



## Town of Hamden

### Planning and Zoning Department

Hamden Government Center  
2750 Dixwell Avenue  
Hamden, CT 06518  
Tel: (203) 287-7070  
Fax: (203) 287-7075  
www.hamden.com

**December 17, 2012**

**MINUTES: THE PLANNING & ZONING COMMISSION**, Town of Hamden, held a Public Hearing and Regular Meeting on Tuesday, December 11, 2012 at 7:00 pm. in the Thornton Wilder Hall, Miller Memorial Library Complex, 2901 Dixwell Avenue, Hamden with the following results:

Commissioners in attendance:

Ann Altman, Chairperson  
Brack Poitier  
Lee Campo  
Michele Mastropetre  
Bob Roscow  
Myron W. Hul  
Peter Reynolds  
Joe McDonagh, Alternate sitting for  
Ryszard Szczypek  
Jennifer Cutrali, Alternate sitting for  
Jon Cesare

Staff in attendance:

Leslie Creane, Town Planner  
Dan Kops, Assistant Town Planner  
Stacy Shellard, Clerk  
Genioveve Bertolini, Stenographer

Ms. Altman called the meeting to order at 7:01 p.m. The clerk read the Public Hearing items into the record. Ms. Altman introduced the panel and reviewed the Public Hearing procedures.

#### **A. Public Hearing**

##### **1. Proposed Amendment to the Hamden Zoning Regulations 12-930**

55 West Woods Road

Mixed Income Housing (MIH) District

File available for review in the Planning Office & the Office of the Town Clerk

Westwoods Properties, LLC, Applicant

***Public Hearing continued from November 13, 2012 Meeting***

Note: Includes testimony for this application, Zone Change Application 12-931 and Site Plan Application 12-1479.

Ms. Altman and Mr. Roscow stated that they were not in attendance at the November 13, 2012 meeting and have read the minutes of the previous meeting. Ms. Altman asked if there were any objections to herself and Mr. Roscow sitting for this application and there was none.

Mr. Dan Kops, Assistant Town Planner, read his comments regarding the three applications. For the amendment to the Zoning Regulations application 12-930 revised November 27, 2012 he recommended approval with an effective date of January 1, 2013 with the following minor changes to the conditions noted:

Section 380.4.5.e.6. Site Standards - Earth Materials Excavation and Removal

Change:

“In order to reduce the amount of truck traffic leaving the site, on-site handling or processing of excavated earth material will be subject to the following conditions:”

To:

“On-site handling or processing of excavated earth material will be subject to the following conditions:”

Section 380.4.7.g., concerning leases for affordable housing units

Change:

“...section 8-30g-1(10) of the Regulations of Connecticut State Agencies, and may re-rented...”

To:

“...section 8-30g-1(10) of the Regulations of Connecticut State Agencies, and may **be** re-rented...”

Mr. Kops recommended approval for the proposed amendment of the Zoning Map #931 with the effective date of January 1, 2013 provided Zoning Text Amendment application 12-1930 has been approved.

Mr. Kops recommended approval of the Site Plan Application 12-1479/WS based on the following plans:

Title Sheet 1, Site Plan – Existing Conditions Sheet 2, Site Plan-Layout Sheet 3, Site Plan-Landscaping Sheet 4, Site Plan-Grading Sheet 5, Site Plan-Utilities Sheet 6, Site Plan-Sediment & Erosion Controls and Regulated Activities Sheet 7, Site Plan-Parking Drive Plan & Profile Sheet 8, Sediment and Erosion Control Details and Site Details Sheets 9, Site Details Sheets 10-12, access way Profile Sheet 13 10/31/08, Photometric Plan Sheet 14, Sight Line Profile Sheet 15, 7/12/12, rev. 11/26/12

and the following conditions:

1. Prior to the Issuance of a Zoning Permit:

(a) The applicant must provide for approval by the Town Engineer and Town Planner:

i. Revised plans containing:

- a) A reduction of the driveway width to 18 feet total. A center area at or near grade, with or without plantings may be added.
- b) Elimination of all references to rock crushing.
- c) Internal landscaping for the parking lot that includes at least is one tree for every five spaces.
- d) Placement of guide rails on the uphill side of the retaining wall between the upper and lower parking lot in areas.
- e) Replacement of the chain link fence on the southern retaining wall and recreation area with aluminum or iron grill fencing.

- f) Taller plantings around the screening for the dumpster at the southern end of the building.
  - g) Any changes employing low impact development practices
  - h) Any changes based on the “General Construction Best Management Practices for sites within Public Drinking Water Supply Areas.”
  - i) The Inland Wetlands application 06-1105 Conditions of Approval, as amended on September 5, 2012.
  - j) Formal architectural drawings that include the sound insulation improvements to the community room wall shown in the November 26, 2012 sketch.
  - k) All Conditions of Approval.
- (b) The applicant must obtain approval from the Town of a Memorandum of Understanding (MOU) for Drinking Water Protection from Stormwater/Drainage Runoff with the Town of Hamden.
  - (c) The applicant must file at the Town Clerk's Office a deed restriction with language approved by the Town Attorney, that requires fifteen apartments to remain affordable, per § 8-30g for 40 years.
  - (d) The applicant must file at the Town Clerk's Office an easement, approved by the Town Attorney, in favor of the Town, permitting Town employees to enter the property to inspect and if necessary repair the stormwater management system in the event the applicant fails to maintain the system. Any costs incurred in making repairs will be charged to the owner of the property.
  - (e) The applicant must obtain approval of the proposed connection to the Farmington Canal Trail by the Legislative Council, per C.G.S. § 8-24.
  - (f) The applicant must provide a performance bond in an amount approved by the Town Planner and Town Engineer.
2. During the construction phase:
- (a) Prior to the commencement of any blasting the contractor must conduct a pre-blast survey containing a written report and high definition video of the interior and exterior of each structure within a minimum of 1,000 feet of the blast site and provide a copy to each property owner. The contractor will not be required to survey structures on properties where access is denied by the property owner.
  - (b) All erosion controls shall be installed prior to the commencement of construction activities.
  - (c) RWA shall be notified at least three days prior to the start of any construction activity.
  - (d) The permittee must retain a third-party to monitor the sedimentation and erosion control measures. This third party is subject to approval by the Hamden Inland Wetlands and Watercourses Commission and Planning and Zoning Department staff. Inspections shall be conducted weekly and after one inch of rainfall or more, until the site is stabilized. Reports of said inspections must be forwarded to the Zoning Enforcement Officer within twenty-four (24) hours of inspection(s).
  - (e) The permittee must provide the Zoning Enforcement Officer with a weekly list noting the weekly and cumulative total of truckloads and cubic yardage removed until the excavation activity has been completed.
  - (f) The permittee must provide a monthly report regarding the progress of excavation, regrading, removal or filling activity, including contours and cross sections, certified by a civil engineer or land surveyor, as described in Subsection 380.4.5e.8 Earth Materials Excavation and Removal of the amendment to the Zoning Regulations.
  - (g) The permittee's Clerk of the Works must meet on a biweekly basis with the Zoning Enforcement Officer to indicate the progress made and any problems encountered.
  - (h) Hours of operation are limited to between 8:00 am and 5:00 pm, Monday through Friday.

- (i) No rock crushing is permitted.
  - (j) The noise level for all construction activity must be maintained below the decibel level allowed by the State – 90 decibels on the "A" weighted scale (dBA) measured at the nearest residence or occupied building. The applicant will be responsible for providing noise level readings prepared by an independent professional once every two weeks for the first three months of the project.
  - (k) Public roads traveled by project trucks and equipment should be inspected regularly and cleaned whenever necessary. The applicant will be responsible for cleaning any material tracked or spilled on Town or State roads by trucks removing excavated material from the site.
  - (l) All stockpiles of excavated material remaining on-site for more than a month should be temporarily seeded or covered.
  - (m) Erosion controls should be inspected regularly and immediately after each rainfall, as well as maintained and modified as necessary.
  - (n) All fuel, oil, paint and other hazardous materials stored on-site should be placed in a secondary container and kept in a locked indoor area with an impervious floor when not being used.
  - (o) Any on-site fueling and repairs should be conducted over a portable spill containment system.
  - (p) A supply of absorbent spill response material should be kept on-site to clean up any spills of hazardous materials.
  - (q) The RWA should be notified of any spills of hazardous materials.
  - (r) The applicant must provide a maintenance bond covering the continued operation of the detention basin and system, in an amount approved by the Town Planner and Town Engineer. The bond must be provided prior to the issuance of a Certificate of Zoning Compliance.
3. After the completion of construction:
- (a) No rentals to undergraduate students are permitted.
  - (b) No rentals to graduate students are permitted without a determination by the Zoning Enforcement Officer that there is adequate parking and full compliance with Section 670.4 of the Zoning Regulations.
  - (c) The applicant must adhere to the stormwater management plan listed in the plans.
  - (d) No waste water shall be dumped outside the building.
  - (e) The dumpsters shall be plugged and covered at all times.
  - (f) RWA inspectors shall be granted access to the site to conduct routine inspections.
  - (g) The vegetation along West Woods Road must be maintained to ensure adequate visibility in both directions.
  - (h) Annual reports demonstrating the degree of compliance with the Affordability Plan, as well as § 8-30g in general, must be provided.
4. All work must be completed by December 11, 2017.

Mr. Kops noted that Mr. Hollister has drafted several proposed changes which he will present.

Ms. Altman recognized Mr. Kops for the work he has done to address this application. Also, she thanked Mr. Hollister for working with the Planning Department and the Commission to resolve many of the issues associated with the applications.

Mr. Hollister, Attorney, addressed the Commission and introduced the presenters for this meeting. Mr. Hollister stated that progress was made with making changes to the application that the applicant is willing to accept. Mr. Hollister agrees with and accepts Mr. Kops' clarifications and corrections made on pages 5 & 6 of his comments for the MIH zone. The applicant is willing to accept the reduction in the width of the driveway to 18 feet. However, Mr. Hollister noted that the preference is 24 feet, because it would work better for the traffic flow. He understands

that the Commission's and Staff's preference is based on the T-4 regulation. He noted that the proposed regulation draft with the date of November 27, 2012 states 18 feet.

Mr. Hollister reviewed conditions 2(a) and 2(b), and submitted in writing to Mr. Kops' the following proposed changes: 2(a) to read: Any blasting required will be conducted in strict conformance to all state codes and statutes and local codes, under the supervision of the Fire Marshal. Also, condition 2(d) he would like to add the following: Such third-party monitor will also be responsible to report on a biweekly basis to the Zoning Enforcement Officer on the progress of excavation, regrading, removal or filling activity, including providing contours and cross sections certified by a civil engineer or land surveyor as required by Section 380.4.5e.8. Mr. Hollister would also like to eliminate 2(f) and 2(G) and re-letter the following subsections.

Mr. Hollister does not feel that there will be any blasting because of the nature of rock, which is red rock. He said that the distance to the abutting properties of 1,000 feet goes back 25-30 years ago when blasting was a much more intrusive practice. Today, to minimize the lateral affect of earth excavation that relies on a blasting charge, the charge is reduced. He said an example of this would be when blasting is done in Midtown Manhattan, and the adjacent buildings are without damage. The Fire Marshal has the power to control blasting under the State Fire Code.

Mr. Hollister said that on page 11 of Mr. Kops' comments, condition 2(d) refers to a third party monitor and in 2(e) it refers to a clerk of the works. These are not two different people, so the proposed changes merge conditions 2(d), (f) and (g) together. Mr. Hollister is asking for this change so that the applicant would only be paying for one person. The proposed addition to condition 2(d) outlines the duties of a third party monitor.

Mr. Hollister stated that he has clarified with Mr. Kops the meaning of condition 3(a) no rentals to undergraduate students are permitted. It is the applicant's intent not to rent to undergraduate students. Mr. Hollister's understanding is, if the amount of graduate students becomes more than 50 percent of the population a special permit will be required.

Mr. Hollister stated that all remaining conditions of approval are acceptable and he will agree to them.

Ms. Altman expressed the Commission's appreciation that Mr. Hollister has worked with the Planning Staff and all the work he has done on this application.

Ms. Mastropetre referred to condition 2(d) and she asked if the third party monitor would have the qualifications to monitor the sediment and erosion control measures. Mr. Hollister explained that the third party monitor will only be hired if he/she is qualified to carry out the Erosion Control Plan. The other obligations of reporting the progress of the excavation will be added to their duties.

Mr. McDonagh has no objections to the hours of the operation. However, he disagrees with the level of service shown during the weekday mornings for D & E in the traffic report. Without trucks it shows 291 cars will make a right hand turn onto Whitney Avenue. He would like to see the hours be changed to after 9:00 a.m. Because the trucks leaving the site with full loads will be moving at a slower rate of speed.

Mr. Hul asked how the survey of structures within 1,000 feet of the blast site agrees with Mr. Hollister's proposed revised language change and with the current zoning regulations.

Mr. Kops replied that there are no specific regulations governing blasting. The Fire Marshal does not have specific standards for pre-blast surveys that will protect the homeowner or the developer for any damage resulting from the blasting. Mr. Hul asked how surveys were handled in the past. Mr. Kops explained that in the past, blasting on a site was attached to a Special Permit approval. Mr. McDonagh said that the blasting was done when the York Hill Campus at Quinnipiac was being built. Mr. Hul added that blasting was done when The Spring Glen School was being constructed.

Mr. Hollister said that the State Fire Code is administered by the local Fire Marshal. It is a series of State Statutes and Regulation which include detailed practices, which are used for surveying and the amount of charge allowed for blasting. Blasting is strictly supervised and is not an unregulated activity. Mr. McDonagh asked if a specific distance is required for surveying when blasting is going to be done a site. Mr. Hollister responded that the distance for surveying is done on a case by case basis.

Mr. Hul referred to condition 2(j) and would like added “while excavation is being performed the noise level will be monitored” and remove the specific time period. Ms. Altman feels that the proposed condition is vague because in between blasts the noise would be recorded at a low level. The condition should also state “maximum noise levels must be recorded once every two weeks for the entire duration of excavation”. Mr. Hollister stated he did not object to the proposed changes.

Mr. Hul referred to condition 3(a) and 3(b) which addresses not permitting undergraduates and the need for adequate parking if there are graduate students on the premise. He said a student may not identify their student status and he asked how this would be controlled. He also asked if subleasing would be allowed, and how subleasing would conform to the restrictions to the primary lessee.

Mr. Hollister said that with affordable housing units subleasing is prohibited, this is because there is an income qualification process. The other units would have a standard practice that the lease does not allow subleasing. If it was discovered that subleasing was occurring, it would be a lease violation and subject to eviction. All leasing activity will have a question on the application: “is the applicant is a student”. The lease will also require income verification required which can present a red flag, especially if the applicant is young. The information provided by the applicant will be verified. Mr. Hollister advises Avalon Bay which has the same requirements and they have not indicated any problems.

Mr. Roscow is concerned and does not understand, if there are 200 cars traveling this area in the morning, and there are trucks leaving the site at 5 or 10 minute intervals, and they are all making a left hand turn, how it will work.

Mr. Henry Ditman, Professional Engineer, reviewed his resume and qualifications. He stated that the amount of traffic generated from a 50 unit complex will be more than what is generated by the construction vehicles during the peak hours. So if there are five or six trucks leaving the site during peak hours it would be less than the amount of vehicles exiting under normal built conditions. He does not feel there should be hour restrictions placed the construction vehicles. The sight lines will be good and there should be no issues with the trucks exiting the site.

Ms. Cutrali asked if there will be any on site management to handle any issues with noise. Also, she asked if there will be a noise issue with the recreation room being located next to a living unit.

Mr. Hollister referred to the applicant’s Final Submission dated November 27, 2012, Tab E, which addresses the materials that will be used to sound proof between the community room and the living units. There will be a management company, but there will not be a management person living on the premise. The management company will deal with any noise issues.

Mr. Roscow said that Milone & MacBroom’s website states that they routinely do planning for municipalities and their POCD. The website classifies different types of land use based on its topography. This property under Hamden’s Zoning Regulations is a steep sloped property and Mr. Roscow asked if Milone & MacBroom if they have a practice to identify this type of topography.

Mr. Ryan McEvoy, Professional Engineer, addressed the Commission and stated he is not a Planner, nor has he taken part in the POCD. With regards to the proposed site for adequate site preparation, and how earth removal will allow for the site to be developed, Mr. McEvoy is not familiar with how POCD's are prepared.

Mr. Roscow is concerned that approving this application differs from regulations and how they address steep sloped sites. He said anyone can come under affordable housing with bulldozers and dynamite, and go to town on the site,

He does not see this as part of Hamden's zoning regulations. Mr. Roscow doubts Milone and McBroom's normal planning would envision this type of operation.

Mr. McEvoy said that the proposed property has been subject to prior approvals with substantially similar site operations for an inn.

Mr. Roscow said that he has a big problem with a site that is like a ravine, that will have an eleven foot gravity retaining walls, and two parking lots with an eight foot level difference. He does not feel that the proposed site works with the POCD, nor is it a normal operation being proposed.

Mr. Hollister stated that the Affordable Housing Statute does not give carte blanche to do something that is unsafe or unwise. There are approximately 50 developments within the state that was approved under the 830.g Statute and they are all the pride of their communities. The amount of excavation for this site will be 20,000 cubic yards, and this is not a large amount. There are many projects in Hamden and elsewhere that dwarf this amount of earth material excavation. Mr. Roscow said that the proposed amount of excavation is 51,000 cubic yards. This is a small piece of property that will be carved up by heavy machinery and blasting. Mr. Hollister explained that a plan has been created with a development pad so that the building will not be visible from other properties. It could have been made higher and more visible. Mr. Hollister feels that the proposed plan will not be unsafe.

Mr. Reynolds does not understand why Mr. Hollister is compelled to write a new regulation for a new zone. He would like clarification as to what the advantage of this development in a new zone will be. Mr. Hollister replied that the end result will be a conforming use that has a governing regulation. When going for financing it shows that a regulation is approved and the project complies with the regulation, and a variance is not needed. The proposed regulation will take away all the ambiguity going forward for any modifications to say what is allowed and in conformance. Mr. Reynolds questioned why the current regulations could not work, but under 830.g it would allow the development. Also, Mr. Reynolds asked why if an approved application would not be enough to receive financing.

Mr. Hollister said that the starting point was to take what Mr. Romano, Westwood Properties, wanted to do and compare it to the T-4 regulations and the dimensional requirements applicable to this problem, and they did not fit. The proposed regulation is to have a conforming regulation and site plan. By trying to take the proposed site plan and put it under the existing regulation, it would be trying to fit 10 pounds in a five pound bag. Mr. Reynolds feels that the application has been made to fit the existing regulations with some major differences. Mr. Hollister disagrees, and that the differences are minor ones. He has agreed to the substantive regulations regarding earth materials. There are many aspects of the T-4 regulations that do not fit the proposed regulations. Mr. Reynolds said that the 830.g allows the applicant to bypass the T-4 regulations and he does not understand why the applicant wants to say what is approved does not have any variances. Mr. Reynolds and Mr. Hollister further discussed the need for the proposed site to conform to a governing regulation and they both agreed to disagree.

Ms. Leslie Creane, Town Planner, said that the Staff's memo refers to the obligation and responsibility of the commission's role concerning the application. An 830.g application allows an override of many different aspects of the regulations. The only way the Commission can vote against an 830.g application, is if the project in some way risks public health, safety and welfare in a way that cannot be remedied through conditions of approval that are reasonable. To a large extent the Commission's hands are tied because the 830.g Statute is very strong. The applicant has worked with the Planning Staff to move things a long way over the last few months. The Planning Staff did encourage the applicant to start off as Mr. Reynolds recommended. The applicant chose to take a different route which is their right. The Commission's obligation is to vote based on the criteria outlined with regard to the impact on Public health, safety and welfare and if it outweighs the need for affordable housing. Hamden is below the 10 percent threshold for deed restricted affordable housing in the Town. This does not mean that Hamden does not have housing that is affordable, and that caters to those who fit the affordable range, but that it is not deed restricted.

Ms. Altman asked if the applicant was under no obligation to work as closely with the Planning Staff as they have done. Ms. Creane said that the technical answer is yes. However, the Planning Office has a reputation for working with applicant's to not let an application come before the Commission until the Staff believes it is in the best interest of the Town. There are property rights and obligations on both sides. Ms. Altman hopes the public in attendance at this meeting understands that the Commission must act according to the Statutes.

Ms. Altman asked for comments in favor of the application. There was none.

Ms. Altman asked for comments against the application:

Mr. Aris Stalis, 256 Johnson Road, addressed the Commission and reviewed his resume. He did not hear addressed the new ADA regulations and laws that became effective in March 2012. The proposed site does not lend itself to those who are physically challenged and have disabilities. Once on the site you are trapped. Moving around the site or getting off the site does not meet the current regulations and in Mr. Stalis' opinion is something that should go hand and hand with the Affordable Housing Statute. When looking at populations that may have challenges in terms of affordable housing, they are those with disabilities. The Town as an entity is looking to improve the housing situation, they should also look at how they can find housing that meets the need of people with disabilities. Amenities are being added to the site such as sidewalks going down West Woods Road. In the last month, the Town leaders denied adding more Public Work positions. Now there will be a sidewalk that increases the maintenance and burden on the Town. If this is not addressed it becomes a liability.

Mr. Stalis reviewed the application and noticed that the applicant's engineer utilized a 35 mph speed in terms of site distances. He did not see it identified as the design speed of the roadway or if it was 85th percentile to determine what the site distance is. In the case of many firms he has worked with, the traffic engineer's physically measured the sight distances to make sure they work properly. Mr. Stalis is concerned with the maintenance for the drainage system. The gravel pathway has a structure that discharges into the wetland basin. This location is out of sight, out of mind, and could lead to failure. The volumes of excavation does meet the zoning regulations. There are steep slopes on the west side of the property which are not permitted in the zoning regulations. There is more fencing on the site than the fencing at the prison located in Cheshire. It is going to be littered with chain link fencing. Chain link fencing will survive the first few years, then slowly degrade, and detract from a site. The amount of fencing proposed will be difficult to maintain. The lower parking area will have an eight foot chain link fence and a four foot chain link fence.

Mr. Stalis does not feel anyone in the room would want to live in a facility with these safety features. The affordable housing statute should not say "they will not provide quality design". The applicant's attorney said the T-4 application talked about design, courtyards and quality of space, which leads to an improved quality of life. It is recognized that the health of the public is recognized and the quality of the design environment leads to healthier living. There have been a numerous amount of studies for the quality of life and design by the CDC at the University of Illinois. Someone living in an apartment located on the lower level and western side of the building will never see the sun and this does not lead to a good quality of life. It will always be in the shade. The landscaping should include the de-compaction of all soils when planting more than 24 inches deep. Historically everything is compacted and trees are dropped in and never grow. The detention basin calls for plantings to be placed three feet on center, and this opens it up to allow invasive species. Some plantings placed 18 inches on center take three years to grow in. In Mr. Stalis' opinion, the plantings in the detention basin are light and the plantings to restore it would have a pseudo wetland habitat. In the southern corner of the property there is a small corner of a retaining wall which is abutted up to the property line of the Talbot shops located below. Per the design the concrete block wall will require geo-textile fabric and it will require excavation 6-10 feet back which will be up against the property and would appear that the Commission is giving permission for the applicant to work on the abutting property. The zoning regulations talk about preserving vegetation and the character of a property. The proposal is against the character of the area and will become called "something towers". The top of the building will be at an elevation of 219 feet. When at the intersection of Whitney Avenue and West Woods road, the only thing you will see is the proposed building. The proposed building is not in line with the neighborhood and when looking at the special permit threshold the proposal does not fall within it. In Section 826 of the zoning regulations

this project does not comply with the conditions. To protect the abutting property chain link fencing is added, but in 10 years the fence is forgotten about it. The fence can fail and if children are playing in the area and fall, then it will be said “it was a tragedy and we will have to pay attention”. These are the kinds of things that why the regulations talk about not creating steep slopes and hap-hazard excavations. It seems it was simply throwing a dart at the site and saying “let’s put in affordable housing”. Mr. Stalis does not feel the proposed plan meets the POCD and allow people to enjoy a town. Mr. Stalis concluded that when designing spaces and creating living environments for people to remain healthy, thought should be give to how it is designed. It must be able to survive, last and grow with the community. The proposed plan is completely contrary to the intersection and what can be considered a healthy environment. Mr. Stalis feels that the gravel path to the trail will wash away in a short time. Once something is done they cannot go back and fix it. The Commission should deny the application based on the health, safety and welfare of the public at large.

Mr. Peter Schwartz, 605 Still Hill Road, addressed the Commission and feels that the affordable housing act is commendable. He is concerned with the egress from the property when turning left onto West Woods Road. There are difficult turns when turning left from People's Bank. Mr. Schwartz said that rush hour will have a tremendous impact on the neighborhood with trucks leaving the site and making a left hand turn, as will 50 cars when the project is complete. It has been stated that there will be 35 cars leaving the site during the morning peak hours, but Mr. Schwartz feels that there will be additional vehicles because some apartments will have more than one vehicle. Mr. Schwartz does not understand the reasoning of the developer and his professionals when they define what will be leaving the site, and that it would not be a problem. Mr. Schwartz said it will be a problem and a nightmare for the residents living in the area with what is already a difficult situation. He was impressed with what Mr. Stalis had said from his professional background and the problems with having the project located in a steep area. Mr. Schwartz asked the Commission not be totally swayed by a very good goal for the State of Connecticut and the Town of Hamden to have more affordable housing, but this is the worst area to put housing and does not work for the community.

Ms. Cindy Civitello, 61 Berkeley Court read the following statement:

From all the testimony that has been given so far whether it was from Atty Lee, the planning office and even Atty Hollister, in order for this application to be denied, which has been stated numerous times there needs to be reasonable evidence that this development would greatly affect the health and safety of the public and outweigh the need for affordable housing.

Since hiring an attorney to help our case in getting this application denied is beyond our financial means, I looked through files on the office of legislative research web site on the key issues in affordable housing appeals. What I was looking for is what the court looks for when a Planning & Zoning commission denies an application like the one before you and the applicant appeals that decision.

I found and I quote, “under the procedures, municipalities must convince the court that they had to reject a developer’s affordable housing project for three reasons;

It could seriously harm public health and safety and guess what was given as an example, a traffic hazard

2<sup>nd</sup> that the potential harm was greater than the need for affordable housing, and

3<sup>rd</sup> the town could not minimize or prevent the harm by making reasonable changes to the proposed project.

In addition, and I quote again, the Supreme Court also ruled that if a zoning commission sustains its burden of proof for just ONE of its collective reasons for denying the application the court must uphold the commission’s decision.

So in regards, to this application a valid justification could suggest that this development would likely increase traffic congestion in an area of town that is already plagued by traffic flow.

As I stated at a previous meeting, I totally disagree with the traffic study presented by the applicant. I travel West Woods Rd every day and the amount of traffic generated on that road due to the Tonino's parking lot, the People's bank parking lot, the polling station, the student parking lot and the trail crossing is already congested, adding an additional 50-100 cars is an accident waiting to happen. Finally, in my research I was quite surprised as to the number of cases where a commission's denial of an application was sustained. Most of these applications were not as intense as this one with the amount of rock removal, the added traffic with dump trucks removing the rock crushed or not and finally the heavy traffic especially during rush hour traffic that this road generates.

You need to deny this application 1<sup>st</sup> because taking down this mountain is an environmental hazard to all those who live in the area and travel on this road and most importantly the added traffic this development will cause onto West Woods Road would certainly be a traffic hazard at an already heavily traveled roadway.

Mr. John Morrison, 1692 Whitney Avenue, addressed the Commission and stated that the key issue is public safety. The traffic engineer has said that the trucks will not be a problem, but how about the cars that will be added to the traffic situation. It will be a public safety issue forever in this area once the project is completed. Mr. Morrison urges the Commission to deny the application. There is also an issue with regard to the public drinking water and the watershed area. Mr. Eric McVety, Supervising Analyst of the Connecticut Department of Public Health, Source Water Protection Unit, had issued a letter on September 27, 2012 which had found "the proposal was inconsistent with the policies in place to protect the public water drinking supplies". Mr. Morrison said that this is another public safety issue. There is no doubt that it is a public health issue. Mr. Morrison feels that the courts will support the public health issues and the Commission should deny the application.

Mr. Kurt Zilm 217 Todd Street, addressed the Commission and stated that the traffic that will be created by this project will not be less than what it would have been for the proposed inn. Conditions in the area have changed since the inn was approved. There has been a big change in the intersection. The elimination of the right hand turn on red which makes the congestion coming down the hill, especially during the bad weather, it is treacherous. Mr. Zilm stated "that just because a mistake was made before, does not mean one has to make the same mistake again". He urges the Commission to deny the application.

Ms. Debra Shaffery, 85 Leatherman Trail, addressed the Commission and stated that she lives a quarter of a mile from the proposed project and travels West Woods Road extensively. The dangers on West Woods Road include curves in the road with rock ledges. If there is an accident there is no room for vehicles to get out of the way. In the winter there is a lot of water runoff that freezes and becomes a very large area of thick ice. This makes navigating the street very dangerous. Ms. Shaffery has observed that when vehicles take a left off of Whitney Avenue, they often are traveling at a high rate of speed and must slam on their brakes when turning into Tonnino's. What very often happens is that the traffic backs up, and at times backs up to Whitney Avenue. There is not two designated lanes coming from Whitney Avenue onto West Woods Road and vehicles swerve to the right to avoid a vehicle turning into Tonino's.

Ms. Shaffery has witnessed a number of Quinnipiac University shuttle bus trips on West Woods Road. The University allows students to park at the Polling Institute and Ms. Shaffery has seen three or 4 double rows taken up. The employees of the polling institute park at the far end of the parking lot. The shuttle buses are driving in and out of the polling institute going over to the main campus. The buses are using the access road to Talbot's as a temporary parking area. The buses block the entrance to Talbot's and People's bank because they park partially on the access road and partially on the grass. The grassy area has been torn up and is mud.

The proposed project will increase traffic by 50 percent and this does not count their visitors. It was stated that there are 219 cars on West Woods Road that take a right hand turn on Whitney Avenue during rush hour, this did

not include the cars that take a left hand turn and cars coming off Whitney Avenue. Ms. Shaffery is not sure how the stipulation not to rent to students can be enforced when the zoning regulations treat the graduate students the same as the undergraduate students. If the applicant decides not to adhere to the stipulations in the future, there is no recourse. Ms. Shaffery agrees with a previous speaker about the effect on the area because the area does not have apartments with a lot of fencing. She is concerned that parents of students will sign the lease and then students will live in them. A comment was made earlier about a renter not being honest about being a student. Ms. Shaffery asked if a renter moves in and becomes a student what can be done. Will the renter then be evicted or the lease not renewed. Ms. Shaffery does not understand why an apartment building needs a recreation room and it sounds to her like the building will be similar to a dormitory. She has not heard what the purpose of the room is, how the room will be furnished or how it will be used. Ms. Shaffery stated that as a Real Estate Agent, if she lived on the street she would be concerned how the project would affect her property value. The traffic congestion is getting worse and when the work was done to realign West Woods Road it may have cut down on the amount of accidents, however, this project may create more accidents with vehicles trying to access the businesses. Ms. Shaffery stated that West Woods Road is very dangerous.

Ms. Christine Esposito, 1742 Whitney Avenue, addressed the Commission and stated that she understands that the affordable housing in Hamden is below the 10 percent threshold. She appreciates the work that the Planning Staff has done with this application. Ms. Esposito lives on Whitney Avenue and she is very concerned with the project because it affects everyone. The West Woods area is beautiful and Ms. Esposito hopes that the Commission will protect the area for all of Hamden by denying the application.

Ms. Sara Clark, 4032 Whitney Avenue, addressed the Commission and expressed her regret that the vision of the hillside will be destroyed.

Ms. Helen Pallaria, 77 Still Hill Road, addressed the Commission and stated that she has lived in her home since 1965 and will not travel West Woods Road because it is dangerous. She asked why the applicant has picked this location for affordable housing. Ms. Pallaria does not feel it is an appropriate location for the elderly or handicapped people, and that they would be applicants for affordable housing. She does feel that the location was chosen because it is close to a University.

Mr. Gus Spohn, 4032 Whitney Avenue, addressed the Commission and asked if Mr. Hollister could summarize the 2006 legal opinion banning excluding student tenants at Town Walk, along with the case law that would support excluding students from rental units. He asked if this has been an issue that has gone to the Connecticut Supreme court. Mr. Spohn asked how solid are the legal grounds for excluding students from the apartments. Further, he asked if a lawsuit was filed challenging the excluding of students and the court upheld the challenge, could this mean that students could be tenants at 55 West Woods, even though the developer does not want them there. Also, is there something that could be written into the approval of the application in a way of some kind of recompense to the Town if in fact the developer was ordered to allow students to live there.

Ms. Joanne Cannelli, 36 Todd Street, addressed the Commission and stated at 55 Todd Street is a beautiful home that has been restored. The owners live in Canada and their son, daughters and half the hockey team living in the house. They park on the condominium's lawn and say that they have lost their keys and cannot move the vehicles. They also throw their garbage on the condominiums grass and dumpster.

Mr. Joe Livi, 36 Todd Street, addressed the Commission and stated what he finds very disturbing is the safety issue. He knows that deep in the Commission's hearts is that when they put their head on the pillow or are sitting at the kitchen table, they must think of the decision that the public is fearful of and the ramifications of denying the application will be. He understands that it will be a difficult decision to make, and he applauds the members for serving on the Commission. The safety of this project screams for the traffic safety and well being of the community. Mr. Livi said it would be naive to think that with 50 apartments there will not be children. The school buses will have to stop on a hill with a blind curve. Mr. Livi has lived in the West Woods area since 1979 and has traveled West Woods Road at least twice a day. The traffic study stating that there will be 35 cars that will make 35 trips from a 50 unit complex on any given day. Mr. Livi feels this is farfetched because that would mean each

unit would have three quarters of car per unit. If there is a family or students living in the units, there would be one and a half cars per unit which will be 75 vehicles. This does not include aunts, uncles, holidays, people coming in to drop of children for daycare or children for play dates. Mr. Livi asked if the trucks will go in from 7:00 a.m to 9:00 a.m. And 3:00 p.m to 5:00 p.m, or has it been determined what the hours of travel would be for the trucks. When a truck leaves the site, it will be taking a hard left to go to Route 10. A right turn on red was denied at Whitney Avenue and West Woods Road and this adds to the difficulties that will be compounded with the trucks leaving the site, as well as those coming onto the site. The traffic and safety is a problem, and it is obvious that this location is not an area for a fifty apartment unit. Mr. Livi gave examples of possible scenarios involving cars that would have to stop for a school bus on a hill and a blind curve. He asked if one child injured is it worth this type of application. He said purchasing this property was like buying stock, because applications were denied, and now the applicant is using the affordable housing statute behind him, which puts extra weight behind him because the federal government and the law is involved. Mr. Livi said that the Town's Attorney needs to be in attendance to answer questions before a decision is made. It only takes one traffic safety issue for a court to overrule the Commission. He fears a child getting hit by a vehicle who is unable to stop. Mr. Livi stated that traffic is a safety issue.

Ms. Altman does not feel it is a good idea for the Commission to discuss this application in the absence of Mr. Tim Lee, Assistant Town Attorney. The public hearing will proceed, however there will be no discussion or decision made by the Commission, but will be taken up at the December 18, 2012 meeting.

Mr. Spohn asked if the Public Hearing is closed, will the public's questions be answered and Ms. Altman replied yes.

Ms. Altman reviewed the letters received by the Commission. She noted that the letters were against the approval of this application.

Mr. Tim Hollister reviewed his opinion with regards to excluding students from Avalon Bay apartments. He noted that the policy excluding students from living at Town Walk was implemented and is still in place. Mr. Hollister stated that there is no one with a greater interest than his client to make the proposed apartment building attractive and a safe place to live. Seventy percent of the apartments will be rented at market rate. If the apartments are not built nice, not a safe place to live, and not make it a desirable place to live, then his client will not be able to make his financial objectives. In the past there was speculation about affordable housing not being maintained. There is always an overlooking of the applicant's self interest which is to make it not just a credit of the town, but also, a successful development.

Ms. Altman closed the Public Hearing.

## **2. Proposed Amendment to the Hamden Zoning Map 12-931**

55 West Woods Road

Change from a T-4 to MIH zone

File available for review in the Planning Office & the Office of the Town Clerk

Westwoods Properties, LLC, Applicant

***Public Hearing continued from November 13, 2012 Meeting***

## **3. Major Amendment to Special Permit 11-1180**

190 Pine Rock Avenue, M zone

Changes in topographical elevations & grading

Modification to parking tables

Bernard Pellegrino, Applicant

***Deadline to open public hearing 1/17/13***

Mr. Bernard Pellegrino, Attorney, addressed the Commission and introduced the presenters. He submitted to the clerk, an affidavit and pictures of the public hearing sign as required by the zoning regulations.

Mr. Pellegrino said that the original application was approved in July, 2011. He reviewed the original application. He stated that during the course of the site work discoveries were made that posed an impediment to the excavation to set the building's first floor elevations at the approved elevations on the original plans. The project's engineer went to the Town Engineer and showed him the revisions and explained how it would not affect the operation of the drainage. The Town Engineer approved the changes, but it was not presented to the Planning Staff. The as-built was submitted in August, 2012. The construction staff met with the Planning Staff as the students leasing the units were preparing to move in. The issue was that the grade elevations were between 10 and 22 inches above the approved plan. Also, configurations of some of the detention basins and swales were different than the approved ones. Mr. Pellegrino stated that it was agreed that a bond would be posted to cover the additional work, complete outstanding issues and file an application to correct the differences between the as-built and approved plans. There were some minor changes relative to the landscaping and an application was submitted and has been approved.

Mr. Pellegrino stated that the issues are related to useable open space, concerns relative to security and the amenities in community room. Mr. Pellegrino said there are some outstanding issues that will be addressed with the conditions of approval that are being recommended.

Mr. Pellegrino reviewed the useable open space that had been approved and the application to modify the required open space. The property is located in an M-1 zone which does not require usable open space. He feels that the Commission would be hard pressed to deny the requested amendment based on the open space that was previously approved and based on the prior approval the changes made do not significantly alter the usability of the area.

Mr. Pellegrino said that the community building will be completed by the spring semester. He stated that the claim that the application cannot be approved, even though it is identical to what was approved in 2011 and after the project is already built, is not fair because in most respects it is identical to the original project. The site is in an M-1 zone and open space is not required, so there is not a need for a variance.

Mr. Raymond Rizzio, Owner, addressed the Commission and stated that the project is successful and has satisfied a need in the area for student housing. The housing was built with student tenants in mind and Mr. Rizzio described the units. There have been issues with security. The security problems have not been as a result of the tenants, but with outside forces. The SCSU students coming to the site cause the trouble. Mr. Rizzio referred to the incident that occurred on Halloween. He explained what happened and that the Hamden Police were called and the people who were arrested were not tenants.

Mr. Rizzio said that the issue with useable open space and students is controlling where they gather. He believes that there is the required ground area. There have been minor changes to the grade. Security has been updated. Mr. Rizzio met with the security force at SCSU and were told that the less area for people to assemble the better. This is because the kids go to the area where they feel they have the greatest opening. The property has been fenced as much as possible. Off-duty police officers have been hired on the weekends and there have been no further incidents. Security on the site is needed to protect the tenants from external environments. Mr. Rizzio reviewed the landscaping plan and stated that benches and bicycle racks will be installed in the spring. He explained that the community room will be allowed for use on a sign up basis. Parking permits have been issued and if a car does not have one and is parked in a designated space it will be towed. Cars will also be towed if they are illegally parked. The project is in a good location and is a good service for the students and generates taxes for the Town.

Ms. Leslie Creane, Town Planner, read her comments. She cannot recommend approval without the useable open space issue being resolved. If that happens she could recommend approval with the following conditions:

1. Approval of the addition of the amendment to the parking table that states "NOTE: At the Commission's request, the applicant received approval from the Hamden Traffic Authority for 15 public off-site parking spaces designated as #138 thru (*sic*) #152. This approval was granted on September 12, 2012."

2. Gutters and roof drain pipes be installed on the rear of buildings C, D, and E or, if eliminating the gutters and roof drain pipes is acceptable to the Commission, crushed stone should be placed below the drip line to prevent erosion and grading next to the building must direct water away from the building.
3. Rip rap must be installed on the steep slopes at each end of the swale behind Building E.
4. An easement to the town for public access should be provided for the entire sidewalk along Pine Rock Avenue.
5. All conditions of approval associated with the initial approval of this project, unless modified by this application or the approval of a minor amendment are still in full force and effect.

Ms. Creane noted that condition #4 should be deleted.

Ms. Creane noted that the Commission should be clear that the fencing of the detention basins was done based upon the steep slopes and their depths, and for public safety reason. The detention basins were presented on the plans as useable open space and it is noted on the plans. Also, there seem to be three definitions as opposed to two definitions of open space. There is active space, passive recreation space, and barred from admission space(detention basins). The detention basins were fenced off before a conditional certificate of zoning compliance was issued. Ms. Creane stated that it is the job of the Commission to determine if there should be enough open space to allow students to gather and throw a Frisbee around.

Ms. Altman asked if the a consensus of the Commission that a variance is required, should the public hearing remain open until an approval or denial is received, or should the application be denied.

Mr. Kops stated that Mr. Pellegrino has raised the point that an M-1 zone does not require a variance and so a variance is not needed. Mr. Kops discussed denying the application vs. continuing the public hearing to allow the applicant to address the issues raised.

Ms. Cutrali asked Mr. Rizzio what the purpose of the community room is and if there is a security office. Mr. Rizzio replied that they had met with SCSU and it was suggested that a community room would be better than open space. Security is available during peak nights to control non residents overtaking the community. Mr. Rizzio reviewed the peak hours and described the security that is now in place.

Ms. Cutrali asked if there are call boxes and security cameras on the premise.

Mr. Michael Perkins, Property Management, Sound Development, addressed the Commission and described the location of the security cameras and the security that is on the site and their hours of operations. Ms. Cutrali asked about the parking plan. Mr. Perkins discussed with the Commission the parking plan and stated that the parking spaces on Pine Rock Avenue are for use by anyone.

Ms. Cutrali asked for clarification of the Stormwater Management Plan, because that area of Pine Rock Avenue gets flooded. Mr. Pellegrino reviewed the Stormwater Management Plan with the Commission.

Ms. Mastropetre is concerns with the elevations being 10-22 inches higher than the grade elevations. She asked why if problems were recognized with the elevations, the applicant did not go to the Planning Office to address the issue. Mr. Pellegrino stated that the project engineers went to the Town Engineer and did not realize that they needed to go to the Planning Office. Mr. Rizzio said even though the grade was raised, the height of the building did not.

Mr. Poitier asked that Mr. Pellegrino what the minor issues were that he had stated early. Mr. Pellegrino said the changes were the note on the plan regarding parking, the roof drains, installing the rip rap at the end of the swale

behind building E, and the field change required by the Traffic Department when preparing the pavement on Pine Rock Avenue.

Mr. Pellegrino discussed the grade changes made behind the buildings in the swale areas. Mr. Poitier said that the plan submitted is small and cannot be read. Mr. Poitier stated that when the original application was being heard there were countless times that the Commission tried to get the Developer to complete the drawings. The final outcome was that whatever was needed to be done to satisfy the Planning Staff had to be done. Mr. Poitier further stated the applicants did what they wanted and got caught with their hand in the cookie jar, and now come back before the Commission asking to have the changes approved.

Mr. Pellegrino stated that Mr. Poitier's characterization is fair, and he agrees that consideration was given to the developer in approving the plan to allow the development to be ready this past fall for the students. He further agrees that the Commission did give the developer and the Planning Staff permission to work on issues that weren't completely ironed out during the approval. Mr. Pellegrino further discussed the issues that remain at the site.

Mr. McDonagh said he would not vote in favor of the application. The plans are small and he cannot see what the applicant is requesting approval for.

Ms. Creane said that because the grades have changed so much, a map is needed that clearly shows where there are 20 percent or more grades and where there are 20 percent or less are located.

Ms. Mastropetre would like plans to include an explanation showing the areas that can be used as recreation by the residents because it was part of the original approval.

Ms. Altman continued the public hearing until the January 22, 2012 meeting.

#### **4. Major Amendment To Special Permit 11-1176/WS**

1670 Whitney Avenue, T 3.5 zone

Restaurant expansion

**Michael Migliaro, Applicant**

***Deadline to open public hearing 2/14/12***

Mr. Dan Kops, Assistant Town Plan, read his comments which recommends approval based on the conditions stated and following plan:

"Cafe Amici Proposed Bar Room," Sheet A-1, prepared by EDIFICIO Architecture & Design, dated November 5, 2012.

Mr. Edward Bruce, 191 Montowese Avenue, North Haven, addressed the Commission and reviewed the uses that are currently in the building and the proposed site plan for Amici's Restaurant. Mr. Bruce explained that he had discussed the zoning regulation requiring a Special Permit for the expanded use of the restaurant with Mr. Kops. Ms. Cutrali asked if there were apartments on the second floor above the restaurant and the nail salon, and Mr. Bruce replied yes. Ms. Cutrali expressed her concerns about the possible noises that would come from the restaurant. Mr. Bruce explained that an acoustical ceiling will be used. However, the owners do not plan to have entertainment.

Ms. Altman stated that a letter was submitted from Ms. Ann Prokop in favor of the application.

Ms. Altman asked for comments in favor of the application:

Ms. Christine Esposito, 1742 Whitney Avenue, addressed the Commission and stated that she lives near Amici's and does not hear noise coming from the restaurant when she walks by. She feels that Cafe Amici's is a good neighbor.

Ms. Altman asked for comments against the application:

Mr. Richard Choe, 21 Hawthorne Avenue, addressed the Commission and stated that he is not against the application. He stated that Cafe Amici's is a good neighbor. However, his concern is that patrons going into the restaurant illegally park on Hawthorne Avenue and on the sidewalk. Mr. Kops stated that the amount of parking for Amici's is adequate and illegal parking should be brought to the attention of the Police Department.

Ms. Altman closed the public hearing.

## **B. Regular Meeting**

### **1. Proposed Amendment to the Hamden Zoning Regulations 12-930**

55 West Woods Road  
Mixed Income Housing (MIH) District  
File available for review in the Planning Office & the Office of the Town Clerk  
Westwoods Properties, LLC, Applicant

This item is tabled until the December 18, 2012 meeting

### **2. Proposed Amendment to the Hamden Zoning Map 12-931**

55 West Woods Road  
Change from a T-4 to MIH zone  
File available for review in the Planning Office & the Office of the Town Clerk  
Westwoods Properties, LLC, Applicant

This item is tabled until the December 18, 2012 meeting

### **3. Site Plan 12-1479/WS**

55 West Woods Road  
Multi-Family Housing  
Westwoods Properties, LLC, Applicant

This item is tabled until the January 22, 2013 meeting

### **4. Major Amendment to Special Permit 11-1180**

190 Pine Rock Avenue, M zone  
Changes in topographical elevations & grading  
Modification to parking tables  
Bernard Pellegrino, Applicant

This item is tabled until the January 22, 2012 meeting

### **5. Major Amendment To Special Permit 11-1176/WS**

1670 Whitney Avenue, T 3.5 zone  
Restaurant expansion  
Michael Migliaro, Applicant

***Mr. McDonagh made the motion to approve the Major Amendment to Special Permit 11-1176 as recommended by Mr. Dan Kops, Assistant Town Planner, with the following conditions:***

1. The applicant must obtain a Zoning Permit.
2. All work must be completed by December 11, 2017.

***Ms. Cutrali seconded the motion. The motion passed unanimously.***

### **C. Old Business/ New Business**

1. Review minutes of November 13, 2012

The clerk stated that Ms. Mastropetre had submitted corrections to the her.

***Mr. McDonagh made the motion to approve the minutes of November 13, 2012 with Ms. Mastropetre's corrections. Mr. Campo seconded the motion. Mr. Poitier, Mr. Campo, Ms. Mastropetre, Mr. Hul, Mr. Reynolds, Ms. Cutrali and Mr. McDonagh voted in favor of the motion. Therefore, the motion passed.***

2. Review minutes of November 27, 2012

Ms. Cutrali said on page 3, revised 2013 meeting minutes should be amended to read: Ms. Mastropetre seconded the motion.

***Ms. Mastropetre made the motion to approve the minutes of November 27, 2012 as amended. Ms. Cutrali seconded the motion. Mr. Poitier, Mr. Campo, Ms. Mastropetre, Mr. Hul, Mr. Reynolds and Ms. Cutrali voted in favor of the motion. Therefore, the motion passed.***

Mrs. Altman noted that she had returned recently from a three-week trip to Mongolia, where she had been explaining the elements of municipal planning and zoning to government ministers and officials and to municipal department heads and officials. She said that the Zoning Regulations of the Town of Hamden are now available, as a model, on the website of the capital city, UlaanBaatar, and that Hamden's zoning map was exhibit A in all her lectures and discussions.

### **D. Adjournment**

***Ms. Mastropetre made the motion to adjourn. Ms. Cutrali seconded the motion. The motion passed unanimously.***

***The meeting adjourned at 10:36***

Submitted by: \_\_\_\_\_  
Stacy Shellard, Clerk of the Commission