

**EAST LYME ZONING COMMISSION  
PUBLIC HEARING I  
Thursday, MARCH 23rd, 2006  
MINUTES**

The East Lyme Zoning Commission held the Application of Attorney Theodore A. Harris, agent for Vespera Investments, Public Hearing for (a) Approval of a Zone change to the property known as 38 Hope Street, located at 38 Hope Street, Niantic, Connecticut, from a Light Industrial District to an Affordable Housing District, and (b) approval of a site plan for an Affordable Housing Development to be known as 38 Hope Street, containing approximately 150 units, on March 23, 2006 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT.

**PRESENT:** Mark Nickerson, Chairman, Rosanna Carabelas, Secretary,  
Marc Salerno, Norm Peck, William Dwyer, Alternate, Joe  
Barry, Alternate

**ALSO PRESENT:** Attorney Theodore Harris, Representing the Applicant  
Karl Frey, Applicant  
Michael Dunning, Shook Kelley  
John Sullivan, Barkan & Mess Traffic Engineers  
Robin Leigh, Leigh Landscape Design  
Robert D. Pfanner, Civil Engineer  
Bob Bulmer, Alternate  
William Mulholland, Zoning Official  
Joshua Foley, Assistant Town Counsel  
Rose Ann Hardy, Ex-Officio, Board of Selectmen

**FILED IN EAST LYME TOWN  
CLERK'S OFFICE**

Mar 31 20 06 at NOON AM  
PM

*Esther B. Williams*  
EAST LYME TOWN CLERK

**ABSENT:** Pamela Byrnes, Ed Gada

**PANEL:** Rosanna Carabelas, Acting Chairman, Marc Salerno,  
William Dwyer, Alternate, Bob Bulmer, Alternate &  
Acting Secretary, Joe Barry, Alternate

**Pledge of Allegiance**

The Pledge was observed.

Mr. Nickerson said that he anticipated a long Public Hearing this evening and asked that the people in attendance keep the discussions to next to nothing as the microphones will pick up conversation and it will be difficult for everyone to hear. At the beginning of every Commission meeting we ask –

From the back of the room – ‘Excuse me Mr. Chairman, point of order’ -

Bob Gadbois, 358 Boston Post Road said that he has attended a lot of Zoning Board meetings and he remembered Mr. Mulholland really expressing his opinion not to talk about any of these projects that go on –

Mr. Nickerson asked Mr. Gadbois if he was talking about within Public Delegations here -

Mr. Gadbois said to Mr. Nickerson, that it was either way he wanted to take it. He said that he was not speaking as a Water & Sewer member here and not speaking as a part of that Commission. On March 7 at the Planning meeting in the lobby, after the meeting, he said that he observed Mr. Nickerson talking to the residents of Hope Street and he was talking about the project. He said that he also spoke to him about it. He said that he respects that Mr. Nickerson will recuse himself from chairing this meeting and discussing and voting on it. He then asked Mr. Nickerson what his pleasure was.

Mr. Nickerson said that he would excuse Mr. Gadbois and continue with the meeting.

Mr. Gadbois again asked Mr. Nickerson what his pleasure was.  
Mr. Nickerson asked Mr. Gadbois to sir, please step down.  
Mr. Gadbois said that he could not talk and vote on this meeting.  
Mr. Nickerson said that he disagreed whole heartedly with Mr. Gadbois.  
Mr. Gadbois said that he had a letter from the Town Attorney and said that he would like him to read what it says. (He then gave the Commissioners a copy)  
Mr. Nickerson said that they would break –  
Mr. Mulholland said that the Town Attorney was present and that they could confer with him.  
Mr. Nickerson said that they would take a brief recess.  
(Two-minute recess taken)  
Mr. Nickerson said to Mr. Gadbois that he would address that and asked that Mr. Gadbois please not interrupt his meeting. He said that they start every Zoning Commission meeting with time for the public to speak to the Commission about items that are not on the agenda and not being decided.

Mr. Nickerson seated two Alternates, Mr. Dwyer and Mr. Barry.  
Mr. Barry, Alternate discoursed on the alphabet and who was sitting and the order.

### **Public Delegations**

Mr. Nickerson called for anyone from the public who wished to address the Commission on subject matters not on the Agenda.

Josephine Beebe, 9 Dodge Court, Niantic said that she has been to several meetings now where they have been asked to approve developments. They come in and they come in and she thinks that Niantic/East Lyme must be very fertile ground for developers. She said that she is wondering why that is. She said that she went to the meeting at the 38 Hope St. location and it was a slick presentation with nice hot food, very social-

Mr. Nickerson said that she could not speak about this particular project as it is on the agenda –

Ms. Beebe said no, she is not going to speak about it, oh – she can't refer to it – sorry. She said that what she was going to ask of this Commission which is a Zoning & Planning Commission why they allow people to come in and plan our Town. She asked if these people have a Plan of Development for our Town. She said that we are hostages to people who come in and present lovely things, and that is fine but what are we doing to make a plan for our Town. What are we doing about this. She thinks that we should be planning our Town.

Anthony Pezzullo, 9 Joyce Court said that he was going to be quiet in the back but considering that he was one of the residents that Mr. Nickerson was speaking to and voicing his opinion to and how he said that this was his meeting and not the Town's meeting, he figured that he would voice his opinion that he was witness to Mr. Nickerson's opinion and perhaps he should step down.

Mr. Nickerson said that with advice from the Town Attorney, the two reasons why someone would step out of a Public Hearing are because there would be personal gain or a pre-disposition on voting. He said that he has neither. Conversations about this, constituents' phone calls at home, people on the street, he has conversations as they all do, they are conversations about fact and how the process works. There were many in the back of the room who were confused on how the process works and when they would be able to speak and that was some of the conversations.

Larry Burgess, 10 Joyce Court said that he was one of the people that Mr. Nickerson was speaking to that evening in the lobby and one of his comments to him was asking him if he would like to have it in his neighborhood or his back yard. He said that Mr. Nickerson said that it was not conducive to his neighborhood. Well, it is not conducive to our neighborhood. The other comment that you made was asking if we would rather have it be a trucking company. My perception is that you had already made up your mind and you have a predisposition to this.

Mr. Nickerson said that there seems to be a feeling that this is the case and he does not want to make this a bigger controversy than it already is so he said that he would step down as he thinks that they have enough people.

Mr. Mulholland asked that they take a two-minute recess so that they can determine who will be the Chair.

(Brief recess taken)

It was determined that Ms. Carabelas would be the Acting Chairman for the Public Hearing.

#### **Public Hearing I**

- 1. Application of Attorney Theodore A. Harris, agent for Vespera Investments, for (a) approval of a Zone Change to the property known as 38 Hope Street, located at 38 Hope Street, Niantic, Connecticut, from a Light Industrial District to an Affordable Housing District, and (b) approval of a site plan for an Affordable Housing Development to be known as 38 Hope Street, containing approximately 150 units. The property is further identified as East Lyme Assessor's Map 11.2, Lot 122. Acting Chairman Carabelas opened the Public Hearing and called it to order at 7:55 PM.**

Ms. Carabelas, Acting Chairman said that it was the consensus of the Commission that she would be the Acting Chairman for this Public Hearing.

Mr. Peck said that he would recuse himself as he has a conflict. He seated himself in the audience.

Ms. Carabelas seated Bob Bulmer, Alternate and asked that he also be the Acting Secretary.

Ms. Carabelas said that Town Counsel would brief them on Affordable Housing applications.

Joshua Foley, Acting Town Counsel said that Affordable Housing applications fall under CGS 8-30g. He advised that they read that section. Typically there are two types – one that falls under the statutes and the current local Section 32 Zoning Regulations. The other is under the 'Wisniewski' approach. Here, the Courts have ruled that the underlying Zoning Regulations are not a basis to deny the application (due to lot size) because the lot size difference was not a matter of public health or safety, which is the only basis on which affordable housing may be denied under Section 8-30g. The burden of proof shifts in affordable housing applications when they are denied, from the applicant to the Commission. Every attempt must be made if there are reasonable modifications that could be made to accommodate the application and encourage affordable housing. The Commission can act on the application in the following ways – it can approve the application, deny the application, approve the application with restrictions and modifications or deny the application with findings on how the application can be reasonably modified.

Mr. Barry said that they could also table it.

Attorney Foley said that he was giving them the ultimate outcomes.

Mr. Bulmer said that he thinks that one of the things to emphasize to the members of the Board is what is on the record and the tapes as that is what counts. He cautioned the members not to talk with each other as if they are at a cocktail party.

Attorney Foley concurred.

From the audience – 'Point of Order Madam Chairman'

Bob Jones, 5 Applewood Common said that two members just got dismissed for talking outside the Board about this project that we are having a Public Hearing on – is that correct?

Ms. Carabelas said that it was just one and the other recused himself for a conflict of interest.

Mr. Jones asked if anyone else here on the Board has talked about this or expressed an opinion?

Ms. Carabelas said, speaking for herself – no.

The other Commission members shook their heads no.

Mr. Jones thanked them and asked the Recording Secretary if that was on the record.

The Recording Secretary replied yes.

Ms. Carabelas said that they would now have a brief introduction of this application from Mr. Harris.

Attorney Theodore Harris, place of business 351 Main Street, representing the applicant said that what they have before them is an exciting opportunity to take an old dilapidated factory site and turn it into 150 flat and condo units. In the late 1980's the downtown area was on the downslide and now it is on its' way back up. Not only will this provide housing, but some much needed Affordable Housing which will enable people to buy homes in downtown Niantic. This gives an added shot in the arm for downtown Niantic. He said that they

would get into the details of this proposal shortly once they read into the record the various items of correspondence.

Ms. Carabelas asked Mr. Bulmer, Acting Secretary to read the following correspondence into the record:

- ◆ Memo dated 3/10/06 to Mark Nickerson, Zoning Commission Chairman from Francine Schwartz, Planning Chairman - Re: 38 Hope Street Referral – Finding it CONSISTENT with the POCD goal to provide for multi-family housing to meet a portion of the regional need for a variety of housing types at affordable cost provided water and sewer service is available to the site and measures are taken to avoid any adverse impact to the Town well on the adjoining property or to Dodge Pond.
- ◆ Letter dated 3/1/06 to Rosanna Carabelas, Secretary EL Zoning Commission from Gene Lohrs, Committee Chairman SECCOG Regional Planning – Re: 38 Hope Street Referral – Finding that the application does not need to be referred to the Regional Planning Commission under CGS.
- ◆ Memo dated 3/17/06 to Mark Nickerson, Zoning Commission Chairman from Ed Shapiro, Chairman EL EDC – Re: 38 Hope Street Project – Finding that this is an excellent development, tastefully done and well timed that fulfills the great need of affordable residence opportunities in Town.
- ◆ Letter dated 3/21/06 to Bill Mulholland, Zoning Official from Chris Taylor, Deputy Fire Marshal – Re: 38 Hope Street – Finding no fire code issues at this time as the complex will be fully sprinklered.
- ◆ Memo dated 3/15/06 to William Mulholland from George Calkins – Re: 38 Hope Street Affordable Housing Development – Outlining as a follow-up to the Staff meeting four items of concern.
- ◆ Memo dated 3/23/06 to Mark Nickerson, Zoning Chairman from Beth Hogan, Water & Sewer Commission Chairman – Re: 38 Hope Street – Noting the water main infrastructure, sewer infrastructure and the appropriate application process that has to be followed.
- ◆ Fax Letter dated 3/22/06 to William Mulholland ZEO from Marcy Balint, DEP Senior Coastal Planner OSLIP – Re: Coastal Site Plan Review Affordable Housing Development for 38 Hope Street, East Lyme – Finding that the vast majority of the site is located outside the coastal boundary and recognizing that the proposed stormwater measures, namely catch basins, sumps and a detention basin are an improvement over none on the site, which is currently developed. This also included a memo dated 3/20/06 to Marcy Balint, OSLIP from Rob Hust, DEP Bureau of Water Management Aquifer Protection Program – Re: 38 Hope Street, East Lyme – Finding that overall, the proposed conversion of the site from historic industrial manufacturing use to residential housing use is a compatible land use for the aquifer protection area, and will remove a grandfathered industrial use. Three comments and recommendations were also included.

Ms. Carabelas asked Mr. Salerno to read the following correspondence into the record:

- ◆ Letter dated 3/22/06 to Mark Nickerson Chairman EL Zoning Commission from Pauline Lord, President, Niantic Main Street – Re: 38 Hope Street Public Hearing 3/23/06 – Requesting that the letter be read into the record and advising that the Niantic Main Street Board of Directors unanimously voted to support the planned residential development at 38 Hope Street because it will be 30% affordable and provide much needed housing for Townspeople, is an adaptive use of existing property that will become aesthetically pleasing and this project will follow an objective of the Niantic Main Street program to increase the number of residential units in and adjacent to downtown Niantic.
- ◆ Memo dated 3/22/06 to William Mulholland, Zoning from Keith Hayden, Conservation Officer - Re: 38 Hope Street – Noting that after careful consideration that the Conservation Commission voted to approve the Wetlands Permit for 38 Hope Street. This memo outlined the conditions of approval.
- ◆ Memo dated 3/20/06 to William Mulholland Zoning Enforcement Officer from Mike Giannattasio Director of Public Works – Re: 38 Hope Street – Citing 36 initial comments for 38 Hope Street from review of plans dated 2/1/06 revised to 3/9/06.
- ◆ Memo dated 3/21/06 to William Mulholland, Zoning Official from Michael Giannattasio, Director of Public Works – Re: Site Plan Review – 38 Hope Street – Finding that upon review of the plans dated 2/1/06 revised to 3/9/06 that there were 34 comments.

Ms. Carabelas asked Mr. Bulmer to read the following correspondence into the record:

- ◆ Email Memo dated 3/6/06 to Keith Hayden, Meg Parulis and Emelie Napolitano, from Virgil Horton, 2 Amberly Lane, Niantic – Re: Public Hearing on Hope Street site – Saying that 'as he understands the plan, it violates state statues concerning the necessary conservation easement of 200' around a public water wellhead and stating that he feels sure that the DOH and DEP will be most interested in the proceedings.'

- ◆ The Notice of Public Hearing was published in the New London Day on March 10, 2006 and again on March 20, 2006.

(A short break was taken here)

Ms. Carabelas noted to the audience that the second Public Hearing scheduled for this evening would only be opened and continued at the request of the applicant.

Ms. Carabelas called for everyone to please keep quiet as the microphones pick up everything – She then called upon the applicant for their presentation.

Karl Frey, Vespera Investments, 528 Carter Street, New Canaan, CT, the applicant said that he was very pleased to be here this evening with their application for 38 Hope Street – a 150 unit townhouse and condominium project in Niantic. He said that he knows that there will be lively debate tonight and he hopes that the questions that may arise will be addressed through a well-organized presentation of the project. He said that he begged their indulgence to speak about something that they are not there to talk about - an affordable housing application of 300 units, four story frame construction on top of two levels of structured parking, one block from public transportation and immediately adjacent to all necessary community shopping on the Hermitage site. We could be but we are not. That is not a project that Vespera would undertake. We spent hundreds of hours working to design the least dense project economically feasible that fits within the parameters of a special permit application for multi-family housing in a CB zone. We recognize and are very sensitive to the fact that 38 Hope Street abuts nine homes on Joyce Court. We invited the entire neighborhood to a gathering last Thursday night to go over the project with them and to see how we might address their concerns. We are not asking anyone to pick the lesser of any potential evils, as we are proposing a project in scale and in keeping with the Village of Niantic. A project that fulfills a need for affordable housing in this Town and a project that we will first market to the folks in Town who need it. Many of these are the people who make this Town run. Over 200 teachers and teachers aides earn an amount that would qualify them to purchase an affordable unit in this Town. He then explained how the affordable housing price parameters are figured. He said that this would also be good for the merchants in Town. He then cited the professional people that were present with him this evening and the presentations that would be heard.

Attorney Harris explained the 'Wisniowski' approach and the reason why they brought the application forth under that approach. He noted that they are proposing a project with about 70% of the density that would be allowed in the zone. He then submitted the certificates of mailing to those property owners within 500' of the proposed project. This was entered into the record as **Exhibit 1**. He also explained that they have submitted a full CAM report that is on another part of the agenda. Only a small portion falls within that area and there is no impact. Further, the permit received from the Conservation Commission provides for the drainage from more than half the site to be retained on the site. He noted that he has to disagree with Mr. Hust regarding impervious surfaces in the vicinity of the well as that would encourage water to run toward that area and that is not what they want to do. The upland review area near Dodge Pond is basically a garbage dump now and that area will be redone with a sidewalk, path and a small pavilion with new vegetation so that people can walk to and relax there. He said that he also took issue with the tone of the letter from Virgil Horton and submitted documents that Mr. Horton could have obtained from the Town. **Exhibit 2** – DOH Letter to Fred Thumm regarding Well Use Approval for Well 4A of the Town of East Lyme, dated 7/23/99 and **Exhibit 3** – The deed Declaration of Covenants and Restrictions for Well 4. He said that the first part of the easement prohibits certain activities and they are not proposing to do any of those activities. The second part indicates the permitted activities and they have made application to the Water & Sewer Commission for some of those permitted activities and anticipate that they will receive approval for them. They are before that Commission for those items.

Michael Dunning, Architect with Shook Kelley, 2151 Hawkins Street, Charlotte, NC presented a PowerPoint presentation on the proposed project. From this presentation - This project of 150 residences will bring people, long term residents and new arrivals alike into the core of the Town. These people will shop at the Town's stores, will join the community organizations and build a stronger, enduring Niantic. To enter this community one passes through one of two carriage-ways in the main building fronting on Hope Street. These lead to lanes flanked on both sides by residential buildings and paved with a variety of materials including articulated concrete and pavers. The overall color palette will be muted with varying shades of white, yellow and taupe as primary building colors. More vibrant accent colors will be used here and there with discretion. At their highest, the buildings will be three stories with a mix of brick, lap siding and shingle siding used to clothe the exteriors. The space on the ground floor could at some future time be converted for use as retail

shops. There will be a central mail facility. The residences will have elevator service so that those who want to age in place may do so. He then handed out a vision book of the project. This was entered into the record as **Exhibit 4**. He noted that there are also copies of the booklet available for the public. He then introduced David Sullivan of Barkan Mess Associates to present the traffic study.

David Sullivan Senior Transportation Engineer with Barkan Mess Associates, Branford, CT explained the phases that they look at with respect to the project. They look at the conditions today, they review the proposed use for site lines and safety, they perform a series of analyses and traffic counts and they then make any recommendations on any issues that they might find. He said that they took traffic counts at seven intersections. They analyzed at the morning and afternoon peak hours. Based on this, they found that there would be 75 trips in the AM peak hour and 100 trips in the PM peak hour. 32 MPH is the average speed that people are traveling even though it is higher than the posted speed limit. The site line necessary for that speed is 360' of visibility and this can be achieved at either driveway. The level of service is based upon the average waiting time. In general, the analysis of all seven of the intersections is that they have a good level of service. They found B, C and A levels of service. This was with site traffic and without site traffic.

Mr. Bulmer asked Mr. Mulholland if there is a requirement that a traffic study has to be done in the summertime.

Mr. Mulholland said that while they do have that requirement in some areas of their regulations, they do not apply due to State Statutes in this application as Attorney Foley has already explained.

Mr. Bulmer said that he did not hear that.

Attorney Foley explained that under the Wisniewski approach that they do not have to meet the underlying regulations.

Mr. Bulmer said that he was under the impression that under Wisniewski they do not have to comply and he thought that they had to be 'unduly restrictive'. He then looked for this in the What's Legally Required book.

Mr. Dwyer explained that the denial has to be based on safety, not on the traffic itself.

Mr. Bulmer said that he wanted to hear it from Mr. Foley himself.

Attorney Foley explained the Wisniewski case at which the Court said that they could not deny the affordable housing application because it does not conform to the underlying zoning regulations.

Ms. Carabelas asked that the Commission members please not cross talk with each other so that everything can get on the record. She then called upon Mr. Barry.

Mr. Barry said that the oxymoron here is the SU zoning and that under SU-E zoning a builder can do almost anything he wants and they do that by incorporating the 30% affordable housing. So, the issues they have to address are the safety and health issues and he sees these two tunnels coming out of this building and they are like a slot-car race shooting out into the road. He said that they are changing this from a CB zone to affordable housing.

Mr. Mulholland noted that it is a Light Industrial zone at present.

Mr. Bulmer said that he found the area in the book and that it is within a section and that it is a matter of interpretation of if our regulations are overly restrictive or not.

Attorney Foley said that he would have to look at the whole section, as he was not sure what was being discussed there.

Attorney Harris asked if he might interrupt and go back to where this all began with Mr. Bulmer asking about traffic counts during the summer. He said that Mr. Bulmer is correct in that it is required in an SU zone. If it were a straight CB zone, they are not even required to have one. They have taken into consideration the fact that they took the traffic counts in November and have made additions that Mr. Sullivan will explain to them.

Mr. Sullivan, Traffic Engineer said that the seasonal variations were what he was going to cover next. Because they did not do the study during the summer, they use the State permanent recorder stations data where the State collects data all the time and then gives them figures in terms of percentages to add to the data they have collected to get to the summertime data. This figure is an additional 30% to get to peak August sunny day data. When this is done, there are a couple of intersections that went to D level and a few that went to C from B level.

Ms. Carabelas asked what the worst was.

Mr. Sullivan said that F is the worst level. He said that the last thing that he will touch on is the railroad crossing. He said that he spoke with Cal Tyler of Rings End and the RR people jump off the train at Rte. 156

and that he would recommend that they walk to that crossing (Hope St.) to make sure that it is protected. Lastly, they were asked if they had made an application to the State Traffic Commission (STC). He said that they will be making this submission shortly, it is called a 'Determination of Impact', as it does not sit directly on a State highway. The STC will determine the impact to the area streets.

Mr. Salerno asked if they were proposing any road improvements or a light at Hope St.

Mr. Sullivan said no, as the delays would not change or be mitigated and the distance is an awkward one that the State would most likely not approve. It would be difficult to time the signals with not enough distance between the signals to clear the area to get the traffic to move out. The distance there is probably somewhere between 500' to 1000'.

Mr. Dwyer noted that the applicant has no authority to say that there is going to be a light there as the State would most likely not approve it.

Mr. Sullivan said that was one of his reasons also.

Mr. Mulholland asked if in his analysis Mr. Sullivan had given consideration to the truck traffic.

Mr. Sullivan said that there is truck traffic however there is not a spacing issue there.

Ms. Carabelas asked about the CVS there and how the trucks are going in.

Mr. Mulholland said that he recollects that they are entering off of Pennsylvania Ave.

Attorney Harris said that they have heard comments entered from the State and Staff and that they have modified the reports to include and address those comments and he would like to submit those reports and plans for the record as exhibits. He submitted the following items that were entered into the record: **Exhibit 5** – Pollution Prevention & Stormwater Quality Management Report. **Exhibit 6** – Construction Sequencing Plan for 38 Hope Street. **Exhibit 7** – Best Management Plan for Landscape Practices. **Exhibit 8** – Modified Drainage Report. **Exhibit 9** – 38 Hope Street Plans revised to 3/21/06, received on 3/23/06.

Attorney Harris said that he would like to address the DEP comment about if they could capture 80% of the total suspended solids for the entire site. He said that they could accomplish that especially with the Vortechincs unit. This could be specified by condition. The other comment was to retain the first one-inch. He said that they do not want to do infiltration near the well and do not feel it prudent to do it.

Robert Pfanner, Pfanner & Associates, 37 Grand Street said that this is presently an Industrial site and that 90% of the impervious surfaces drain to Hope Street – untreated into the Town system. They have split this up and 70% of the drainage will go to the Vortechincs, a retention pond and eventually to Dodge Pond. The front 30% goes through the catch basins to sumps to collect the suspended solids. They are also prepared to treat it and put in another Vortechincs so it will be clean water coming out of that system. Currently 60% of the drainage goes to the South and 40% to the North. They are changing it around to have 70% go to the North and 30% to the South. They are eliminating the areas of infiltration closest to the well. All of the water will be treated.

Attorney Harris submitted for the record - **Exhibit 10** – Landscape Planting Design Plan dated 3/23/06.

Robin Leigh, Leigh Landscape Design, New Milford, CT said that they have been retained to do the landscape design. He said that their objective was to harmonize with the needs of the environment and the surrounding area. He gave a PowerPoint presentation depicting the planting types that would be utilized. This would be organic landscaping that will not be hazardous. They will utilize trees, shrubs, perennials and seasonal grasses. Invasive species will be removed in the Dodge Pond area and native species will be planted. The Hope Street frontage will have simple, easy to maintain species that will thrive and always look great. As part of the bio-retention area a vegetative area will be planted adjacent to the pond to cleanse the area. This will be a low-maintenance, environmentally friendly landscape.  
(Note – A five minute recess was taken here)

Attorney Harris said that this ends the formal presentation and that they would be happy to answer questions or have it opened up to the public for comments.

Ms. Carabelas said that she would like to open this up for the public to speak. She called for those from the public who wished to speak in favor of this application –

Hearing no one –

She called for anyone from the public who wished to speak against this application –

Susan Berck, 6 Joyce Court asked them to imagine sitting in the back yard of their home that they purchased 17 years ago with the grill going and a pool with a 42' high, three-story high building with eyes 10' from your property line. She said that from what she read in the affordable housing regulations of the Town Zoning regulations it states that there must be Town water and sewer available and that the area must be not less than 10 acres. 38 Hope Street is less than that. The buffer is supposed to be 50' and she said that she is guessing that there is only 10' with this project. There will also be traffic problems and water shortages and this will impact the quality of life of the surrounding homes. At the open house when Mr. Frey was spoken to about this, he said that he felt bad for the residents of Joyce Court. When the residents asked that he build lower condos near their homes and the Rings' End people said that he could build taller ones on that side, he said no. Why not expand the lumber yard or look for other industrial uses for this area. She asked that they consider the people who live in Joyce Court.

Cathy Favalora, 5 Joyce Court said that she is an abutting property owner. She said first, that she is quite disappointed that Vespera was allowed to go on continually tonight to the point where the majority of the public had to leave. They are paying baby sitters to watch their children tonight. She said that they all have jobs to go to in the morning and that they deserve the right to be heard in a timely manner tonight. She said that she is not against affordable housing in East Lyme. She is not against developing the property at 38 Hope Street. She is against this project for this property for a number of reasons. The first is water, 42' high buildings housing condos will impact the water supply. They have been told that they cannot wash their cars or water their grass. There is a sign in front of the Town Hall to conserve water. She said that she has been reading the minutes on the Website from various meetings and they denied another affordable housing application in another area of Town. She questioned the traffic study and what the peak hours are. She said that there are no additional parking spaces for this area and that she wanted to know where the people who come to use the Dodge Pond area are going to park. She said that they are the neighbors who pay taxes in this Town. She asked that they leave it as it is.

Mark Favalora, 5 Joyce Court said that he felt compelled to drop his pedigree. He said that he is a mechanical engineer with four patents. He has lived in this house since 1971 and this is something that he never thought that he would have to be involved in. He felt that with the Light Industrial behind his house that it would always be that way. 42' high is quite a site and he took four photos that he wanted to submit and explain to them. He had his son hold a 10' pipe with vectors off of it to try to show what 42' high would look like. These photos were submitted and entered into the record as **Exhibit 11 (A-D)**. He said that he does not know if the setbacks are applicable here but he really enjoys the sun and he will not see if for another hour or so from when he sees it now if this is built there. He then asked about the 362 parking spots and if the garages are included in that figure. (The answer was yes) He said that these garages would become a roomful of junk and the cars will flood out onto the street and into the Town and it will be a dismal situation. Fire safety is another issue that he sees. He said that with all of the cars that he is worried about a car fire. The brochure does not look like his 'Niantic', he said that it does not look like the Town. He said that this also would not increase business for the shops in Town. He cannot see where the local businesses get off saying that this is going to increase their business. He has lived here for a long time and he shops at Wal-Mart and Target and stretches his buck as far as it will go. The reason why he does not shop downtown is because these guys do not have a lot to offer him. He does not see that by adding people that those economics will change. Guys like Andy Pappas will always have a good business as they put out a great product and they take care of themselves. He said that Planning talked about Dodge Pond and a green and walkway and while that would be a great idea he thinks that the condo owners will keep them out from being able to use it. He sees the Zoning Commission as responsible to prevent overcrowding and he sees that as being relevant to his back yard.

Ms. Carabelas asked that the people who wish to speak please keep repetitiveness out of their speaking so that everyone will get a chance to speak.

Maryanne Sherman, 39 Lake Ave. said that this unit density is way over the limits and that it wantonly disregards the East Lyme affordable housing restrictions. The water needs cannot be met. This project would need something like 25,000 gallons of water and sewerage each day. She said that she feels that we are able to deny this application on the basis of water and sewer resources and fire and traffic. She asked that

they please not change it from an Industrial zone. She questioned the traffic study and the additional 75 cars during the peak hours, which she said just, cannot be correct. She said that she made some notes of the Plan of Conservation and Development and from the State Statutes and that she would like to enter the notes that she made. This was entered into the record as **Exhibit 12**.

John Nazarchyk, 58 Hope Street said that he has lived here since 1949. He has always had difficulty in a hard rainstorm as the area in front of his house is always flooded out. He said that he would like to get a guarantee from the developer that he will put 70% of the water to the pond so that he won't be flooded out. He said that he also agrees with his neighbors, as he would not like to wake up and see that building outside of his window in the morning.

Patricia Antilli, 11 Joyce Court said that her house is the closest to these proposed buildings. She is probably 20' to 30' away. She said that she couldn't see 42' condos there and that while they might be affordable housing, they will turn their homes into a slum and destroy their property values. The traffic study did not speak about Joyce Court. They have a stop sign at the end of their street before they turn out to Hope Street. They did not take this into consideration as they are trapped there when there is traffic from the Light Parade or Celebrate East Lyme. The traffic backs up and they cannot get out of Joyce Court. Also, McDonalds wanted to paint their building red and yellow but the Town made them put it back to the brick that it was to keep to the small Town look. This proposed project does not have the small Town look. She also asked how they could put shops in an affordable housing project. She asked that they take this into consideration as she grew up with the factory there. She asked that they have the developer lower the height of the buildings to two stories. She said that they are on septic, not sewers on Joyce Court.

George Sherman, 39 Lake Ave. said that in looking at the monster scale of this development that he does not see how it conforms to the regulations. 300 or more people in their backyards will degrade the Town and their property values. They have heard that the State mandates affordable housing however he does not believe that the State would mandate it here. He reminded the Commissioners that they are not here to decide what is best for the State or Vespera but what is best for this Town and this neighborhood.

Scott York, 18 Lake Avenue said that he has questions about the site plan. He asked how water and sewer were looking at this and approving a site plan that has not been approved.

Attorney Harris said that they are not approving a site plan, it is a referral.

Mr. Mulholland said that Attorney Harris is correct, those are statutory referrals, they are not approving a site plan. This Commission will approve or disapprove the application as it so decides. Wetlands has approved their wetlands permit, not this site plan.

Mr. York asked about the application in front of water and sewer.

Mr. Mulholland said that this Commission does not have control of the other Boards and Commissions.

Mr. York said that he agrees with the traffic issue pulling out onto Hope Street. He said that this project is not kid friendly and that there will be problems with the kids not having anyplace to go. He said that he does not agree with this plan at all. It is too dense and there is no room for anything in there. He said that he did not receive a notice.

Attorney Harris said that the mailing information was obtained from the Town GIS system for the 500' radius.

Larry Burgess, 10 Joyce Court said that he agrees with his neighbors. The key main issues here that they have to consider are water, sewer and traffic. All will be impacted negatively. The systems that they plan on putting in there are fine and well but they only have to fail once. He said that he thinks that they are missing 15% of the actual traffic. He wants the survey done with the traffic at peak.

Justin Harris, 3 Joyce Court said that he agrees with his neighbors. However, they have more faith in them than he does – his house is under contract and he is going to spend his tax dollars somewhere else.

Susan Turner, 90 Hope Street said that she agrees with her neighbors' comments. She read in the newspaper about this project and asked how a family of three could live in a one-bedroom unit. She said that there are many problems in other Towns with projects such as this that have caused nightmares for the Town officials. They call it hot-bunking and they cut up the dwelling inside to allow for more people than is

allowed. She also questioned how this would affect the school system and how many children it would bring to the schools. She said that she was surprised that no one had mentioned that before her.

Kurt Hayes, 13 Joyce Court said that this is his first time to any of these meetings or this process. He said that this project is coming right in their back yards. He thinks that it is a nice project and that they spent a lot of time and money on it but it is in the wrong place. It would be better in another part of Town. He suggested that maybe they could make a deal with them and put it in another area of the Town. He also said that they would need to go over the affordable housing issue as he is confused over it and he thinks that they are all confused except for Mr. Mulholland. This project would be better for the other end of Town.

Scott York, 18 Lake Avenue said that he wants them to continue this so that those who left can speak.

Bob Gadbois, 358 Boston Post Road said that he is a member of the Water & Sewer Commission but he is not speaking as a member of that Commission or for that Commission. He said that he has lost his pump three or four times. He has a well but does have a water line that goes by his house. He wants it to be there when he needs it and if they keep giving it away then he won't have it. And - if we lose a Well then we are all in trouble.

Anthony Pezzullo, Joyce Court said that he is a New Yorker and that he moved here to get away from that. Looking at these buildings is like looking at the brownstones. He said that he does not want to go backwards and that this makes him feel that way.

Ms. Carabelas asked if anyone else wished to speak and if anyone wished to speak neutrally – Hearing no one she asked if Attorney Harris would like to comment.

Attorney Harris said that it has been a long evening and it is clear that they are not going to be able to finish this evening and he would have no problem with continuing this hearing so that they could rebut everything at the same time.

Mr. Mulholland said that a lot of new things were put into the record and that he would like staff to be able to have the time to address them.

Mr. Bulmer said that there is a large barge out in Dodge Pond and that it is a Naval Acoustics test facility and he is concerned with the water quality and any particulate matter going there.

Attorney Harris said that while he could understand his concern that the particulates are taken out first and then the retention pond filters during huge storm events. He said that he doubts that there would be any degradation of the pond as there is no stormwater treatment going on there today and this is no problem.

Mr. Bulmer asked that they contact the Underwater Naval facility in Rhode Island about this.

Ms. Carabelas called for a motion to continue this Public Hearing.

**\*\*MOTION (1)**

**Mr. Salerno moved that this Public Hearing be adjourned and continued to another date, possibly April 6, 2006.**

**Mr. Bulmer seconded the motion.**

**Vote: 5 – 0 – 0. Motion passed.**

Mr. Mulholland said that he would have to work on a date as it may involve another Special Meeting as they have a full schedule.

Ms. Carabelas adjourned and continued this Public Hearing at 11:45 PM.

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary (Pro-Tem)

STEVENS, HARRIS & GUERNSEY, P.C.

ATTORNEYS AND COUNSELORS AT LAW

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PAIGE STEVENS QUILLIAM

February 9, 2006



Mr. William Mulholland  
Zoning Enforcement Officer  
Town of East Lyme  
P.O. Box 519  
Niantic, CT 06357

Re: 38 Hope Street

Dear Bill:

Enclosed please find a proposed site plan for an affordable housing development to be known as 38 Hope Street. Frequently, development of housing in which a portion of the units are subject to long-term restrictions on maximum sales prices in accordance with the affordable housing statute, Conn. General Statutes § 8-30g, requires density, setbacks, and dimensions that differ from a town's underlying zoning regulations. This is the case with this application. The Connecticut courts and the estate legislature, during the 15 years that the affordable housing statute has been in effect, have allowed two approaches to this situation. The first is the drafting and adoption of a new or amended zoning regulation that governs this specific development. The second approach is to file an application for site plan approval, providing all of the information requested by the town's current regulations for site plans. The second approach is allowed by a Connecticut Appellate Court decision called **Wisniowski v. Zoning Commission, 37 Conn. App. 303 (1995)**. In that case, the underlying zone require a minium lot size of one acre, but the applicant proposed affordable housing on half acre lots. The Appellate Court ruled that the fact that the development plan did not comply with the underlying zoning regulations was not a basis to deny the application because the lot size difference was not a matter of public health or safety, which is the only basis on which affordable housing may be denied under §8-30g. When a site development plan is approved under this approach, it becomes a conforming use when approved. This approval, however, is limited to the specific site.

In this application, the proposed residential development program differs from the underlying zoning requirements but otherwise fits the site very well. While the site is currently zoned LI, it is only this parcel which is so zoned. The adjoining zone to the east and south is CB; and the west is R-10. This residential development will provide a transition between the commercial and residential zones which adjoin it. Moreover, the Development substantially complies with the

Ref. AHTD

Attachment PH I 3/23/06  
SH reference on AH approach

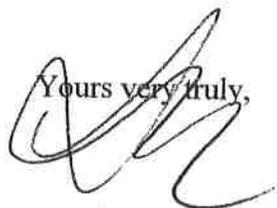
Mr. William Mulholland  
February 9, 2006  
Page 2

standards imposed by the Regulations for multifamily use in a CB Zone. However, since the site is presently LI and in order to spare the Commission and Town staff the task of amending the Town's Zoning Regulations, or considering how such an amended regulation might affect other parcels within the Town, we have chosen the so-called **Wisniowski** approach, i.e., filing a simple, site-specific site plan application.

Would you kindly distribute the plans in accordance with your normal practice and place this on the Commission agenda for scheduling.

I thank you in advance for your assistance.

Yours very truly,

A handwritten signature in black ink, appearing to be 'Theodore A. Harris', written over the typed name.

Theodore A. Harris

TAH:jpl  
Enclosure