

SPECIAL MEETING

THURSDAY, DECEMBER 13, 2007 – 6:00 P.M.

New Town Hall
Conference Room
40 Main Street

North Stonington, CT 06359

Minutes Approved ~ January 3, 2008

1. CALL MEETING TO ORDER: Chairman Stewart called the Special Meeting of the North Stonington Planning & Zoning Commission to order on Thursday, December 13, 2007 at 6:15 p.m. at the New Town Hall, Conference Room.

COMMISSIONERS PRESENT: G. Russell Stewart, III, Chairman, Elaine Boissevain, Vice-Chairman, Louis E. Steinbrecher, Joe Siner and Alternate Members Duncan Schweitzer

COMMISSIONERS ABSENT: Vilma J. Gregoropoulos, Secretary and Alternate Member Susan Grufstedt and Ann Brown

STAFF PRESENT: Sr. Planner & Zoning Official Craig Grimord, Administrative Assistant Cheryl Konsavitch and P&Z Attorney Michael Carey via speaker phone.

PUBLIC HEARING

A. RC #07-060 (Regulation Change) Application of Garden Court, L.L.C., c/o James Ruskowski, 1420 Route 169, Woodstock, CT 06281 to amend the Town of North Stonington Zoning Regulations to add new Housing Opportunity Development or "HOD" overlay district regulations. The regulations apply to housing development in which, for at least 40 years after initial occupancy of units within the proposed development, (1) not less than 15% of the dwelling units will be sold or rented as units of affordable housing, as defined in Conn. Gen. Stat. 8-30g, for persons or families whose income is less than or equal to 80% of the area or statewide median income, whichever is less; and (2) not less than 15% of the dwelling units will be sold or rented as units of affordable housing, for persons or families whose income is less than or equal to 60% of the area or statewide median income, whichever is less. (PH opened on 7/05/07 & continued to 8/09/07, 8/30/07, 9/20/07 & 9/27/07 (extension granted); Received on 5/03/07 & PH must close on or by 10/11/07)

L. Steinbrecher read the application into the record.

Seated: R. Stewart, E. Boissevain, L. Steinbrecher, J. Siner, D. Schweitzer seated for V. Gregoropoulos

D. Schweitzer stated he has attended all but one of the meetings on Garden Court, L.L.C. which was 8/30/07 and listened to the tape of that meeting.

Chairman Stewart stated Towne Engineering has submitted a report pertaining to this application.

Atty. Tim Bates representing the applicant objected to the report being entered into the record. Atty. Bates stated it is new testimony and that the applicant cannot respond to as the Public Hearing was closed.

Atty. Carey stated to the Commission that he felt the report could be entered into the record as he believes it is not new evidence.

The Commission took a short recess to look over the revised draft decisions.

MOTION by L. Steinbrecher, SECOND by J. Siner to deny Application RC #07-060 (Regulation Change) by Garden Court, L.L.C., c/o James Ruskowski, 1420 Route 169, Woodstock, CT 06281 to amend the Town of North Stonington Zoning Regulations to add new Housing Opportunity Development ("HOD") overlay district regulations.

This decision has been made in accord with the regulations of Section 8-30g of the Connecticut General Statutes which requires the Commission to establish, based on evidence in the record, that:

A. The North Stonington Planning and Zoning Commission ("Commission") having thoroughly reviewed the proposed amendment to the Zoning Regulations submitted with the application and having considered all of the evidence submitted throughout the public hearings, finds the proposed amendment to be inadequate to protect substantial public interests in health and safety, and inadequate to promote affordable housing, for the following reasons:

1. The nature, density and scope of this proposal are incompatible with the objectives of the local, regional, and state Plans of Conservation and Development to develop the subject area in a less dense manner to protect the environment and public health and safety and to promote smart growth.

(a) The Connecticut Office of Policy and Management through Sections 16a-24 through 16a-33 of the Connecticut General Statutes (State Plan of Conservation and Development) designated the applicant's site area as Conservation Area and Rural Lands. The Town of North Stonington's Plan identifies it as R-60 (medium density) residential and the 2007 draft Regional Conservation and Development Plan identifies the area as Existing and Proposed Rural Uses. The uses that would be allowed under the applicant's proposals are antithetical to the goals of those plans.

(b) The Town Plan of Conservation and Development encourages a strong sense of community with development patterns that protect environmentally sensitive areas, which preserve the water supply and ecosystem. The development of this site at the proposed density

will be more severe than what could occur with the present zoning classification (R-60) and existing regulations. The Plan further points out that there are a number of constraints to development in North Stonington because of wetlands, shallow-to bedrock soils, rock outcrops, severe slopes and flood plains, all of which, except floodplains, are present at the site. A number of the physical constraints on the site resulted from the present landowner's activities (gravel removal and filling), which appear to have been done without any regard to their environmental impact. The historic use of the property as a gravel bank/excavation has adversely affected the site's ability to support the density proposed by the applicant. The density goals for the subject site expressed in the North Stonington Plan of Conservation and Development are also in part based on the existence of a sole source aquifer, one of two in the State of Connecticut, on the site. The project proposed by the applicant will or may with a reasonable degree of probability have severe and potentially irreparable effects on said environmental resources, including the aquifer, which is or is potentially a regional source of potable water.

(c) The density proposed by the applicant at this location will be incompatible with surrounding land uses, which is contrary to the stated recommendations (including but not limited to stated goals and actions) of the Town's Plan of Conservation and Development.

2. The proposed text and proposed zone are not consistent with Public Act No. 07-04 regarding Incentive Housing Zones. The area chosen by the applicant would not be eligible for state funding under that legislation because it does not meet the statute's express requirements.

3. The Town's largest dairy farm (the Beriah Lewis Farm, which produces 15 tons of milk daily) is located just south of the subject site on Boom Bridge Road (pasture and fields are also located directly to the north and north east of the proposed entrance to Garden Court on Boom Bridge Road). Based on the evidence in the Record, the Commission concludes that the proposed new development at the stated density will adversely affect the operation and viability of the farm in numerous ways, including, based on traffic projections submitted by the applicant itself, interfering with the farm's long-established modes of using town roads. The location of the project proposed by the applicant in such close proximity to and the anticipated effects on the Lewis Farm (and other nearby agricultural sites) are contrary to the stated goals and objectives of the General Assembly as expressed in, for example, C.G.S. § 22-26aa: "The General Assembly finds that the growing population and expanding economy of the state have had a profound impact on the ability of public and private sectors of the state to maintain and preserve agricultural land for farming and food production purposes; that unless there is a sound, state-wide program for its preservation, remaining agricultural land will be lost to succeeding generations and that the conservation of certain arable agricultural land and adjacent pastures, woods and natural drainage areas and open space areas is vital for the well-being of the people of Connecticut."

4. The applicant's proposed text amendment is inadequate to protect substantial public interests in health and safety and to promote affordable housing because it fails to provide information required by the Commission to satisfactorily evaluate the application, including:

a. Section 403.1 of the applicant's proposed regulation includes as a use permitted as of right a category for "accessory commercial". That term is not defined and its inclusion in the regulation without a definition could lead to unanticipated, unintended and undesirable land uses.

Without a definition for this term, the Commission could not properly evaluate the potential traffic impacts of a project that might be proposed in the HOD District.

b. Section 403.1 of the proposed text amendment is inconsistent and confusing in its designation of some uses as permitted as of right because the body of the text, as amended during the public hearing process, calls for any HOD project to be approved by special permit. Section 403.1 also designates one use, "Home Occupation", as a special permit use. These inconsistent designations could lead to unanticipated and undesirable land uses.

c. The proposed regulation includes a use designated "accessory retail or service uses principally servicing residents of the HOD," but does not define the term. The lack of definition of that term could lead to unanticipated and undesirable land uses. Without a definition for this term, the Commission could not properly evaluate the potential traffic impacts of a project that might be proposed in the HOD District.

d. The proposed text requires an application for a boundary change to land the HOD District on a specific piece of property to include only a "Conceptual traffic impact analysis". That term is undefined and the regulation does not specify the type of information the Conceptual traffic impact analysis would be required to contain. The proposed regulation is therefore inadequate for purposes of the Commission's review of a proposed boundary change to land an HOD District. The Commission will not be provided sufficient information to make the traffic analysis necessary to review such an application. The text therefore does not adequately protect the substantial public interest in traffic safety.

e. The proposed regulation contains no provision dealing with ingress and egress by the residents of the site.

f. The proposed regulation requires that a site have a minimum of 50 feet of frontage on a Town of North Stonington road. It makes no specific provision for adequate sight lines at intersections of the project roads with public roads or for the number or nature of accessways to be required for use by the project's residents. This frontage requirement, particularly combined with the lack of specific requirements for sight lines and/or for means of access by the residents, is inadequate to protect the substantial public interest in traffic safety.

g. The proposed regulation requires two means of emergency access but contains no specific requirements for such accessways, such as location, ownership and control and the like. It therefore fails to protect a substantial public interest in traffic safety, public safety and health.

h. As originally proposed, the application required that an applicant for rezoning "demonstrate" both well capacity and capacity for a septic system adequate for the number of units or, in the alternative, the availability of adequate public water and sewer service. During the hearing process, the applicant deleted the requirement for the "demonstration" of adequate provision for water and sewage services as part of the process for reviewing a zone change proposal. The elimination of that requirement significantly impedes the Commission in making determinations necessary to the assurance of public health and safety regarding the potential affects on a particular piece of property and adjacent properties of a proposed zone change seeking to land an HOD District.

i. The proposed regulation does not address the need for the provision of security to assure the construction of an approved project and the permanent maintenance of infrastructure therein.

5. The site proposed as an HOD District does not have the characteristics required for the construction of multi-family housing of the type and amount proposed by the applicant.

Lack of infrastructure and capacity to provide adequate water.

(a) Based on the evidence in the Record, the Commission concludes that the applicant failed to establish that there is sufficient water at the site to adequately supply the needs of a project of the density, scope and nature proposed by the applicant. The evidence submitted by the applicant on this issue is wholly insufficient to demonstrate the presence of adequate water supplies at the site. At the beginning of the public hearing, a consultant for the applicant from Heritage Design Group stated that a test well had been dug. However, that consultant presented no test well data and Commission staff and consultants observed no evidence of a test well on the property despite making multiple visits to it. At a subsequent session of the public hearing, another consultant for the applicant, Russell Slayback, stated that he had reviewed the data prepared by and for the applicant and determined that any test data available for his review was inconclusive on the question whether there are adequate water resources on the site to meet the needs of the proposed project. In short, the applicant provided no reasonable assurance based on specific testing performed on the site and documentation thereof that there is adequate on-site water for domestic and/or fire suppression needs. Public water is not available for this site at the present time and will not be in the foreseeable future.

Lack of infrastructure and capacity to provide adequate sewer.

(b) Based on the evidence in the Record, the Commission concludes that the applicant failed to establish that the project site has the capacity for on site sewage treatment for a project of the density, scope and nature proposed by the applicant or that sewage treatment of the required capacity could be provided without undue risk of substantial harm to water and other natural resources. One representative of the applicant, Cheryl Peterson of Heritage Design Group, stated during the public hearing that 70 test pits had been dug. However, the applicant neither presented to the Commission any professionally endorsed results from said pits nor indicated where they were located. In addition, the applicant provided no assurance against harmful discharge from the proposed package sewage treatment plant nor did it provide reasonable assurances based on specific on-site testing and documentation thereof related to the suitability of the site for on-site sewage disposal. The applicant proposes to install a package treatment plant on top of an aquifer. The applicant's site is at the top of an area identified as an important regional aquifer. The aquifer is an important United States Geological Service - identified drinking water supply and resource with existing wells now supplying public water for a two state area. Public sewer is not available for this site at the present time and will not be in the foreseeable future. The Record indicates that in the event of a failure of such a plant, an eventuality that the applicant could not rule out, the affects on the aquifer both on and off site would be catastrophic and potentially irreparable.

Unsuitability of the soils for the density proposed.

(c) Soils at the site are not suitable for building site development at the density proposed. Testimony revealed questionable fill practices and dumping that occurred on the site during the

historic excavation activities. The applicant initially claimed that there are no dumpsites on the property. The applicant stated that there was nothing to be concerned about except for two abandoned cars. Those two burned abandoned cars are located within the well field proposed by the applicant. However, Commission staff identified multiple dumpsites throughout the site in both upland and wetlands areas. One dump site included an inverted vehicle in a wetlands area. This vehicle was never located or identified by the applicant. The applicant failed to adequately demonstrate that the soils at the site are suitable for use for the project proposed by the applicant both in terms of their potential contamination and their ability to support and provide water and sewage treatment services for the number of units and residents proposed.

(d) The applicant did not show an open space plan as required by its own proposed text amendment.

6. Development of the site at the proposed density allowed by the regulations and shown on the Conceptual site plan submitted by the applicant would result in adverse impacts on the ecosystem, wetlands and water resources within the Town of North Stonington.

7. The site proposed as an HOD District does not have adequate vehicular access. The access available to the site is insufficient to handle everyday residential traffic and emergency access and residential emergency egress from the site given the proposed nature and density of development and will result in unsafe traffic and public safety conditions.

(a) The sole means of ingress and egress to the site for the residents of the project is on Boom Bridge Road, a road maintained by the Town of North Stonington. The proposed intersection of the project driveway with Boom Bridge Road is unsafe and does not protect the substantial public interest in traffic safety because the sight lines at the intersection do not meet established and recognized minimum standards and the applicant does not have sufficient property interests on either the east or west sides of Boom Bridge Road to create sight lines that meet minimum requirements for public safety. This is true of both the original proposal submitted by the applicant and of the variations thereof suggested by the applicant over the course of the public hearings, including on the second to last and last nights of the public hearing. The proposed modification made on the final night of the hearing included moving Boom Bridge Road further to the east than had been proposed at the preceding portion of the hearing. However, the applicant's proposals to move and otherwise change Boom Bridge Road and the driveway design are themselves flawed in several ways:

i. The sight lines at the intersection of the driveway into the project with Boom Bridge Road would still be inadequate.

ii. Sight lines from existing driveways on properties on the east side of Boom Bridge Road would be rendered inadequate or more inadequate than they already are.

iii. Moving Boom Bridge Road would require a change in its configuration from an essentially straight line to a curved road, which would itself create traffic hazards that do not exist now.

iv. The proposed relocation of Boom Bridge Road could not be accomplished within the existing street right-of-way and would require the applicant to obtain rights on properties on the east side of Boom Bridge Road in which it currently has no property interests in order to do grading and other work on said properties.

v. Late in the hearing process, the applicant suggested a 3-way stop sign in possible mitigation of the acknowledged sight line problems at Boom Bridge Road. But that proposal is itself inadequate to achieve its stated goal and is unwarranted under guidelines governing the installation of traffic control devices.

vi. During the hearing the applicant submitted a boulevard design and indicated that a boulevard was necessary to reduce public safety deficiencies at the site's intersection with Boom Bridge Road. However, the applicant subsequently discovered that it has insufficient property rights to create a boulevard at this site and withdrew the boulevard proposal.

(b) The applicant's traffic engineer indicated that the sight lines at the existing intersection of Boom Bridge Road and state highway #184 are below minimum standards and that volumes there exceed capacity. The project as proposed would exacerbate those problems by significantly increasing traffic volumes at that intersection.

(c) The project as proposed and as amended during the hearing process fails to provide adequate means of access for emergency vehicles and of egress from the site by residents during emergency situations.

i. The application as originally submitted called for the use of a private, unpaved right-of-way known as Cranberry Bog Road as the sole means of access to the site by emergency vehicles. As the hearing progressed, the applicant proposed that Cranberry Bog Road also be used as the sole means of emergency egress for residents. Because of its topography, narrow width, and other inadequacies, including inadequate sight lines at its intersection with a public road, and because of the applicant's limited rights to use, maintain and improve Cranberry Bog Road, it is inadequate for any of the uses proposed for it by the applicant.

ii. The easterly portion of the applicant's site, on which a substantial number of units are proposed to be constructed (the applicant's site currently consists of at least two separate lots), has no deeded right to use Cranberry Bog Road. In response to submission of evidence to that effect, the applicant proposed using an existing driveway to Boom Bridge Road south of the proposed main driveway for emergency ingress and egress. That driveway, however, was not part of the application as to which public notice was given by the Commission and no information was provided as to the applicant's rights in that driveway or its suitability for the use proposed for it. The rights of the westerly portion of the applicant's property to use Cranberry Bog Road are limited in scope and nature and might not be broad enough to support the uses proposed by the applicant.

8. The site proposed as an HOD District does not provide adequate measures to insure public safety as it relates to fire protection.

(a) The fourth stories of the proposed structures cannot be accessed by the North Stonington Volunteer Fire Department.

i. The North Stonington department cannot handle evacuations from four story buildings without mechanical assistance from second responders (Mashantucket Pequot Fire Department located ± 10.12 miles away, Pawcatuck Fire Department located ± 6.54 miles away), with which it has no formal written agreements for mutual aid. The applicant stated that it could not reduce the height (4-stories) of any buildings at this particular project. Other alternatives suggested by the applicant, such as the acquisition of special ladders, are untenable and unrealistic given the size and nature of the fire departments, the types of ladders that might be available and the nature and scope of the proposed development.

(b) The North Stonington Volunteer Fire Department has limited membership and equipment. The applicant compared this project to others in Groton, New London, and Norwich which have access to municipal water and paid fire departments. The ladder system proposed by the applicant to mitigate safety concerns regarding four-story buildings is deemed inadequate to protect public safety because of the small size of the Town's small volunteer department and lack of mechanical aerial equipment.

(c) The arrangement of the proposed structures could not be adequately accessed by the North Stonington Volunteer Fire Department.

i. The proposed location of buildings did not provide adequate access for fire fighting apparatus.

9. The application even as amended during the hearing process fails to comply with the requirements of the proposed text amendment itself and of C.G.S. § 8-30g(c) for the provision of a Conceptual Plan adequate and sufficient to allow the Commission to address the public health and safety issues associated with the proposed zone boundary change because, among other things, it fails to provide sufficient information about sewage disposal and water supply proposed for the site.

10. The application is incomplete pursuant to the Town of North Stonington Ordinance entitled "Ordinance Concerning Fees for Review and Evaluation of Land Use Applications and Inspection of Land Use Permit Compliance". The applicant has failed to sustain the fund that Ordinance

required it to sustain during the plan review and hearing process. The terms of the Ordinance therefore compel the Commission to declare the application incomplete. The Ordinance is intended among other things to assure the Town's ability to adequately review proposed zone text and boundary amendments to protect the substantial public interests in public health and safety inherent in any such applications.

11. Information submitted to the Commission by and/or on behalf of the applicant during the review and hearing processes was insufficient in many ways. Among them was the fact that the information provided was speculative and incomplete, as noted in Section A5 hereof concerning water and sewage treatment capacity at the site. In addition, much of the information submitted by the applicant was contradictory. Some of the applicant's consultants contradicted themselves while others contradicted one another. For example, the information provided by the applicant's traffic consultant regarding the sight lines at Boom Bridge Road was repeatedly changed (with no acknowledgment that the testimony was being changed), seemingly in response to the information presented by the Town's consultants. His "conclusions" were no more than speculation. Moreover, other consultants testifying for the applicant on occasion disagreed with one another. For example, Mr. Slayback contradicted testimony that had been presented by others regarding the quality and nature of the information obtained by the applicant about the water resources available at the site. In addition, information was provided to the Commission strongly questioning the reliability of testimony provided on behalf of the applicant on fire suppression issues. Finally, none of the professionally prepared plans submitted by the applicant were professionally sealed. The quality of the information presented by the applicant on substantial public safety and health issues like traffic, fire suppression capacities, and environmental issues can only be characterized as unreliable and insufficient.

12. The application does not propose to include Cranberry Bog Road in the proposed HOD District. Cranberry Bog Road is currently zoned for medium density residential uses. Its use as a means of access to the proposed HOD project is therefore impermissible under Connecticut law.

13. Modifications to the application proposed by the applicant during the hearing process require that land be included in the project that was not included in the notice of the public hearing: A parcel 30' wide at the base of the residents' driveway; property on the east side of Boom Bridge Road; and a driveway to Boom Bridge Road south of the proposed residents' driveway that the applicant posited as an alternate means of emergency access to the easterly half of its property.

14. The applicant submitted insufficient information about stormwater runoff anticipated to result from the project and about the project's anticipated affects on adjacent and nearby properties.

15. The applicant's proposed text amendment and project would create an undue concentration of population in one isolated area of a rural town, create traffic hazards and threats from fire, and pose unreasonable risks of harm to water and other environmental resources, all contrary to the stated resource's objectives of zoning for the state of Connecticut to: lessen

congestion in the streets; to secure safety from fire, panic, flood and other dangers; to promote health and the general welfare; to prevent the overcrowding of land; to avoid undue concentration of population and to facilitate the adequate provision of transportation, water, sewerage, parks and other public requirements.

B. This decision is necessary to protect substantial public interests in health, safety or other matters which the commission may legally consider.

1. This decision is necessary to protect the following public interests:

a. Consistency with density goals necessary to protect valuable natural resources, including but not limited to sole source aquifers, wetlands and watercourses, and active agricultural land.

b. Public health through the provision of adequate water and sewer and the protection of water and other natural resources.

c. Public safety through the provision of safe and adequate transportation systems and of adequate means of fire suppression and of dealing with emergencies.

2. Such public interests clearly outweigh the need for affordable housing (particularly in light of the existence of other parcels in town which would be suitable for affordable housing). Given the substantial public interests cited above; the collective totality of the evidence in the hearing record documenting the inconsistency of the affordable housing application with long-standing, existing policies and goals; the adverse impact on the public health and safety and the historical effort to plan how the community develops (per Plan of Conservation of Development and Comprehensive Plan), the Commission finds that the substantial public interests noted herein

clearly outweigh the need for affordable housing in the proposed location.

C. The public interests noted herein cannot be protected by reasonable changes to the proposed Affordable Housing Development. Because there is no plan specific proposal for a particular housing development project, the Commission cannot consider whether any "plan specific" problems might be eliminated or adjusted by reasonable design modifications. The Commission cannot require modifications of plans that do not exist and are not before the Commission. However, in that regard the applicant affirmed that it cannot reduce the height (four stories) of the structures proposed for the site despite the manifest fire safety concerns posed by buildings of that height at this location. Moreover, the physical "site specific" constraints associated with the proposed site, including the degraded condition of the land resulting from its

use as an excavation site, cannot be changed by a decree of this Commission. For example, the applicant neither owns nor controls sufficient property interests to provide and perpetually maintain adequate sight lines at Boom Bridge Road or to provide a boulevard or other adequate means of ingress to the property, and the applicant has insufficient interests in Cranberry Bog Road to use it for the purposes proposed in its application. In that regard, the traffic authority of the Town of North Stonington indicated that it would not allow road intersection modifications that would lessen existing sight lines, road standards or create nonconformance's that do not currently exist. In addition, modifications to the original plan suggested by the applicant during the course of the public hearing would require the inclusion of land in the zone change that was not included in the parcel as to which public notice of the hearings was given by the Commission.

The Commission further finds that there is substantial public interests in rejecting the application because of the lack of public water and sewer (the applicant removed the requirement for demonstration of water and sewer from its text amendment after not meeting its own initial requirement), unsafe traffic conditions, adverse impacts on water quality, wetlands quality and water and other natural resources. The Commission further concludes that the public interest cannot be protected by reasonable changes to the proposal and only denial of the application is practical for this site.

D. BE IT THEREFORE RESOLVED, that for the foregoing reasons, the Commission hereby DENIES the application of Garden Court, L.L.C., c/o James Ruskowski, #07-060 for an amendment to the Zoning Regulations for an HOD overlay district.

MOTION CARRIED UNANIMOUSLY.

B. ZC #07-061 (Zone Change) Application of Garden Court, L.L.C., c/o James Ruskowski, 1420 Route 169, Woodstock, CT 06281 to amend the Town of North Stonington Zoning Map to add new Housing Opportunity Development or "HOD" overlay zone. The proposed zone consists of two parcels identified as Map/Block/Lot #118/2751/49/3006 & #119/2751/59/9950, totaling 97+/- acres of land. Located on the West side of Boom Bridge Road, North of I-95 and East of Cranberry Bog Road, approximately 1000' south of the intersection of Boom Bridge Road and CT Rte. 184. (PH opened on 7/05/07 & continued to 8/09/07, 8/30/07 & 9/20/07 (extension granted); Received on 5/03/07 & PH must close on or by 10/11/07)

L. Steinbrecher read the application into the record.

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Atty. Carey stated to the Commission that he felt the report could be entered into the record as he believes it is not new evidence.

MOTION by L. Steinbrecher, SECOND by E. Boissevain MOTION TO DENY Application ZC #07-061 (Zone Change) by Garden Court, L.L.C., c/o James Ruskowski, 1420 Route 169, Woodstock, CT 06281 to amend the Town of North Stonington Zoning Map to locate a new Housing Opportunity Development ("HOD") overlay zone on parcels identified as Map/Block/Lot #118/2751/49/3006 & #119/2751/59/9950 totaling 97+/- acres of land located on the West side of Boom Bridge Road, North of I-95 and East of Cranberry Bog Road, approximately 1000' south of the intersection of Boom Bridge Road and CT Rte. 184.

This decision has been made in accord with Section 8-30g of the Connecticut General Statutes, which requires the Commission to establish, based on evidence in the record, that:

A. The North Stonington Planning and Zoning Commission ("Commission") having thoroughly reviewed the proposed zoning boundary amendment submitted with the application and having considered all of the evidence submitted throughout the public hearings, finds the proposed amendment to be inadequate to protect substantial public interests in health and safety, and inadequate to promote affordable housing, for the following reasons:

1. The nature, density and scope of this proposal are incompatible with the objectives of the local, regional, and state Plans of Conservation and Development to develop the subject area in a less dense manner to protect the environment and public health and safety and to promote smart growth.

(a) The Connecticut Office of Policy and Management through Sections 16a-24 through 16a-33 of the Connecticut General Statutes (State Plan of Conservation and Development) designated the applicant's site area as Conservation Area and Rural Lands. The Town of North Stonington's Plan identifies it as R-60 (medium density) residential and the 2007 draft Regional Conservation and Development Plan identifies the area as Existing and Proposed Rural Uses. The uses that would be allowed under the applicant's proposals are antithetical to the goals of those plans.

(b) The Town Plan of Conservation and Development encourages a strong sense of community with development patterns that protect environmentally sensitive areas, which preserve the water supply and ecosystem. The development of this site at the proposed density will be more severe than what could occur with the present zoning classification (R-60) and existing regulations. The Plan further points out that there are a number of constraints to development in North Stonington because of wetlands, shallow-to bedrock soils, rock outcrops, severe slopes and flood plains, all of which, except floodplains, are present at the site. A number of the physical constraints on the site resulted from the present landowner's activities (gravel removal and filling), which appear to have been done without any regard to their environmental impact. The historic use of the property as a gravel bank/excavation has adversely affected the site's ability to support the density proposed by the applicant. The density goals for the subject site expressed in the North Stonington Plan of Conservation and Development are also in part based on the existence of a sole source aquifer, one of two in the State of Connecticut, on the site. The project proposed by the applicant will or may with a reasonable degree of probability have severe and potentially irreparable effects on said environmental resources, including the aquifer, which is or is potentially a regional source of potable water.

(c) The density proposed by the applicant at this location will be incompatible with surrounding land uses, which is contrary to the stated recommendations (including but not limited to stated goals and actions) of the Town's Plan of Conservation and Development.

2. The proposed text and proposed zone are not consistent with Public Act No. 07-04 regarding Incentive Housing Zones. The area chosen by the applicant would not be eligible for state funding under that legislation because it does not meet the statute's express requirements.

3. The Town's largest dairy farm (the Beriah Lewis Farm, which produces 15 tons of milk daily) is located just south of the subject site on Boom Bridge Road (pasture and fields are also located directly to the north and north east of the proposed entrance to Garden Court on Boom Bridge Road). Based on the evidence in the Record, the Commission concludes that the proposed new development at the stated density will adversely affect the operation and viability of the farm in numerous ways, including, based on traffic projections submitted by the applicant itself, interfering with the farm's long-established modes of using town roads. The location of the project proposed by the applicant in such close proximity to and the anticipated effects on the Lewis Farm (and other nearby agricultural sites) are contrary to the stated goals and objectives of the General Assembly as expressed in, for example, C.G.S. § 22-26aa: "The General Assembly finds that the growing population and expanding economy of the state have had a profound impact on the ability of public and private sectors of the state to maintain and preserve agricultural land for farming and food production purposes; that unless there is a sound, state-wide program for its preservation, remaining agricultural land will be lost to succeeding generations and that the conservation of certain arable agricultural land and adjacent pastures, woods and natural drainage areas and open space areas is vital for the well-being of the people of Connecticut."

4. The applicant's proposed text amendment is inadequate to protect substantial public interests in health and safety and to promote affordable housing because it fails to provide information required by the Commission to satisfactorily evaluate the application, including:

a. Section 403.1 of the applicant's proposed regulation includes as a use permitted as of right a category for "accessory commercial". That term is not defined and its inclusion in the regulation without a definition could lead to unanticipated, unintended and undesirable land uses. Without a definition for this term, the Commission could not properly evaluate the potential traffic impacts of a project that might be proposed in the HOD District.

b. Section 403.1 of the proposed text amendment is inconsistent and confusing in its designation of some uses as permitted as of right because the body of the text, as amended during the public hearing process, calls for any HOD project to be approved by special permit. Section 403.1 also designates one use, "Home Occupation", as a special permit use. These inconsistent designations could lead to unanticipated and undesirable land uses.

c. The proposed regulation includes a use designated "accessory retail or service uses principally servicing residents of the HOD," but does not define the term. The lack of definition of that term could lead to unanticipated and undesirable land uses. Without a definition for this

term, the Commission could not properly evaluate the potential traffic impacts of a project that might be proposed in the HOD District.

d. The proposed text requires an application for a boundary change to land the HOD District on a specific piece of property to include only a "Conceptual traffic impact analysis". That term is undefined and the regulation does not specify the type of information the Conceptual traffic impact analysis would be required to contain. The proposed regulation is therefore inadequate for purposes of the Commission's review of a proposed boundary change to land an HOD District. The Commission will not be provided sufficient information to make the traffic analysis necessary to review such an application. The text therefore does not adequately protect the substantial public interest in traffic safety.

e. The proposed regulation contains no provision dealing with ingress and egress by the residents of the site.

f. The proposed regulation requires that a site have a minimum of 50 feet of frontage on a Town of North Stonington road. It makes no specific provision for adequate sight lines at intersections of the project roads with public roads or for the number or nature of accessways to be required for use by the project's residents. This frontage requirement, particularly combined with the lack of specific requirements for sight lines and/or for means of access by the residents, is inadequate to protect the substantial public interest in traffic safety.

g. The proposed regulation requires two means of emergency access but contains no specific requirements for such accessways, such as location, ownership and control and the like. It therefore fails to protect a substantial public interest in traffic safety, public safety and health.

h. As originally proposed, the application required that an applicant for rezoning "demonstrate" both well capacity and capacity for a septic system adequate for the number of units or, in the alternative, the availability of adequate public water and sewer service. During the hearing process, the applicant deleted the requirement for the "demonstration" of adequate provision for water and sewage services as part of the process for reviewing a zone change proposal. The elimination of that requirement significantly impedes the Commission in making determinations necessary to the assurance of public health and safety regarding the potential affects on a particular piece of property and adjacent properties of a proposed zone change seeking to land an HOD District.

i. The proposed regulation does not address the need for the provision of security to assure the construction of an approved project and the permanent maintenance of infrastructure therein.

5. The site proposed as an HOD District does not have the characteristics required for the construction of multi-family housing of the type and amount proposed by the applicant.

Lack of infrastructure and capacity to provide adequate water.

(a) Based on the evidence in the Record, the Commission concludes that the applicant failed to establish that there is sufficient water at the site to adequately supply the needs of a project of the density, scope and nature proposed by the applicant. The evidence submitted by the applicant on this issue is wholly insufficient to demonstrate the presence of adequate water

supplies at the site. At the beginning of the public hearing, a consultant for the applicant from Heritage Design Group stated that a test well had been dug. However, that consultant presented no test well data and Commission staff and consultants observed no evidence of a test well on the property despite making multiple visits to it. At a subsequent session of the public hearing, another consultant for the applicant, Russell Slayback, stated that he had reviewed the data prepared by and for the applicant and determined that any test data available for his review was inconclusive on the question whether there are adequate water resources on the site to meet the needs of the proposed project. In short, the applicant provided no reasonable assurance based on specific testing performed on the site and documentation thereof that there is adequate on-site water for domestic and/or fire suppression needs. Public water is not available for this site at the present time and will not be in the foreseeable future.

Lack of infrastructure and capacity to provide adequate sewer.

(b) Based on the evidence in the Record, the Commission concludes that the applicant failed to establish that the project site has the capacity for on site sewage treatment for a project of the density, scope and nature proposed by the applicant or that sewage treatment of the required capacity could be provided without undue risk of substantial harm to water and other natural resources. One representative of the applicant, Cheryl Peterson of Heritage Design Group, stated during the public hearing that 70 test pits had been dug. However, the applicant neither presented to the Commission any professionally endorsed results from said pits nor indicated where they were located. In addition, the applicant provided no assurance against harmful discharge from the proposed package sewage treatment plant nor did it provide reasonable assurances based on specific on-site testing and documentation thereof related to the suitability of the site for on-site sewage disposal. The applicant proposes to install a package treatment plant on top of an aquifer. The applicant's site is at the top of an area identified as an important regional aquifer. The aquifer is an important United States Geological Service - identified drinking water supply and resource with existing wells now supplying public water for a two state area. Public sewer is not available for this site at the present time and will not be in the foreseeable future. The Record indicates that in the event of a failure of such a plant, an eventuality that the applicant could not rule out, the affects on the aquifer both on and off site would be catastrophic and potentially irremediable.

Unsuitability of the soils for the density proposed.

(c) Soils at the site are not suitable for building site development at the density proposed. Testimony revealed questionable fill practices and dumping that occurred on the site during the historic excavation activities. The applicant initially claimed that there are no dumpsites on the property. The applicant stated that there was nothing to be concerned about except for two abandoned cars. Those two burned abandoned cars are located within the well field proposed by the applicant. However, Commission staff identified multiple dumpsites throughout the site in both upland and wetlands areas. One dump site included an inverted vehicle in a wetlands area. This vehicle was never located or identified by the applicant. The applicant failed to adequately demonstrate that the soils at the site are suitable for use for the project proposed by the applicant both in terms of their potential contamination and their ability to support and provide water and sewage treatment services for the number of units and residents proposed.

(d) The applicant did not show an open space plan as required by its own proposed text amendment.

6. Development of the site at the proposed density allowed by the regulations and shown on the Conceptual site plan submitted by the applicant would result in adverse impacts on the ecosystem, wetlands and water resources within the Town of North Stonington.

7. The site proposed as an HOD District does not have adequate vehicular access. The access available to the site is insufficient to handle everyday residential traffic and emergency access and residential emergency egress from the site given the proposed nature and density of development and will result in unsafe traffic and public safety conditions.

(a) The sole means of ingress and egress to the site for the residents of the project is on Boom Bridge Road, a road maintained by the Town of North Stonington. The proposed intersection of the project driveway with Boom Bridge Road is unsafe and does not protect the substantial public interest in traffic safety because the sight lines at the intersection do not meet established and recognized minimum standards and the applicant does not have sufficient property interests on either the east or west sides of Boom Bridge Road to create sight lines that meet minimum requirements for public safety. This is true of both the original proposal submitted by the applicant and of the variations thereof suggested by the applicant over the course of the public hearings, including on the second to last and last nights of the public hearing. The proposed modification made on the final night of the hearing included moving Boom Bridge Road further to the east than had been proposed at the preceding portion of the hearing. However, the applicant's proposals to move and otherwise change Boom Bridge Road and the driveway design are themselves flawed in several ways:

vii. The sight lines at the intersection of the driveway into the project with Boom Bridge Road would still be inadequate.

viii. Sight lines from existing driveways on properties on the east side of Boom Bridge Road would be rendered inadequate or more inadequate than they already are.

ix. Moving Boom Bridge Road would require a change in its configuration from an essentially straight line to a curved road, which would itself create traffic hazards that do not exist now.

x. The proposed relocation of Boom Bridge Road could not be accomplished within the existing street right-of-way and would require the applicant to obtain rights on properties on the east side of Boom Bridge Road in which it currently has no property interests in order to do grading and other work on said properties.

xi. Late in the hearing process, the applicant suggested a 3-way stop sign in possible mitigation of the acknowledged sight line problems at Boom Bridge Road. But that proposal is itself inadequate to achieve its stated goal and is unwarranted under guidelines governing the installation of traffic control devices.

xii. During the hearing the applicant submitted a boulevard design and indicated that a boulevard was necessary to reduce public safety deficiencies at the site's intersection with Boom

Bridge Road. However, the applicant subsequently discovered that it has insufficient property rights to create a boulevard at this site and withdrew the boulevard proposal.

(b) The applicant's traffic engineer indicated that the sight lines at the existing intersection of Boom Bridge Road and state highway #184 are below minimum standards and that volumes there exceed capacity. The project as proposed would exacerbate those problems by significantly increasing traffic volumes at that intersection.

(c) The project as proposed and as amended during the hearing process fails to provide adequate means of access for emergency vehicles and of egress from the site by residents during emergency situations.

iii. The application as originally submitted called for the use of a private, unpaved right-of-way known as Cranberry Bog Road as the sole means of access to the site by emergency vehicles. As the hearing progressed, the applicant proposed that Cranberry Bog Road also be used as the sole means of emergency egress for residents. Because of its topography, narrow width, and other inadequacies, including inadequate sight lines at its intersection with a public road, and because of the applicant's limited rights to use, maintain and improve Cranberry Bog Road, it is inadequate for any of the uses proposed for it by the applicant.

iv. The easterly portion of the applicant's site, on which a substantial number of units are proposed to be constructed (the applicant's site currently consists of at least two separate lots), has no deeded right to use Cranberry Bog Road. In response to submission of evidence to that effect, the applicant proposed using an existing driveway to Boom Bridge Road south of the proposed main driveway for emergency ingress and egress. That driveway, however, was not part of the application as to which public notice was given by the Commission and no information was provided as to the applicant's rights in that driveway or its suitability for the use proposed for it. The rights of the westerly portion of the applicant's property to use Cranberry Bog Road are limited in scope and nature and might not be broad enough to support the uses proposed by the applicant.

8. The site proposed as an HOD District does not provide adequate measures to insure public safety as it relates to fire protection.

(a) The fourth stories of the proposed structures cannot be accessed by the North Stonington Volunteer Fire Department.

i. The North Stonington department cannot handle evacuations from four story buildings without mechanical assistance from second responders (Mashantucket Pequot Fire Department located \pm 10.12 miles away, Pawcatuck Fire Department located \pm 6.54 miles away), with which it has no formal written agreements for mutual aid. The Town of North Stonington has no formal

written agreements with either fire department as it relates to mutual aid. The applicant stated that it could not reduce the height (4-stories) of any buildings at this particular project. Other alternatives suggested by the applicant, such as the acquisition of special ladders, are untenable and unrealistic given the size and nature of the fire departments, the types of ladders that might be available and the nature and scope of the proposed development.

(b) The North Stonington Volunteer Fire Department has limited membership and equipment. The applicant compared this project to others in Groton, New London, and Norwich which have access to municipal water and paid fire departments. The ladder system proposed by the applicant to mitigate safety concerns regarding four-story buildings is deemed inadequate to protect public safety because of the small size of the Town's small volunteer department and lack of mechanical aerial equipment.

(c) The arrangement of the proposed structures could not be adequately accessed by the North Stonington Volunteer Fire Department.

i. The proposed location of buildings did not provide adequate access for fire fighting apparatus.

9. The application even as amended during the hearing process fails to comply with the requirements of the proposed text amendment itself and of C.G.S. § 8-30g(c) for the provision of a Conceptual Plan adequate and sufficient to allow the Commission to address the public health and safety issues associated with the proposed zone boundary change because, among other things, it fails to provide sufficient information about sewage disposal and water supply proposed for the site.

10. The application is incomplete pursuant to the Town of North Stonington Ordinance entitled "Ordinance Concerning Fees for Review and Evaluation of Land Use Applications and Inspection of Land Use Permit Compliance". The applicant has failed to sustain the fund that Ordinance required it to sustain during the plan review and hearing process. The terms of the Ordinance therefore compel the Commission to declare the application incomplete. The Ordinance is intended among other things to assure the Town's ability to adequately review proposed zone text and boundary amendments to protect the substantial public interests in public health and safety inherent in any such applications.

11. Information submitted to the Commission by and/or on behalf of the applicant during the review and hearing processes was insufficient in many ways. Among them was the fact that the information provided was speculative and incomplete, as noted in Section A5 hereof concerning water and sewage treatment capacity at the site. In addition, much of the information submitted by the applicant was contradictory. Some of the applicant's consultants contradicted themselves while others contradicted one another. For example, the information provided by the applicant's traffic consultant regarding the sight lines at Boom Bridge Road was repeatedly changed (with no acknowledgment that the testimony was being changed), seemingly in response to the information presented by the Town's consultants. His "conclusions" were no more than

speculation. Moreover, other consultants testifying for the applicant on occasion disagreed with one another. For example, Mr. Slayback contradicted testimony that had been presented by others regarding the quality and nature of the information obtained by the applicant about the water resources available at the site. In addition, information was provided to the Commission strongly questioning the reliability of testimony provided on behalf of the applicant on fire suppression issues. Finally, none of the professionally prepared plans submitted by the applicant were professionally sealed. The quality of the information presented by the applicant on substantial public safety and health issues like traffic, fire suppression capacities, and environmental issues can only be characterized as unreliable and insufficient.

12. The application does not propose to include Cranberry Bog Road in the proposed HOD District. Cranberry Bog Road is currently zoned for low density residential uses. Its use as a means of access to the proposed HOD project is therefore impermissible under Connecticut law.

13. Modifications to the application proposed by the applicant during the hearing process require that land be included in the project that was not included in the notice of the public hearing: A parcel 30' wide at the base of the residents' driveway; property on the east side of Boom Bridge Road; and a driveway to Boom Bridge Road south of the proposed residents' driveway that the applicant posited as an alternate means of emergency access to the easterly half of its property.

14. The applicant submitted insufficient information about stormwater runoff anticipated to result from the project and about the project's anticipated affects on adjacent and nearby properties.

15. The applicant's proposed text amendment and project would create an undue concentration of population in one isolated area of a rural town, create traffic hazards and threats from fire, and pose unreasonable risks of harm to water and other environmental resources, all contrary to the stated resource's objectives of zoning for the state of Connecticut to: lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; to promote health and the general welfare; to prevent the overcrowding of land; to avoid undue concentration of population and to facilitate the adequate provision of transportation, water, sewerage, parks and other public requirements.

16. The Commission has denied the applicant's text change request, #07-060, and the applicant's proposal for a boundary change deviates from current zoning regulations in ways, (.e.g., density, multiple principal structures on a lot, definition of minimum lot area, etc. See, .e.g., Application 4/13/07 Tab 1) that impair substantial public interests in health and safety and the preservation of environmental resources, as noted throughout this motion.

B. This decision is necessary to protect substantial public interests in health, safety or other matters which the commission may legally consider.

1. This decision is necessary to protect the following public interests:

- a. Consistency with density goals necessary to protect valuable natural resources, including but not limited to sole source aquifers, wetlands and watercourses, and active agricultural land.

- b. Public and other natural health through the provision of adequate water and sewer and the protection of water resources.

- c. Public safety through the provision of safe and adequate transportation systems and of adequate means of fire suppression and of dealing with emergencies.

2. Such public interests clearly outweigh the need for affordable housing (particularly in light of the existence of other parcels in town which would be suitable for affordable housing). Given the substantial public interests cited above; the collective totality of the evidence in the hearing record documenting the inconsistency of the affordable housing application with long-standing, existing policies and goals; the adverse impact on the public health and safety and the historical effort to plan how the community develops (per Plan of Conservation of Development and Comprehensive Plan), the Commission finds that the substantial public interests noted herein clearly outweigh the need for affordable housing in the proposed location.

C. The public interests noted herein cannot be protected by reasonable changes to the proposed Affordable Housing Development. Because there is no plan specific proposal for a particular housing development project, the Commission cannot consider whether any "plan specific" problems might be eliminated or adjusted by reasonable design modifications. The Commission cannot require modifications of plans that do not exist and are not before the Commission. However, in that regard the applicant affirmed that it cannot reduce the height (four stories) of the structures proposed for the site despite the manifest fire safety concerns posed by buildings of that height at this location. Moreover, the physical "site specific" constraints associated with the proposed site, including the degraded condition of the land resulting from its use as an excavation site, cannot be changed by a decree of this Commission. For example, the applicant neither owns nor controls sufficient property interests to provide and perpetually maintain adequate sight lines at Boom Bridge Road or to provide a boulevard or other adequate means of ingress to the property, and the applicant has insufficient interests in Cranberry Bog Road to use it for the purposes proposed in its application. In that regard, the traffic authority of the Town of North Stonington indicated that it would not allow road intersection modifications that would lessen existing sight lines, road standards or create nonconformances that do not currently exist. In addition, modifications to the original plan suggested by the applicant during the course of the public hearing would require the inclusion of land in the zone change that was not included in the parcel as to which public notice of the hearings was given by the Commission.

The Commission further finds that there is substantial public interests in rejecting the application because of the lack of public water and sewer (the applicant removed the requirement for demonstration of water and sewer from its text amendment after not meeting its own initial

requirement), unsafe traffic conditions, adverse impacts on water quality, wetlands quality and water and other natural resources. The Commission further concludes that the public interest cannot be protected by reasonable changes to the proposal and only denial of the application is practical for this site.

D. BE IT THEREFORE RESOLVED, that for the foregoing reasons, the Commission hereby DENIES the application for a zone change by Garden Court, L.L.C., c/o James Ruskowski, for an amendment to the Zoning map to locate an HOD overlay district on property identified as Map/Block/Lot #118/2751/49/3006 & #119/2751/59/9950 totaling 97+/- acres of land located on the West side of Boom Bridge Road, North of I-95 and East of Cranberry Bog Road, approximately 1000' south of the intersection of Boom Bridge Road and CT Rte. 184.

MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT:

MOTION by L. Steinbrecher, SECOND by E. Boissevain to adjourn the special meeting at 6:43 p.m. MOTION CARRIED UNANIMOUSLY.

Respectfully Submitted,

Cheryl Konsavitch, Administrative Assistant
Planning & Zoning Commission