

Present: Chairman Michael Orefice, Lee Hall, Paul Roche, Alternate Member Debra Freidus, Alternate Member Michael Rewenko and Land Use Coordinator Polly Redmond

Absent: Roland Perreault and William Starr

1. OPEN MEETING – ESTABLISH QUORUM.

Chairman Orefice called the meeting to order at 7:00 p.m. All regular members present are seated with Alternate Member D. Freidus seated for R. Perreault and Alternate Member M. Rewenko seated for W. Starr.

2. APPROVE MINUTES OF PREVIOUS MEETINGS: 2/14/18 & 3/14/18

D. Freidus **motioned** to approve the minutes of 2/14/18, seconded by L. Hall. Motion passed unanimously with D. Freidus, L. Hall and M. Orefice voting. P. Roche and M. Rewenko refraining from vote due to their absence at the 2/14/18 meeting.

P. Roche **motioned** to approve the minutes of 3/14/18, seconded by M. Rewenko. Motion passed unanimously with L. Hall refraining from vote due to his absence at the 3/14/18 meeting.

3. CONTINUED DISCUSSION - PLANNING COMMISSION REFERRAL TO THE HARWINTON ZONING COMMISSION IN COMPLIANCE WITH STATE STATUTE 8-3a(b) ON APPLICATION PRESENTED TO THE HARWINTON ZONING COMMISSION BY BUMPER BROOK ESTATES TO AMEND ZONING REGULATION TEXT AMENDMENTS TO ZONING REGULATION SECTION 2.3 DEFINITION OF ELDERLY HOUSING.

TO ADD A NEW ZONING REGULATION UNDER SECTION 4 PERMITTED USES AND SPECIAL PERMIT USES FOR EACH ZONE (NEW SECTION 4.10) TITLED ZONE E – MULTI-FAMILY ELDERLY HOUSING ZONE, THAT INCLUDES SUBSECTIONS TITLED STATEMENT OF PURPOSE, PERMITTED USES, SPECIAL PERMIT USES, STANDARDS AND REGULATIONS AND ADDITIONAL SITE PLAN REQUIREMENTS.

TO AMEND ZONING REGULATION SECTION 5 LOT AREA TO ADD OTHER DIMENSIONS AND SPACE REQUIREMENTS TO INCLUDE REQUIREMENTS FOR ZONE E.

Atty. William J. Tracy, legal counsel for the applicant, and Scott Bayne, S&W Custom Home Builders are present. Chairman Orefice states that he did get comment from Town Atty. Michael D. Rybak regarding the timeframe of the notice given to the Planning Commission for these referrals and whether it met the 35 day notice requirement, which it did. The 35 day notice requirement “time clock” starts on the day the notice was mailed out to the Planning Commissioners, not the day of the next Planning Commission meeting.

Commissioner P. Roche questions whether Atty. Rybak made any comments to the Zoning Commission on the petitions to amend the text of the Zoning Regulations or the petition to change the zone. Chairman Orefice states there has been none made that he is aware of and he warns Commissioners that they need to be careful on discussing the proposed text language as this is not a public hearing. What the Zoning Commission is looking at is the proposed text language to be adopted by the Zoning Commission as new regulations. He states that he did some research reviewing regulations of three or four other towns for procedures on petitions for text amendments and found that some towns had paragraphs in their regulations, others had a couple of pages, so there was a mix. Harwinton’s Zoning Regulations have no procedures on petitioning so the State Statutes must be followed. He points out that State Statute 8-3 states that the “Zoning Commission shall provide for the manner in which regulations under section 8-2 or 8-2j and the boundaries of zoning districts shall be respectively established or changed.” Chairman Orefice states that he has looked at the Harwinton Zoning

Regulations pertaining to Multi-Family zones (Section 4.7) and compared it to the regulation for Town-Sponsored Housing for the Elderly (Section 9.9) where a lot of what is being proposed in the new text amendment came from and found there's some significant pieces that are missing in the proposed language being presented. He refers to impact statements, for example, on how does an elderly zone impact the town, the school system, the tax base, the fire and police department, the ambulance and the traffic in the area, which in his opinion, are significant things. When you look at the Multi Family zone, there is language related to that and he believes there should be some language incorporated into the new zoning regulations regardless if it's specific to this petition or for someone else who wants to create elderly housing. He understands there is a need for elderly housing but when he looks at how it matches up to the Plan of Conservation and Development, he thinks it's a hard thing to do without having those components.

Atty. William Tracy responds by stating the applicant's view point on this was that the town has an existing regulation for publicly sponsored elderly housing and none of the things Chairman Orefice just spoke of are in that regulation. It seemed to have been sufficient to the Commissions at the time the regulation was adopted, that it was sufficient for elderly housing, and they didn't put the publicly sponsored limitation on it. So the applicant is looking at it as, if the town can do it that way then a private developer should be able to duplicate the same thing because it's a very artificial distinction between where there is publicly sponsored or privately sponsored in terms of what the Zoning Regulations require of a developer. That is why he didn't look at the Multi Family zone, which Atty. Tracy states he believes is a type of floating zone that could apply to any of the zones if the Zoning Commission elects to locate it, and at that point there may be, because of the different demographics with the multi-family and different possibilities of location of a multi-family, and there may be additional criteria the commission was interested in, that they were obviously not interested in an elderly development because they didn't put it in the elderly housing regulation. The applicant is just trying to mirror the publicly sponsored elderly housing regulation for private sponsorship so a private developer can construct something similar to what the town can construct. Because the town has significant budget constraints it does make sense, given language in the Plan of Conservation and Development, and the widely recognized need to allow other people to come in and address that need in town for elderly housing development.

Chairman Orefice states that the town-sponsored elderly housing is not a specific zone and what is being discussed tonight is changing the language to allow for a specific elderly zone. Commissioner L. Hall questions whether the complex on Breezy Hill Road is elderly housing, which is confirmed that it is and was built in a Multi-Family zone. Chairman Orefice states that the developer of that complex followed the guidelines for Multi-Family zone regulations and chose to restrict ownership to those 55 and older. Chairman Tracy states that the developer he represents is looking at rental units and that he didn't write the proposed zoning regulation to require one or the other, that it would become the property owner's decision on the structure of the ownership. That the Zoning Regulations talk about site layout and the physical nature but does not address ownership.

Commissioner L. Hall wishes to confirm then that these units will be for rental purposes only, not to purchase, with Atty. Tracy stating, yes. Chairman Orefice states that these units to be built are proposed 55 and older with 80% of the units that have to have someone 55 or older. Therefore, 20% of the proposed development, about 7 units, can be rental apartments with no age restriction. He points out that in the 55 and older complex there could be potential for children of school age which can have an impact on the school system. Also, police and ambulance response will be from Harwinton so there is an impact and it is unknown what that impact is. Atty. Tracy replies that that is very speculative. Chairman Orefice states that other regulations he has read from other towns, including Harwinton's Multi-Family zone, typically has a section, whether it's elderly or not,

where impact studies are required. Atty. Tracy states that in terms of that, the proposed language being presented makes the actual use a Special Permit use, so things like traffic circulation are going to be addressed by the Zoning Commission in a Special Permit application, that it will not be a use of right. Atty. Tracy continues by stating, if the text is adopted and the zone is created then the developer still has to come in for a Special Permit to construct and that requires a public hearing, a review process, and a host of other criteria that must be met, so those are safeguards that are already in the Zoning Regulations. In the existing publicly sponsored elderly housing (Section 9.9), it is also a special permit application and Atty. Tracy states he kept it that way so not to create a difference between the public and private and allowing the private developer to do the same as a public developer.

Commissioner P. Roche asks whether the only downside to using the Multi-Family zone for the proposed construction of elderly housing units is that the development can't be restricted to 55 and older? He questions why the developer can't use the Multi-Family zone already in place in the Zoning Regulations? Atty. Tracy replies that the parcel size and dimensions in the Multi Family zone don't come close to developing this piece of property on Twenty-four Bumper Road. Commissioner M. Rewenko questions whether WPCA has signed off on this development yet with Atty. Tracy replying that there have been discussions with First Selectman Michael Criss regarding WPCA connections and there has also been discussion with Torrington WPCA. Commissioner P. Roche questions if there could be more time for the town to resolve this and more time to come up with a more comprehensive zone with Atty. Tracy stating that the Commissions are free to amend their own regulations, that it wasn't his intention to take on the whole public elderly housing regulation and also, there are time restraints that the Zoning Commission has to adhere to on the application presented to them. Chairman Orefice states that by Atty. Tracy saying this, "not intending to take on the whole public elderly housing regulation", that implies to him that there is more work that needs to be done in the adoption of an Elderly Housing zone. Chairman Orefice notes that in going through the Multi Family zone regulations, he sees some small changes made by the applicant, such as changing a requirement from the word "shall" to "may" (4.10.3f proposed regulation) and he understands the change was made to accommodate this particular development. He also has concerns over the proposed regulation 4.10.3g where a sentence reads "Every building on the site will be accessible to emergency vehicles." which will be added in and he thought this was a good thing until he went to the existing Multi-Family Zoning Regulation 4.7.4d that has five bullet points regarding traffic and circulation and he noticed that four of the five points in the existing regulation didn't get incorporated into this document of proposed regulations. Chairman Orefice believes that more study should be done and states that if Zoning is going to adopt these proposals to amend the regulations there's nothing in terms of numbers, although Multi Family has a maximum of 30 units, someone could come in with a 300 unit elderly housing complex application which would have much greater impact on the town than this application would. He agrees that the Zoning Commission can adopt and change their own regulations but that takes time and any application prior to amendments follows old regulations not new regulations. Atty. Tracy states that the applicant he is representing is proposing a specific zone and specific language and location, someone else coming in is going to have to go through the same process of proposing a zone change in some other location and the question at that point will be, is it appropriate? That is a legislative decision that the Zoning Commission has substantial discretion of. Whereas in the Multi Family zone, there is much less discretion of whether they'll put that Multi Family zone on a particular street because they've already built it into the regulation. Here, in this matter, by making it a specific zone and drawing the boundaries of that zone, they don't necessarily have to put it on a specific road. So someone else coming in still has to convince the Zoning Commission, and this Commission for a recommendation, that the place they're asking for a zone change is appropriate for it. Chairman Orefice notes that the property is in a Light Industrial zone and if it is changed, is that the most appropriate use of that land? Without having any guidelines in place to be looked at, there is no

way of knowing if that land is appropriate for elderly housing. That is why he believes it should be looked at more. Atty. Tracy states that the land has been empty since the 1960s when the radio station moved the towers off the lot. Chairman Orefice agrees that it would be good to have something done with the property and he's not against elderly housing, but he's not sure if it is what's being proposed. Atty. Tracy states that there have been discussions with the Board of Selectmen and with this proposal there would be less illegal activity of dumping on the property that has been taking place. Commissioner L. Hall states that based on the way the Zoning is for town-sponsored elderly housing, he believes that certain requirements needed to be met regarding ADA compliance to which Atty. Tracy states that compliance falls under the building code. Commissioner L. Hall states that if these units are being built for elderly housing, and only a portion are being used for elderly and the others are not for elderly housing, will they all be built to ADA compliance rules? Atty. Tracy states they would be all built to ADA code in regards to doors being at ground level, and door widths being compliant, and bathrooms sized appropriately, etc. Commissioner L. Hall then states if they are being built to those standards then it would be advantageous to find elderly people to rent the units.

Chairman Orefice notes that this Commission's charge is to give a referral to the Zoning Commission on whether consistency with the Plan of Conservation of Development has been found with this proposal. He doesn't want to get into the specifics of the site plan, that should be for public hearing, so that would be left out of any referral but he feels strongly that those pieces should be included in this proposed language since it's going to be part of our Zoning Regulations. Language related to the tax base, schools, municipal services, environment, traffic and even property values should be considered and that typically falls to the developer to provide that information either through traffic studies or data analysis.

With no further comments, Commissioner P. Roche made the following **motion**:

Although the Planning Commission fully supports the need for elderly housing, the Commission feels that the proposed language for an E -- Multi-Family Elderly Housing Zone is not comprehensive enough for the commission to properly determine whether it is consistent with the town's Plan of Conservation and Development. The proposed language lacks key components including impact to the town's tax base, schools, municipal services (fire, ambulance and police), the environment, traffic and the effect on surrounding property values. The commission feels these components must be included in the language of any new Zoning Regulation and the burden should fall on the applicant to assist the Planning and Zoning Commission with any information.

Furthermore, the Planning Commission feels that a thorough and comprehensive study on the inclusion of an Elderly Housing Zone should be conducted prior to adopting any language.

Accordingly, at this time, the Planning Commission's 8-3a(b) recommendation is that the Zoning Commission not adopt at the present time the proposed E -- Multi-Family Elderly Housing Zone, and that the Zoning Commission, with the help of the Planning Commission, promptly conduct a significant additional study before adopting any new elderly housing zone regulations.

Commissioner M. Rewenko seconded the motion and it passed unanimously.

4. CONTINUED DISCUSSION - PLANNING COMMISSION REFERRAL TO THE HARWINTON ZONING COMMISSION IN COMPLIANCE WITH STATE STATUTE 8-3a(b) ON APPLICATION PRESENTED TO HARWINTON ZONING COMMISSION BY BUMPER BROOK ESTATES FOR A ZONE CHANGE FROM LIGHT INDUSTRIAL TO NEWLY CREATED ZONE E – MULTI FAMILY ELDERLY HOUSING ZONE, TWENTY-FOUR BUMPER ROAD, ASSESSORS MAP NOS. A8-03-0003, A8-03-0004 AND A8-03-0006.

Before any motion is made, Chairman Orefice asks if Atty. Tracy has any comments. Atty. Tracy notes that this is for the zone change from Light Industrial to Elderly Housing. Chairman Orefice notes that we did not deny this application, it goes to public hearing at the Zoning Commission meeting, and if the language is accepted as written, the applicant would be able to move forward. If the Zoning Commission denies it, then it does not move forward. He expresses concern that if the Zoning Commission moves forward with conditions, the Planning Commission won't know what those conditions are so he doesn't see how this Commission can give a reasonable referral. Atty. Tracy states that the question is, assuming the Zoning Commission moves forward with the text amendment, is this a location suitable for elderly housing which would be the question before the Planning Commission, what would be their recommendation on that. The specifics of the development would be a site plan application showing the location of buildings, driveway, the traffic, etc. and those would be reviewed under a Site Plan and Special Permit application process and a public hearing that would follow. So this is a broad brush of, would this be an appropriate use for that parcel of land. Atty. Tracy notes that there is very strong language in the Plan of Conservation and Development about addressing the need for elderly housing in the community and in terms of the kind of development that that means, and the kind of density that goes along with it. He states that the town does want to be careful of where it gets situated and the state's Plan of Conservation and Development talks about increasing the densities and the smart growth in areas where there's already a good infrastructure. Again, this is adjacent to the City of Torrington's infrastructure and in that sense, it will benefit the town to have taken these kinds of steps. When the state reviews the discretionary grants that are available to the town, if the town hasn't taken steps in that regard, the state may decide to deny grants to Harwinton on that very basis.

LUC P. Redmond states that she sees it as being unfair to towns that have no land available or viable land for incentive housing or smart growth due to lack of water and/or sewer who would be denied grants by the state. Atty. Tracy states that perhaps that's where state waivers would come into play. LUC Redmond points out that she researched other towns' regulations that are within the NHCOC and only found two towns that have specific mention of elderly housing. Litchfield allows for elderly housing in their Multi Family zone and Burlington has mention in their Regulation definitions of elderly housing that states "elderly housing is a dwelling unit exclusively for the needs of single people over the age of 55 or couples with at least one member over the age of 55." Burlington permits Elderly Housing under Zoning Regulations concerning Multi-Family Dwellings that are allowed in Residential zones. LUC Redmond notes that the Town of Kent has regulations for Affordable Housing sponsored by the town, Salisbury has Affordable Housing sponsored by the town or non-profit. No town has a specific zone called Elderly Housing. Looking at other towns such as Canton, Colebrook, Goshen, North Canaan, New Hartford and Winchester LUC Redmond found nothing in those regulations about elderly housing. She questions then would these towns have a hard time obtaining grants? Chairman Orefice notes that some towns do have petitions to allow for a zone change, such as Bristol and Torrington and the Town of Union that allows a zone change and has a Special Development zone section in the regulations. Chairman Orefice states that it isn't a bad idea to have an elderly housing zone with Atty. Tracy stating the question along those lines would then be, is it a logical place for elderly housing?

With no further comments, Commissioner P. Roche made the following **motion**:

Because the Planning Commission has recommended against adopting the proposed E -- Multi-Family Elderly Housing Zone without further study, the Planning Commission recommends that the Zoning Commission re-refer to the Planning Commission its 8-3a(b) referral regarding the proposed change in zoning at the Twenty-four Bumper Road property after the Zoning Commission adopts a new Multi-Family Elderly Housing Zone. However, if the Zoning Commission adopts the proposed E -- Multi-Family Elderly Housing Zone, then the proposed change for the Twenty-four Bumper Road property from Light Industrial Zone to E -- Multi-Family Elderly Housing Zone likely would be consistent with Harwinton's Plan of Conservation and Development.

Commissioner M. Rewenko seconded the motion and it passed unanimously.

5. DAVE WILSON, P.E. FOR MYRON L. BALDWIN, TRUSTEE– APPLICATION FOR TWO LOT SUBDIVISION, BALDWIN SUBDIVISION, HAYDEN ROAD.

Mr. Wilson is present to represent. Plans by Dave Wilson, P.E. are presented and titled Property Boundary Survey prepared for Myron Baldwin, Trustee, October 2017, and a plan titled Site Development Plan/Baldwin Subdivision, dated February 2018. Commissioners review the plans for compliance with application requirements in the Subdivision Regulations. IWWC approval was received 4/2/18. TAHD application has been made and they are awaiting a decision. Commissioner P. Roche **motioned** to accept the application and set a public hearing for Wednesday, April 11, 2018 at 7:00 p.m. in the town hall, seconded by Commissioner L. Hall. Motion passed unanimously.

6. OLD BUSINESS. None.

7. NEW BUSINESS. None.

8. ANY OTHER BUSINESS. None.

9. CORRESPONDENCE. None.

10. INVOICES. None.

11. ADJOURN.

Commissioner P. Roche **motioned** to adjourn the meeting at 8:00 p.m., seconded by Commissioner L. Hall. Motion passed unanimously.

Respectfully submitted,

Polly Redmond
Land Use Coordinator

RECEIVED FOR RECORD AT HARWINTON CT
ON 4-4-18 AT 2:15 PM
ATTEST NANCY E. ELDRIDGE TOWN CLERK