

**EAST LYME ZONING COMMISSION
PUBLIC HEARINGS II & III
Thursday, JUNE 19th, 2008
MINUTES**

The East Lyme Zoning Commission held a Public Hearing on the Application of Theodore A. Harris, agent for Village Crossing of Niantic LLC for approval of an Affordable Housing development, site plan and coastal area management site plan review to construct one hundred residential units (100) on property identified in the Application as Assessor's Map 11.1, Lot 19 and the Application of Theodore A. Harris, agent for Village Crossing of Niantic LLC to re-zone from its existing Zoning designation (RU-40 Residential) to Affordable Housing for property identified in the Application as Assessor's Map 11.1, Lot 19 on Thursday, June 19, 2008 at Camp Rell, Smith Street, Niantic, CT. Chairman Nickerson opened the two Public Hearings and called them to order at 7:41 PM.

PRESENT: Mark Nickerson, Chairman, Rosanna Carabelas, Secretary, Marc Salerno, Steve Carpenteri, Norm Peck, Ed Gada

ALSO PRESENT: Attorney Theodore Harris, Representing the Applicant
Mr. John Aldi, Applicant
Donald Gerwick, PE, LS, Representing the Applicant
Gregory Massad, Alternate
Bob Bulmer, Alternate
William Mulholland, Zoning Official
Attorney Edward O'Connell, Town Attorney
Attorney Andrew Celleme, Town Attorney

FILED IN EAST LYME TOWN
CLERK'S OFFICE

JULY 1 20 08 at 10:05 AM PM

Esther B. Williams

EAST LYME TOWN CLERK

ABSENT: William Dwyer, Alternate

PANEL: Mark Nickerson, Chairman, Rosanna Carabelas, Secretary,
Marc Salerno, Steve Carpenteri, Ed Gada, Bob Bulmer,
Alternate

Pledge of Allegiance

The Pledge was previously observed.

Public Hearings II & III

1. Application of Theodore A. Harris, agent for Village Crossing of Niantic LLC for approval of Affordable Housing development, site plan and coastal area management site plan review to construct one hundred residential units (100) on property identified in the Application as Assessor's Map 11.1, Lot 19.

and –

Application of Theodore A. Harris, agent for Village Crossing of Niantic LLC to re-zone from its existing Zoning designation (RU-40 Residential) to Affordable Housing for property identified in the Application as Assessor's Map 11.1, Lot 19.

Chairman Nickerson noted that the two Public Hearings would be opened together and that the Legal Ad had run on May 2, 2008 and May 12, 2008 in the Day. Also, because this is an Affordable Housing application, he asked Attorney O'Connell to address them regarding what this means and how it differs from a regular application.

Attorney O'Connell, Town Counsel said that most of the members of the Commission are familiar with Affordable Housing and the differences that go with it. The first is that they need not comply with the existing

applicable Zoning Regulations; the Commission cannot deny them due to the zone and if denied, the Commission has the burden of proof as to why they denied the application. An Affordable Housing appeal has the burden of proof shifted from the applicant to the Commission whereas in a conventional appeal, the Commission need not give reasons for its' decision. In an Affordable Housing decision they must have collective reasons for the denial that are supported within the record and the Commission has to prove that it's denial meets the four basic criteria and it must clearly outweigh the need for Affordable Housing and it must not be based on a minor change of the plan.

Mr. Peck recused himself from sitting for this application and Public Hearing.

Mr. Nickerson seated Mr. Bulmer, Alternate at the table.

Mr. Nickerson then explained the protocol of the Public Hearing noting that the public does get to speak however; the applicant presents their information first and then the public can speak regarding what they have heard.

He said that they first have some correspondence to read into the record. He then asked Ms. Carabelas, Secretary to read the correspondence into the record:

Ms. Carabelas, Secretary read the following correspondence into the record:

- ◆ Letter dated 5/27/08 to Mark Nickerson, Chairman, EL Zoning Commission from East Lyme Water & Sewer Commission – Re: Application of Village Crossing for Affordable Housing, Park Place, Niantic – noting that while the property is fed by water & sewer that during the summer months the water supply is strained and suggesting that they might want to look into drilling their own on-site well. This was also entered into the record as **Exhibit 1**.
- ◆ Letter dated 5/12/08 to EL Zoning Commission c/o Bill Mulholland from Marcy Balint, Sr. Coastal Planner DEP OLISP – Re: Application of Village Crossing for Affordable Housing Coastal Site Plan Review Application Park Place, Niantic, CT – noting that DEP Stormwater standards including the retention of the first inch of rainfall as well as removal of 80 percent total suspended solids is to be employed along with proper E & S control measures. This was also entered into the record as **Exhibit 2**.
- ◆ Letter dated 6/18/08 to Mark Nickerson, Chairman, EL Zoning Commission from Francine Schwartz, Secretary, EL Planning Commission – Re: Application of Village Crossing – finding it **INCONSISTENT** with the Plan of Conservation and Development. This was also entered into the record as **Exhibit 3**.
- ◆ Letter dated 6/19/08 to Wm. Mulholland, ZEO from Bill Scheer Town Engineer - Re: Village Crossing of Niantic Plans dated 2/22/2008 – indicating various items that would still need to be addressed or information that would need to be provided. This was also entered into the record as **Exhibit 4**.
- ◆ Letter dated 6/18/08 to Wm. Mulholland ZEO and EL Zoning Commissioners from Jane Dauphinais, Director SE CT Housing Alliance – Re: Village Crossing of Niantic – noting that the Town is in need of affordable housing and citing facts to that effect; noting that Mr. Aldi, the developer has the experience and expertise to ensure success as he is an accomplished developer of multi-family housing in SE CT and urging approval of the application. This was also entered into the record as **Exhibit 5**.
- ◆ Letter dated 6/16/08 to Wm. Mulholland, Zoning Department from Kelly Streich, 20 Brook Rd., Niantic – Re: Village Crossing of Niantic – stating that she is unable to attend the meeting and citing reasons why she feels that the application should be denied – Rezone; Project Design and Other and urging them to leave the zoning as it is. This was also entered into the record as **Exhibit 6**.

Mr. Nickerson called upon the applicant or his representative for their presentation of this application.

Attorney Theodore Harris, place of business, 351 Main Street, Niantic said that he is representing the applicant, John Aldi and that this is an Affordable Housing (AH) application that is being brought under the 'Wisniewski v. Zoning Commission', 37 Conn. App. 303 (1995) where the underlying zone required a minimum lot size of one acre, but the applicant proposed affordable housing on half acre lots and 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. He said that they are not bringing this application in under Section 32 of the Zoning Regulations even though they do meet several of those regulations. They are bringing this in under the 'Wisniewski' approach of filing a simple, site-specific site plan application.

Attorney Harris submitted the Certificates of Mailing which were entered into the record as **Exhibit 7**. He then presented an overview of the project indicating that there would be mostly 2 bedroom units with a few 3 BR and 1 BR units. The total of all of the bedrooms would be around 200. There would be 100 units on 15.73 acres with 36

flat style units and 74 townhouse style units. There will also be a senior area for those 55+ with 30% of those also being AH. They are also required to provide handicap accessible units with living space on the ground floor. He continued that the letter from Water & sewer was in response to the zone change and that an application would have to be made to Water & Sewer separately. Since the time of the letter, two things are known: Water & Sewer is available to the site and water is tight during the summer months. They may have to phase this in and he also noted that there is an on-going process to increase the water supply and to add wells. He submitted a letter from Bruce Morton of Aqua Solutions dated 6/18/08 indicating that it may be feasible to drill a bedrock well on the site with upward of 20,000 gpd. This letter was entered into the record as Exhibit 8. Regarding the sewer, he said that they would also have to apply to the Water & Sewer Commission and work with them on the capacity issues. On the aspect of the change of zone he noted that while Planning found is inconsistent that they had found two other similar referrals consistent. He said that he was at the meeting where they decided and that they cited water and the proximity to the other neighborhood as the reasons. He then submitted Exhibit 9 for the record – the goals and objectives in the POCD that apply and that cite the need for multi-family housing types. Page 16 notes that it needs to be accessible to Water & Sewer and an arterial road. While there are slopes there, they have proposed vegetation to buffer and shield the area. The Park Place area is typically an R-20 area and they have 120' buffer there with dense vegetation as well as near the roadway. Regarding Planning's comment on water – that is actually a matter for the Water & Sewer Commission.

(Note: 8:30 PM – Ms. Hardy arrived and joined the meeting)

Attorney Harris continued that another aspect to the application is the CAM review of an area that is 20' deep and 50' wide. He submitted Exhibit 10 for the record – a plan showing the CAM area and noted that it is where the driveway comes in. The CAM has two goals – to have no impacts on coastal resources – and as there will be no impacts on site; there would be no potential for any off-site. There was concern expressed for the drainage and any flow off-site and their engineer will tell them that there will be no direct impact and based upon the drainage design there also will be no indirect impacts. He lastly said that this is an Affordable Housing development and submitted Exhibit 11 for the record – the 'Proposed Affordability Plan' which covers the entire plan and explains how people would qualify and states that units must be the same and not different in design or construction except for the sale price. They must also remain Affordable for 40 years. The anticipated prices for the Townhouses at the 80% level would be \$190,000 for a 2 BR; and \$145,000 at the 60% level. The flats in the elevator building (for easy access) could be \$198,000 for a 2 BR at the 80% level and \$155,000 at the 60% level. The few 1BR units would be at a lower price. All mandates and formulas are by statute and follow in the deed with the unit.

Ms. Carabelas asked when they come up with the figure if they utilize the median income for East Lyme. Attorney Harris said yes – no more than 80% of the \$81,000 and no more than 60% of the \$81,000.

Mr. Gada asked about the system for fire escape and if it was reviewed.

Attorney Harris said that the Fire Marshal reviewed the plan and had no issue with it. He then introduced John Aldi, the developer of the proposed project to say a few words.

John Aldi, developer/applicant said that he has developed 15 houses at Heritage Field and the last 18 homes at Hathaway Farms. He said that he has also done 170 units in Norwich in the last three (3) years and that most of the people who are buying these homes are teachers, firefighters, engineers, etc. – the workforce people who are the backbone of the Towns and cannot afford the large expensive homes. He said that he and his staff are able to take this project all the way through from soup to nuts.

Mr. Bulmer mentioned the Rutgers Study on the number of kids that would be attending school here and asked if he was familiar with it.

Mr. Aldi said that he was and that in Norwich where they built 78 units that they came up with 15 kids via the study and that in the end there were only 6 kids. He said that they would do the study here also.

Donald Gerwick, LPE, LS, place of business, 1020 Hartford Tpke., Waterford said that he would walk them through the area and explained the location and the items in the vicinity of this site. They would enter through the western portion of Park Place and the land goes up about 80' to a plateau at the top of the site. He said that he feels that this is anything but a cookie cutter approach and that the layout does not maximize the density of what the site can actually hold. They have four or six units to a building to eliminate the 'barracks' effect. The age

restricted units are flats on one floor with the elevator in the building and they have designed it such that it will not have the look of a square block. It is oriented parallel to the N-S contours of the land. A sidewalk runs the full length and there will be walking trails. Regarding the drainage, he said that the standards exceed the DEP and Town standards and submitted **Exhibit 12** for the record – 'Village Crossing Stormwater Management Report by Gerwick-Mereen'.

Mr. Bulmer asked if the design criteria are for the 100 year storm.

Mr. Gerwick said that they were asked to exceed the 100 year storm standard of approximately 7.5" of rain in a 24-hour period. He then submitted **Exhibit 13** – a full set of plans dated 5/29/08 with the modification showing the rotation of the largest unit; and **Exhibit 14** – a colored mark-up of Village Crossing, Niantic. He additionally noted that with respect to Best Management Practices that he was on the Jordan Brook BMP project and that he has worked on several of them so they have included the BMP's where they can on this site such as: drainage swales and the collection of stormwater which starts from day 1 with the maintenance which is recorded with the project and also kept on site. They will also employ sumps and sediments, catch basins and process to meet the 80% removal process and detention re-charge area. They have a total of three basins with four bays that are sized for water quality and they are three to four times larger than it necessary however they are sized to re-infiltrate back into the ground. The adjacent properties would see a reduction of water in the event of a 100 year storm event. They all have biennial inspections in the spring and fall. The DEP letter talks about the first inch of rainfall and they have accommodated the first seven inches of rainfall. Also, regarding trash pick-up; Mr. Aldi does not like dumpsters so there would have to be a private trash hauler who would pick-up the trash.

Mr. Carpenteri asked the length of the road.

Mr. Gerwick said that it is about 1200'.

Mr. Mulholland asked if that was the only way in and out.

Mr. Gerwick said yes and added that they were asked to look at others by staff and that they did look and found that this road is about the same length as the road where Sea Spray is. He added that there are no major emergency constraints to make the road impassable such as a bridge or water issue and they looked at other areas in the back to Bush Hill however, they would have to fill some 3000' of wetlands and that is not something that they want to do. He submitted **Exhibit 15** for the record – Sheet 6 of 23 for Village Crossing with additional notes.

Mr. Nickerson asked if what happens if this is not engineered properly and something goes wrong afterwards. Attorney Harris said that typically the Commission bonds for Soil and Erosion control for the full period of construction. They also have an Association that would be responsible and this would be in conjunction with the Town Engineer.

Mr. Nickerson noted that management and maintenance are the most important part of this system and asked who inspects it.

Mr. Gerwick said to clarify; that it is true of every system no matter who does it and that typically here it is the responsibility of the Homeowners Association and a condition of the permits. They are required to hire a professional third party to inspect it. He added that 80-90% of these systems; if constructed improperly – will fail immediately. Should this be approved the developer is volunteering to have a third party inspect this. He then said that 34 units are age restricted and that the AH units are comprised of 30% of the 36 active adults units and 30% of the others.

(Note: A brief break was taken here)

Mr. Nickerson asked that the applicant move through some of the technical points as the Public Hearing will not be closed this evening; but continued.

Attorney Harris said that they have a Landscape Architect, Ray Dunn and asked that he present some information.

Ray Dunn, Registered Landscape Architect with a business in Boston MA said that they made a great effort to plant more than necessary for this site and that they would be putting in some 350 trees. The buffering to the East and North would be done in three rows staggered with the intent to screen and they will grow to be around 50' tall.

They will all be evergreens. There will be street trees along the main road such as red maple and red oaks. They will be utilizing 19 varieties of trees.

Mr. Bulmer asked what planting they would use to shield Park Place.

Mr. Dunn said that there would be a natural forest along the back to Bush Hill.

Mr. Gerwick submitted Exhibit 16 – a cross section of 250' of natural vegetation showing the area that would be blocked visually from the flats.

Attorney Harris then introduced David Solomon from Barkan & Mess to explain the traffic study.

David Solomon, Senior Transportation Engineer with Barkan & Mess submitted Exhibit 18 for the record – Traffic Study dated 2/4/08. He then explained how the study was done and noted that the road is 24' wide. During the last three years of accident data there were no reported accidents on Park Place. With respect to traffic counts; they took one on Rte. 156 where Park Place intersects it and looked at many databases and found that there would be .2 to .4 trips during the peak hour in the AM and PM. They estimated the number of vehicles for regular condos at 44 during the peak AM hour and 50 during the peak PM hour. They also easily meet the criteria for site lines in both directions. He submitted Exhibit 19 – Park Place and driveway location site line demo 260' noting that the brush would be cleared and that there would also be an easement area so that the brush would not fill in. Exhibit 20 – Rte. 156 at Park Place site line demo noting that at 41 mph it would require about 450' for a site line and that it is easy to get to the right and to the left. He explained the impact analysis which is graded A thru F just like the school grading system noting that you would typically want to find something better than a D. At the Rte. 156 intersection the level of service is A in and B out and at the site driveway the level of service is A. These findings are such that they will not delay or exacerbate the traffic. He said that they will make an application to the STC regarding the impact.

Mr. Salerno asked what the delay time was to take a left to Rte. 156.

Mr. Solomon said that it is average – about 17-18 seconds – it would go up one second.

Mr. Bulmer said that people park there for the Book Barn and asked if they took that into consideration.

Mr. Solomon said that they use 15' when parking there.

Mr. Gerwick noted that they have achieved the required site distance before the road curves.

Attorney Harris said that the other concept that they would cover is how the project would look. He introduced Jeffrey Laramie from Smithfield RI to explain this to them.

Jeffrey Laramie showed them boards noting that they would be using vinyl siding and energy efficient windows to hurricane code. The colors would be in the earth tones. He showed a board of the modulated building that would be on the plateau area and submitted Exhibit 21 – two (2) boards of pictures of the town homes and Exhibit 22 – a rendition of the large age-restricted building on the plateau at the top of the hill. He noted that once the vegetation grows up that you would not see much. The large building is 55' high and if it were reduced by a story it would be 45' in height. He submitted Exhibit 23 – Elevations and floor plans for the multi-unit building and Exhibit 24 – Elevations and floor plans for the town homes.

Attorney Harris said that the easement is owned by the developer and that concludes their presentation for now however he reserves the right to rebut later on.

Mr. Nickerson explained how they take public comment and called for anyone from the public who wished to speak against this application –

Deborah MacDonnell, 21 Park Place said that she has a ton of objections to this: Safety issue – the developer's drive is on a blind corner of the road and the Book Barn guy doesn't always mow his grass and they cannot see; Traffic – it seems that there are more than 100 trips as she said that she makes some 6 to 8 trips per day herself and others also do; Drainage – she said that she lives down the hill from this and while the developer is recommending that the systems will be maintained – what happens once he is gone; Affordable Housing and the way that they are talking about it – all of the houses in East Lyme do not cost a lot – she has looked on Realtor.com and there are many that are affordable for people to buy; and the Buffer – while they are talking about planting trees – but everyone will see that 55' high tower building from Long Island Sound.

Mr. Nickerson noted that Michael Giannattasio, the Director of Public Works was present this evening and that he would answer what happens if something does not work and discuss what is being done to protect Park Place and the Pattagansett River.

Mr. Giannattasio, Director of Public Works said that the Town would be responsible and that the applicant has indicated that a third party would inspect and report on the system and that he would expect that would continue even after the project was completed. Regarding the maintenance plan, one is recommended with every application and that is part of the permit as it means that it has to be followed. He asked if they had any other questions.

Mr. Nickerson asked who the inspector/enforcer is within the Town.

Mr. Mulholland said that if there were a problem that everyone would know it and typically because it is commercial, it would be fixed immediately.

Mr. Giannattasio noted for example that 38 Hope St. stepped up and will supply a maintenance plan for their property and systems.

Mr. Bulmer asked where this would over flow to.

Mr. Giannattasio said that there is still more information regarding this and submitted Exhibit 25 – a letter dated 6/19/08 from Brad Kargl, Municipal Utilities Engineer, Water & Sewer to Bill Mulholland with a list of comments regarding this project.

Mr. Nickerson thanked Mr. Giannattasio and resumed public comment from those who wished to speak against the application.

John Wilson, 13 Park Place submitted Exhibit 26 – a color photo looking east towards Niantic center dated 6/19/08; Exhibit 27 – color photo showing what it looks like to pull into the drive dated 6/19/09; Exhibit 28 – color photo showing a car coming out of the proposed street which is 23' wide, dated 6/19/08 and; Exhibit 29 – color photo showing their house and the road and where the headlights would shine dated 6/19/08. He noted that there are no posted signs at Park Place and that there are 18 homes there. He explained the enlarged photos citing his concern for the traffic part of this project. He said that he was not happy with the positioning of the testing equipment and claimed that all of the 18 homes did not get counted and that the traffic study should be re-done. He said that he also thinks that there are more water run-off issues than are being presented and that a 55' high building is higher than they think and will tower over everything and be seen from everywhere.

Peter DeMarco, 31 Park Place said that he was there to support John Wilson and everyone who lives there as his mother lives at 31 Park Place and he feels that it is a safety issue.

Bob MacDonnell, 21 Park Place said that in discussing making the zoning change for Affordable Housing that he does not feel that this is the place for this development and that East Lyme even at the 5% AH is a leader except for Waterford and New London. He said that he does not think that we are lacking for affordable homes. There is a sign at that road that says Dead End Road; not Private Road and the developer bought this for a reason. He does not think that it is right that someone can buy a home and use Affordable Housing to put a road there. This is not similar to Sea Spray or 38 Hope St. or Pond Cliff. He does not think that the 80 Affordable Housing units will be occupied at 38 Hope St. so they should not rush into building another Affordable Housing development between the two others that they have. He went to the informal hearing and asked about a performance bond and if they would hold one in the event that they don't build out or follow through with this. With respect to the Wisniewski case and how they are applying under that – he asked if this has to be cluster multi-family housing and why it can't be single family housing and fewer units instead. He said that the developer made note of the types of people who could be living there and he objects to the assumption of the types of people that he mentioned.

Mr. Nickerson said that they should keep in mind that this is an Affordable Housing application and that it is different from a typical one as it is by State Statute and the Town does not meet the 10% so they really must look closely at this as if they are to deny it, it must meet a four-way test as it is a very different situation from a regular application. The burden of proof is on the Town if they are to deny it.

Julie Wilson, 13 Park Place said that her house is located directly across from where the driveway would come out and the headlights from the cars would shine in her home and this would also affect her property value. There

are no sidewalks in Town and the road is a busy one. They also have issues with their yard being soggy in the wet season and this could lead to more problems. There is also the water situation and the applicant did not have a bedroom count so the water assumption is wrong. She said that she also questions the testimony regarding the well.

Frank Hanney, 35 Park Place said that the site work study if done in phases, they would have no idea how long this project would go on and with the dust, noise, equipment, etc. and they will see this, hear this and it is irritating – plus there is the potential for blasting. He asked what would be put in place to cover the damage to basements, etc. from the blasting. He also asked how they would de-silt during the building phase. He also does not think that the brook can handle run-off and hopes that it is a great plan.

Dan Coffey, 71 Great Neck Road, Waterford said that his father lives at 8 Park Place and asked that he speak for him. His father's property abuts the southern side of this and is 9 acres of wooded land. He is concerned about the noise as he has owned the land of years. He wonders about the noise from the air conditioners from the buildings. Also, his driveway is on a turn and it can be blind and they have heard screeching tires many times there. His view will be of the catch basins and the whole development and there will be lights that will shine from the street, houses and cars and this will be a drastic change from what he is used to seeing. He also has a well of 88' in depth and is concerned with them tapping his if they are going to drill their own. And, he is concerned with people cutting across his property and the liability.

Carol Russell, 4 Bramble Bush Drive submitted **Exhibit 30** – her prepared written statements and read them into the record. She said that she and her husband Philip have lived here for over 25 years and that they are asking that the Commission deny this application. She cited water as an issue and she wants a moratorium on all building due to the water supply. She does not want large trucks or pets even though that would be up to the association to decide. She said that she is concerned with the developer drilling a well and if the drainage fails over time. Regarding the Affordable Housing part there would have to be association dues and flood insurance and she asked if they would get a discount on their fees because it is Affordable Housing. She said that he is not in agreement with the height of the age-restricted building as it would be seen from everywhere.

Joyce Grabigel, 25 Park Place said that her land is at the lowest point near the brook and that she has pictures of what happens when it rains and it goes to the brook and how it floods her property and how the sand has built up. She submitted **Exhibit 31** – a series of pictures of her flooded back yard and the brook that were taken at various times over the last couple of years.

Mr. Nickerson asked Ms. Grabigel if she has reported the flooding of the brook.
Ms. Grabigel said that she has not reported it although they may be aware of it.

Jonathan Lincoln, 31 Hillwood Drive said that he has public safety concerns as the elderly have higher EMS call rates and this becomes a concern for the Town as a whole. This would put a strain on the fire department and ambulance services and with the demand on these; it would affect the Town services.

Kevin Gruee, 26 Park Place said that he stands with his kids at the bus stop and all the parents drive down and wait with their kids so safety is an issue and the foot traffic is already a scary situation and he cannot see adding more of it.

Philip Russell, 4 Bramble Bush Drive said that Carol is his wife and that he is against this for many reasons but because this is Affordable Housing he will address it on the safety issue. There is no place for the kids living there to play in where they would be safe. He said that he is the superintendent of schools in Milford and sees this type of problem all too often. There will be too many children at one bus stop and it will be dangerous. He does not know how a bus turns into this area as it is tight. He said that they should not approve a project that could result in the death of a kid.

Owen Coffey, 6 Lincoln Road, Waterford said that he agrees with all that he has heard and that he does not like the project. He thinks that things that wash from the road will go into the drinking water and that this will devalue everyone's property up there. He said that there are many rocks up there that would have to be blasted and submitted **Exhibit 32** – a picture of the rocks with him standing near them.

Mr. Nickerson noted that this is private property and that Mr. Coffey had to trespass on it to take the picture...

Julie Wilson, 13 Park Place said that they had to blast rocks to put an addition on their house so they will have to blast a lot of rocks to do this project.

Bob MacDonnell, 21 Park Place asked if any application pertaining to Affordable Housing had to be approved just because it is Affordable Housing.

Attorney O'Connell said that if the Commission denies it that the court will consider the four (4) factors in an appeal from the denial.

Carol Russell, 4 Bramble Bush Drive said that in the CAM from Mr. Gerwick and the DEP that they assumed that there would be on-site water - she asked if they would need to re-review it as that is not the case.

Mr. Nickerson said that would be all that they would hear this evening as they have another public hearing and a Regular Meeting to cover this evening.

Attorney Harris said that the applicant does consent to the extension of time to continue this to the next available meeting.

Mr. Nickerson called for a motion to adjourn and continue this Public Hearing.

****MOTION (1)**

Mr. Salemo moved to adjourn and continue this Public Hearing.

Mr. Carpenteri seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Nickerson adjourned this Public Hearing at 11:30 PM and continued it to the 7/10/08 meeting of the Commission.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

STEVENS, HARRIS, GUERNSEY & QUILLIAM, P.C.

ATTORNEYS AND COUNSELORS AT LAW

351 MAIN STREET

P. O. DRAWER 660

NIANTIC, CONNECTICUT 06357

RONALD F. STEVENS
THEODORE A. HARRIS
PAUL M. GUERNSEY
PAIGE STEVENS QUILLIAM

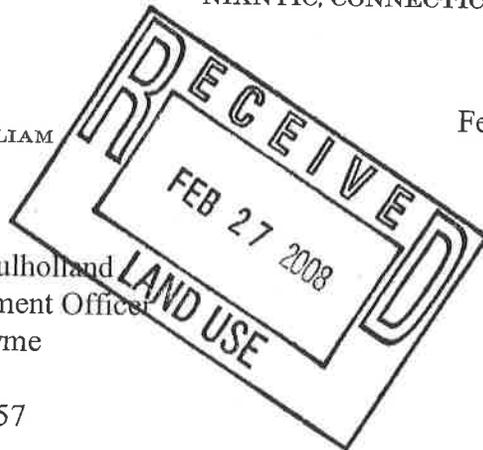
JOHANNA MCCORMICK

TEL (860) 739-6906

FAX (860) 739-2907

E-MAIL shg-attys@snet.net

February 12, 2008



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

Re: Village Crossing of Niantic, LLC
Park Place; Assessor's Map 11.1, Lot 19 (as revised in accordance with the Legal
Description attached hereto)

Dear Bill:

Enclosed please find a proposed site plan for an affordable housing development to be known as Village Crossing of Niantic, LLC. 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 state 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. This residential development, because it is located on a large parcel with substantial buffers, will fit well with adjoining residential neighborhoods. However, since the site is presently RU20/40 and in order to spare the Commission

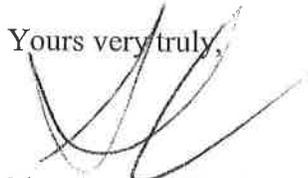
Mr. William Mulholland
February 12, 2008
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and Town staff the task of amending the Town's Zoning Regulations, or considering how such an amended regulation might affect other parcels within the Town, we have chosen the so-called **Wisniewski** approach, 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,



Theodore A. Harris

TAH:jpl
Enclosure