

**HARWINTON ZONING COMMISSION  
MONDAY, APRIL 9, 2018  
TOWN HALL 7:00 P.M.**

Present: Chairwoman Michelle Rewenko, Daniel Thurston, Deborah Kovall, Alternate Member Don Truskauskas, Alternate Member Theodore Root, Alternate Member Nancy Schnyer and Land Use Coordinator Polly Redmond  
Also Present: Town Atty. Michael D. Rybak  
Absent: Cynthia Kasey and Matthew Szydlo

**PLEDGE OF ALLEGIANCE**

**PUBLIC HEARING #1**

**1. OPEN HEARING – ESTABLISH QUORUM.**

Chairwoman Rewenko called the hearing to order at 7:00 p.m. All regular members present are seated with Alternate Member D. Truskauskas seated for C. Kasey and Alternate Member T. Root seated for M. Szydlo.

- 2. BUMPER BROOK ESTATES, LLC - PETITION TO AMEND ZONING REGULATION TEXT  
AMENDMENTS: 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.**

Chairwoman Rewenko reads the call to hearing as published in the Republican American on 3/30/18 and 4/6/18. Chairwoman Rewenko reads the 8-3a(b) Referral of the Planning Commission into the record as follows:

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, police), the environment, traffic and the effect on surrounding property values. The commission feels these components must be included in the language.

Furthermore, the Planning Commission feels that a thorough and comprehensive study on the inclusion of an Elderly Housing Zone 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 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.

Chairwoman Rewenko reads the Referral Report of the NHCOC into the record as follows:

NHCOC staff has reviewed this referral and finds no apparent conflict with regional plans and policies or the known concerns of neighboring towns. The proposed new multi-family elderly housing zone could create additional housing options in town. The Regional Plan of Conservation and Development (RPOCD) encourages a diversity of housing options in each of our towns including multi-family housing and housing that meets the unique housing needs of our older adult residents. The RPOCD does encourage towns, when possible, to locate this type of housing option closer to existing amenities such as the library, senior center, shopping or public transit stops.

Chairwoman Rewenko also reads into the record Town Atty. Michael D. Rybak's email to LUC Redmond regarding statutes and regulations pertaining to zone change petitions and regulation text amendment petitions. LUC Redmond reads into the record the items on the Exhibit List.

Atty. William J. Tracy is present to represent and submits for the record the following:

- \*Sections of Harwinton's POCD regarding elderly housing and affordable housing submitted.
- \*A section of U.S. Code on Elderly Exemption to FFHA law.
- \*A section of OPM Conservation and Development Policies Plan regarding growth management and housing opportunities.

**Atty. William J. Tracy:** The proposal that the applicant is making is to build an elderly housing complex that will be privately built, privately owned. So we looked in the Harwinton Zoning Regulations for the elderly housing that you had and it asked to be sponsored by the town, in other words, only the public can engage in that activity, a private developer doesn't have the ability to do under that regulation to do so. We did look at the Plan of Conservation and Development, and there's quite a bit that's said there about elderly housing. Page 74, speaks of Wintergreen project that say additional sites for other elderly housing should be explored. There's a provision on page 80, in the discussion of Affordable Housing, but goes on to say that the town, in promoting Harwinton's goal to provide efficient housing for elderly citizens, exploring establishing programs to develop more affordable rental housing for elderly residents. Such housing is a concern state-wide, there's a large and growing need for independent living facilities for the elderly. Independent facilities provide rental housing for those senior citizens whose physical health allows them to live independently without assistance. there is currently a shortage, we all know in this community there is a long waiting list for the existing elderly housing that's available. On page 78, the POCD says that the text of the Zoning Regulations should be modified when necessary and that the Planning and the Zoning Commission should consider any proposal that would accomplish the goals of the plan and policies of the town. That lent some encouragement to the application and the reason why we are here. We also find support in Growth Management Principle #2 of the State's Plan where it talks about the state and local governments should proactively address their policies and regulations while building the types of housing options that the market demands such as housing choice across income levels and vibrant mixed income neighborhoods both rental and ownership responsibilities, again, addressing for this kind of housing. There's also an implication for the town to learn that some of the state grants are conditioned upon the town signing on to the growth management principle that the state is promoting. We spoke with 1st Selectman Michael Criss who had concern that the state, in its current budget situation, may be looking for ways of cutting back on discretionary grants to municipalities and the requirement to follow the smart growth policies of the state which the state has been overlooking for many years now may be something they start to seize upon in their time of need. What I'd like to do is go through the specific proposals, the specific language, to give you an idea of why we are making this proposal, where

this proposal came from, what it matches and doesn't match. So we'll start out with the definition language. Harwinton's existing definition allows only one of the two exemptions that are allowed under Federal Law. I was a little concerned with that because Federal law is preempted in this area, as the town may not be able to pick and choose which of those exemptions that are being offered and that the regulations should encompass both to be consistent with Federal Law. So rather than just limiting it to people 62 and over, or it says couple with at least one member age 62 or over, I mirrored the Federal Exemption language which has two categories. One is the solely occupied by a person 62 or over and the other is occupancy by persons 55 years of age or older, at least one of the people in the unit has to meet that criteria and at least 80% of the units have to meet that criteria. Our existing definition is a little bit of a hybrid in that it talks about a single person 62 and older or couples, at least one member is over 62, the 62 meets the first category but if you have a couple where one is over 62 and one is not, then you are into the 55 category because not everybody is 62 or over and there's where the concern was that I was looking at was, that if we were going to say that we could have one member that is over 62 and the other can be under then we're really not following the Federal definition which splits it at 55. The other part of the exemption, the Federal Law is both would have to be over 62. So I did think we had a problem there and I wanted to take the opportunity to match it up with the Federal definition.

Then I proposed a new section, a new zone so to speak. The Section 4, I must confess is purely arbitrarily on my part, but if you think it should go somewhere else in the regulations I won't quibble. But I was looking at primarily, to be honest with you, was where to put it with so the least about of renumbering in the book had to be done and the beginning part of the new text, the Statement of Purpose, is new language, it's modeled somewhat after some of language you see in some of the other zones as a lead in for the purpose of the zone. The Permitted Uses, I thought there would be a need to at least enumerate some permitted uses and so the two permitted uses mirror (existing) Section 4.1b and 4.1c which is the permitted uses in the Residential Zones and just I slid that over word for word. The next part of the proposed text is Special Permit Uses logically the next in sequence in the current Zoning Regulations and I was looking at 9.9 which is the Town Sponsored Elderly and that requires a Special Permit, so I used the similar special permit requirement language with the proposal. Then the next part of it, the actual numeration of uses a. and b., is the language that's found in 4.7.2 in the Multi-Family that I thought was the appropriate language. The next part of it was Standards and Regulations, and this is taken very closely from the existing Town Sponsored Section 9.9. I gave it the kind of standards and regulations because your town sponsored elderly regulation doesn't speak of it that way but that's really what they are. And then you can track those down, calls for a special permit application as does the existing town sponsored elderly in Section 9.9. The minimum lot area, the lot width on the public highway, the access strip to the public highway is straight out of Section 9.9.11. I added the language for the tract of land as it may be for elderly housing development just so it was clear which piece of parcel we would be talking about, other than that it is word for word. b., c., d. and e. come right out of 9.9.1., 2., 3., and 4, that is the building's limited to five dwelling units at maximum. The onsite parking ratio, one to one-half cars per dwelling unit, the number of units based upon whether there is public water and sewer or not, is exactly the same as what's in your existing regulation and then the setback between buildings is the same. Section f. dealing with the recreational facilities or open spaces and such, there is one minor change was made. In the existing Town Sponsored Elderly Housing it says those facilities "shall" be provided I changed that to "may" to allow the developer to have some flexibility in the site layout. In g. of the proposal, taken from Section 9.9.6 for existing Town Sponsored Elderly Housing that the interior walks will be sufficient to serve emergency vehicles, I did add a provision, it seemed to make sense to us, that every building on the site shall be accessible for emergency vehicles. It seemed like an obvious thing to provide in an elderly housing complex. h. comes straight from Section 9.9.7, the 15 foot wide buffer strip. The approval of plans in i. is the same as Section



9.9.8 and j. regarding habitable space is taken from Section 9.9.9 without change. There were some sections from Town Sponsored Elderly Housing regulation that hadn't been included in that list so I set up a Section 4.10.4 for Additional Site Plan Requirements. Because it will require a Special Permit application that automatically triggers a site plan requirement and you have detailed site plan requirements in your regulations for any site plan applications. The items that are on here, a. through k., would be something that might be in addition to a normal site plan application but would be relevant to this type of development, at least if the Commission thought the town was going to be building it, so I kept them in. Location and size of property, location of buildings, septic tank fields, walls, drainage, parking, recreation, restricted areas, these are all 9.9.10 without change. The number of dwelling units proposed the same, statistical data shown on the plans to show that requirements are met. The land and the lot together with such detail to the adjacent properties was kept word for word. The relation of proposed buildings to the existing and estimated future development, if any, is word for word. Proper provision to protecting existing residences and districts and use of land and landscaping is taken wholesale is as the next one, the floor plans and elevations and finally the list of underground utilities is required.

So the thinking of the applicant, my thinking behind this proposal is to not make considerable changes, wholesale changes, to the Town Sponsored Elderly from what we had, but only to make it work for a private developer the same way that it works for the town. And then the last thing that I thought was necessary was to propose a Section 5 since the specific lot area and dimension requirements because otherwise there wouldn't be any. And in going through this, the Planning Commission pointed out to me that there's a typo in the minimum lot width on a public street, where it says 150 feet, that should really be 50 feet because Section 9.9.11 in the existing regulation, which I dragged over to 4.10.3 of the proposal, it's 50 feet and those should be consistent. My intent all along was to keep it as consistent as possible with the existing town sponsored elderly regulation so that the only change is that a private person could come along and build this kind of a project that the town could build. It seemed quite appropriate that the town should have a monopoly on the kind of construction or the kind of use. It did seem that the Commission had gone through exactly what it needed in an elderly housing development and it didn't appear to me that those criteria would be different for a private developer or the name of the town in terms of the end product for the consumer. The regulation didn't really matter whether the town was doing it or a private person was doing it. We are looking at the people who were going to move into it and if that regulation satisfied that purpose it should do so the same way for a private developer. So that takes me through the specific text application.

I should take a moment and address some of the things the Planning Commission had to say, which some of it I've addressed. The point I was trying to make was that the regulation should really be aligned as to who the owner, who the developer was going to be, whether it was going to be a public development or a private development. Once you approach it that way and you look at the existing regulation that works for the elderly consumer, the resident, that if the town was going to do it, then you'd see that the town zoning regulations already made some decisions about the need for this. How it does impact the town, whether there would be any sort of fiscal or other impact of the town, those things have been dealt with, they've been incorporated into your regulation. They're not going to change whether a private individual or a private company develops the project, it will be same for public development as they would be for private development. I think that bringing this kind of development and the ability for private people to invest in this in Harwinton will satisfy the need that's talked about in the Plan of Conservation and Development. It will address this issue with the state grants and will address the issue of mono-culture we sort of have in this town for housing where we don't have suitable places for our senior citizens who want to get out of a bigger house, or get off a bigger piece of land. We have lots of those opportunities here in town but we don't have places for the people who want to

downsize in their later years and we need to provide those opportunities. I think it's probably best if I take a break here before I get into the site specific and zone change, I'll have some remarks on that, but if you have any questions on the actual text that any of you might have.

**Chairwoman Rewenko:** Atty. Rybak, do you have anything to add at this time?

**Atty. Michael D. Rybak:** Yes, I would like Atty. Tracy to state for the record if this Affordable Housing application under 8-30g because as you know, this shifts the burden of proof on what would normally be a legislative decision of this Commission from the applicant to the Commission. So it's important to know what type of application this is right up front.

**Atty. William J. Tracy:** It's not meant as an 8-30g application at this time. Frankly, if we were going to go down that road, I wouldn't be presenting a zone change application, I would have come in with a site plan showing what we proposed to do and then, as Mr. Rybak said, shifting the burden to the town to prove why we shouldn't be able to do it. Some of the rental, for this particular project, the rental figures are going to be close to that. The developer didn't want to be constrained at this point by a strict adherence to those rental calculations. It may work but one of the concerns going forward is, particularly in the world of rising interest rates, what does happen to the affordability calculation and does it then have a negative impact on the economics project.

**Commissioner D. Kovall:** So I'm taking this, that after all this verbiage, this is not designed as Affordable Housing?

**Atty. William J. Tracy:** That is correct.

**Atty. Michael D. Rybak:** I have one other question or two as well just to clarify where we are in the application. Atty. Tracy put in a section of the U.S. Code dealing with exemptions to the fair housing act which of course, prohibits discrimination of housing. These exemptions allow for various levels of elderly housing to be an exception for fair housing. My question I would ask, why those ages were used and not the ones in CT General Statutes 8-113a, which is the definition of Affordable Housing, elderly housing, promoted by the State of CT which is age 62 and older? The question I would ask is, why was the U.S. Code brought in, particularly since it speaks of church or nonprofit elderly housing and not municipal elderly housing?

**Atty. William J. Tracy:** I looked to the Federal Law, Mr. Rybak, because of the requirements under the Federal Fair Housing Act that you should not discriminate and the exemption it provides under Federal Law, which I think controls this area to these two specific categories. Otherwise the age limitation and housing would be discrimination and the Federal Law says that, if you meet either of these criteria then it is not discrimination.

**Atty. Michael D. Rybak:** In terms of the regulations proposed, they were based on the town sponsored elderly housing regulations that we have that admittedly were developed in the mid-1980s for the Wintergreen project by the library which were FHA units, very limited in size, which people have complaints about. In looking at your regulations, I don't see anything in size limitations. Is that up to the developer to decide when he applies?

**Atty. William J. Tracy:** I used the same minimums that are in the existing regulation but they are just minimums, the developer could enlarge. Section 9.9.9 of the existing regulations states units shall be at least 450 square feet for single occupancy and at least 570 square feet for double occupancy. So that is the bottom, they can be larger if the developer chooses and in this case, they would be.

**Atty. Michael D. Rybak:** Given that these could be and are very small units, what would prevent the development at a later date or the developer having secured approval at a later date from converting these apartments to a non-age restricted community, which I feel would have an impact on the community in terms of school population, bus service and other amenities given, and I don't want to get into the zone change itself, given where the location where this could occur. Is there some kind requirement, some sort of restriction or



covenant to be placed on the land records that this would remain age-restricted housing and that the town could enforce that covenant if the population has changed in the future?

**Atty. William J. Tracy:** By a Special Permit application that's going to be required under the terms of the proposal, the special permit will be for the Elderly Housing based on the definition. So I think it would take a change in that special permit for there to be the kind of change you are concerned about, Mr. Rybak, would have to be changed if the restriction were to be changed.

**Atty. Michael D. Rybak:** Do you feel a restrictive covenant which would be recorded in the land records would not be appropriate for these regulations? I'm curious because in revoking a special permit and putting a bunch of people out on the street, how else you would enforce it if the population started to change?

**Atty. William J. Tracy:** The population mix can't start to change too much without running afoul of that Federal Law and the definition that we are proposing and then you would have discrimination problems with the Federal Government. I'm not saying there wouldn't couldn't put a restrictive covenant.

**Atty. Michael D. Rybak:** I am just suggesting that it's something that may come up in the discussion on how we would enforce this without the (inaudible) replication of the special permit which would end up putting people conceivably in illegal housing at that point and then under the uniform relocation assistant act we would have to pay to put them up in a hotel someplace so I would like to see something.

**Atty. William J. Tracy:** That may not be the first line of enforcement because if the population makes changes so that it no longer meets the exemption then its open to the Department of Justice to come in, and they have in various places, over time some have had much more publicity than others, they have come in and fined the developer, fined the property owner, in this case with the proposed single ownership with rental units, the landlord would be exposed to that enforcement by the Department of Justice.

**Atty. Michael D. Rybak:** If an elderly person rents an apartment, say a grandmother who ended up with custody of grandchildren, would they be able to reside in the apartment and go to school from that apartment?

**Atty. William J. Tracy:** Yes, they would be as long as there was one person over 55 and they're related.

**Atty. Michael D. Rybak:** Would the same Federal requirements that allow SSDI recipients to live in elderly housing also apply to this type of project under these regulations regardless of age?

**Atty. William J. Tracy:** Whatever the Federal exemption allows, I think the town is required.

**Atty. Michael D. Rybak:** So, then it is known that people with SSDI disabilities are allowed to live in elderly housing under Federal law. That would apply to of course to these.

**Atty. William J. Tracy:** I think so, as a matter of Federal Law, they would.

**Atty. Michael D. Rybak:** These are just some of the questions I had. I really don't have an opinion one way or the other. I think Atty. Tracy has done an admirable job in writing these regulations. I would point out to the Commission that when you act on a set of regulation amendments from an applicant you are under the strict time limits of State Statute 8-7d so don't confuse this with the situation you had when the commission initiates regulation amendments and there's no time limits and its open ended. Be very mindful of the time limits and remember whatever decision you make you must state reasons for your decision.

**Atty. William J. Tracy:** And if I can add to that Mr. Rybak, you are also required to set an effective date if you decide to accept. You don't have to close the hearing tonight.

**Commissioner T. Root:** Going back to what Atty. Rybak said, this regulation was all based on a development put in long time ago. Looking through the regulations and comparing what we have for our Elderly Housing regulation and what we have for the Multi-Family zone, one is about three pages long, one is a page and half, there's a lot more regulations in Multi-Family including impact studies, how it's going to affect our town schools and so on. I am a little bit concerned about not having some of this verbiage in that new regulation. I guess one of the other questions is, why have a new regulation at all, why not propose a zone change to Multi Family zone instead of a special permit?



**Atty. William J. Tracy:** Well, to deal with the second question first, we're looking at a specific elderly project and you have an elderly project regulation, you just limit it to a public project. We thought the best way to approach this was to use that existing regulation but allow a private developer to do what the town could do on the same basis. The Multi-Family zone is an entirely different animal, it's a Floating Zone which could go anywhere in town on any piece of property, for any age group, any kind of mix of housing and so the factors that go into considering the usefulness of that zone in any particular area is much different than the need that's being addressed under your existing Elderly Housing regulation. They are very different kinds projects and very different kinds of impacts to the town where one is limited to a certain population, the other one is not and we are proposing this as a specific zone that would then have to be put on a location. The next public hearing is to talk about the exact location, but if you were to decide to use this text on another parcel, another area in town, you would go through the zone change, map change process, where you could make decisions about whether a particular section or group of properties would be suitable for this particular text. Whereas a Multi Family zone is a Floating zone, you sort of gone down that road to some degree already and told applicants that it's a useful regulation and now you're going to look at, I think, a more limited number criteria for site specificity and where to put that Floating zone once it's already put in the regulation as a Floating zone. It could be landed anywhere in town. We're talking about is a separate zone and you make a separate decision on where to put it. You don't have to put it in any other locations unless you choose to.

**Chairwoman Rewenko:** How many other towns have this type of zone? We took a look and it didn't seem many other towns had this created zone. Do you know how many other towns have this zone?

**Atty. William J. Tracy:** I haven't looked across the board but frankly we are modeling this whole proposal on an existing development in the City of Bristol that has been very, very well received and is almost built out and has a waiting list for it.

**Commissioner N. Schnyer:** And do they have an Elderly Housing zone? Is that how it's referenced in Bristol?

**Atty. William J. Tracy:** No, they have a different structure in that particular low density zone that allows for it and the development was based upon the owner's desire to satisfy the elderly housing need.

**Commissioner N. Schnyer:** Couldn't the owner do the same here and without changing the zone, saying this is going to be multi-family housing for the elderly?

**Atty. William J. Tracy:** Well, because your Multi-Family housing is a Floating Zone and could be put almost anywhere in town and it deals with different populations, different age groups, different kinds of requirements and it has very different kinds of density and layout criteria.

**Commissioner N. Schnyer:** It could be up to the owner to say I want this multi-family zone to be only for the elderly. I mean, they don't have to have a zone change to do that.

**Atty. William J. Tracy:** Well your elderly, the requirements in your elderly zone apply very well to this property and satisfies the need for the elderly which is what the developer was trying to address anyway.

**Chairwoman Rewenko:** What type of access will there be to public transportation, resources, library, that's one of the things they say that would be preferred. So what types of access would they have in that vicinity?

**Atty. William J. Tracy:** There's probably more amenities available fairly close by in Torrington than they would have in Harwinton but then again they would have no lesser access than if the Multi-Family zone was used. Where in the Country Residential area, Harwinton is a large geographic area and it's very conceivable to see something that could be just as far away from the town hall complex as this one would be but wouldn't be any closer to the things; there's a walking neighborhood, there are retail stores not far away in Torrington, so it has that benefit that any other sites did not have.

**Commissioner D. Truskauskas:** As I read through your proposed Definition 2.3 that you say is taken from the Federal requirement, as I read it, is in two separate parts. It goes through for the elderly intended for to be solely occupied by persons 62 or over and then it says intended or operated solely for occupancy of those 55 of

age or older. So it seems to me we can adopt either side of that, the 62 and older or the 55 and older? Am I misinterpreting that with the word “or”?

**Atty. William J. Tracy:** The Federal Law sets up those two categories as exemptions from the anti-discrimination provisions in fair housing and says you can’t discriminate based on age if you meet one or the other of those criteria. My concern was that we had a sort of hybrid in the regulations that wasn’t one or the other and thought we’d be better off if we had something straight out of the Federal law.

**Commissioner D. Truskauskas:** Is it your opinion if we ended it with age 62 and over and left out the 55 and older would we still be in compliance with Federal law?

**Atty. William J. Tracy:** No, I don’t think it would be because now you’ve cut out one of the exemptions of the Federal law.

**Commissioner D. Truskauskas:** Except it says “or” as opposed to “and” so that seems to me that we could have this exemption or that exemption. It doesn’t say, the way I read it, and maybe Atty. Rybak can give his opinion as well, it says you could have one or the other. It doesn’t say you have to take both exemptions, in my reading.

**Atty. William J. Tracy:** Well, I was concerned that the, I didn’t think the town should be in the position of picking or choosing one or the other of the Federally allowed exemption for housing discrimination, that we should allow both because the Federal law allows both and then it would be up to the property owner which avenue to choose.

**Commissioner D. Kovall:** So we put the onus of discrimination on the owner?

**Atty. William J. Tracy:** Right. The risk of not complying would be on the owner. As Mr. Rybak questioned, what happens if the population changed, that becomes the owner’s risk of not meeting the exemption under the Federal law and therefore being in violation of the fair housing if they allow the population to drift.

**Commissioner T. Root:** Do all the units, in that case, have to be rented to those 62 and older?

**Atty. William J. Tracy:** Yes. And every occupant would have to be 62 and older.

**Chairwoman Rewenko:** It wouldn’t have to be the 80%, it would have to be 100%?

**Atty. William J. Tracy:** Of the 62, yes. The 55, it’s different but then there are much more stringent requirements on the owner for managing it and how he would handle the population and how to verify it and the owner has to be much more active.

**Commissioner T. Root:** But there wouldn’t be anyone under 55? In other words, a certain percentage wouldn’t have to be rented to those under 55 that had kids and so forth.

**Atty. William J. Tracy:** On 55 and older, you have to have someone in the unit who is 55 or over. So that person who is 55 with a spouse who is a couple years younger would qualify.

**LUC Redmond:** And have kids.

**Atty. William J. Tracy:** Theoretically. God bless you at 55.

**LUC Redmond:** A 55 year old man who marries a 30 year old woman may want to start a family or comes with children.

**Atty. William J. Tracy:** But it’s still on a project-like basis. The experience tends to be that that’s a minority of the project and so then you have the rest of the project that’s carrying those school children. Just like I pay taxes now and my children have been out of school for a number of years. So on a project-like basis, the mix will be plenty enough to carry school children.

**Chairwoman Rewenko:** I had a question on proposed Section 4.10.3a., which is coming from existing Section 9.9.11, there’s some changes to the Minimum Lot Area and it was added “for the track of land designated for elderly housing development shall be five acres” and it used to say “usable” and now it says five acres. Is there any reason for those changes in the proposal?



**Atty. William J. Tracy:** Section 9.9.11 states the minimum lot area shall be five acres. The only change was for the tract of land designated for Elderly Housing development I felt should be made a little clearer.

**Commissioner T. Root:** I think the word usable comes from the Multi-Family zone.

**Chairwoman Rewenko:** Correct, I'm sorry. In the Multi-Family zone, the word "usable" is used.

**Commissioner D. Truskauskas:** Section 4.10.3f., is the applicant opposed to leaving the word shall as opposed to the word may be provided for recreation facilities?

**Atty. William J. Tracy:** Probably not.

**Commissioner D. Truskauskas:** Since you make a lot of references to the town being able to do the same thing as a private developer, I think if the town is required to put them in then the developer should be required to put them in.

**Chairwoman Rewenko:** Now even though these are elderly housing units, these are all the units multi-story?

**Atty. William J. Tracy:** Yes. Under this particular proposal, they don't have to be under the text that we are proposing.

**Commissioner N. Schnyer:** Will there be an elevator?

**Commissioner D. Truskauskas:** We should probably hold off on these questions to the next public hearing.

**Chairwoman Rewenko:** There is one question I want to ask, the WPCA approval, are there any updates on that?

**Commissioner D. Truskauskas:** Again, perhaps we should save questions of that nature for the next Public Hearing that will follow this one.

Chairwoman Rewenko opens the floor to public comment at this time.

**Brooke Cheney, 144 Mansfield Road:** Since the only place that we have Elderly Housing currently is town sponsored elderly housing, and I have been on the Zoning Commission attempting to change the regulations, I am just confused as to why we couldn't just copy Section 9.9 the way it currently is. Why it would be changed because for simplicity it is already established and currently works in Harwinton. I just don't understand why create a whole new section vs. just changing 9.9 to be town sponsored and private housing for the elderly and make a simple change instead of adding a brand new section into our Zoning Regulations. I appreciate all the work you had to do but it seems like a lot for a single development. As a member of Harwinton, it seems simpler is easier than coming up with stuff that is all brand new, similar yet different. And as the attorney discussed, we are under a time constraint, it seems like it would be easier to keep the way things similar to what they currently are. So I guess more a comment then a question. Why not keep it easy and simple.

There are no further comments from the public.

**Commissioner D. Truskauskas:** I have a process question. As we go through this, if there are changes we would like to see, do we only have an option to approve what's been presented or do we have an option to make amendments as we see fit and then adopt that amended regulation?

**Atty. Michael D. Rybak:** If that's directed to me, my feel on this is because it's an applicant-submitted text amendment, unless the applicant is willing to make changes, as Atty. Tracy suggested in a couple instances, the Commission can do that because you can reject or modify, but I think it's better advice to engage its own rule writing in this area and not be constrained by time limits. Secondly, remember when in dealing with zone changes, and this becomes more relevant in the second hearing, you can't put conditions on a zone change because it violates the uniformity requirement. The conditions have to be in the regulations themselves not in the particular zone change for the particular property that you're looking at. So you're asking the right

questions about level of detail, Federal definitions, and that sort of thing. When you get into the more site specific stuff, that's the second hearing. I would recommend the Commission keep this public hearing open, you certainly have 30 days for that, because questions may come up in the second hearing that the applicant might want to address as text amendments that were heard in the first. So the very least I would recommend keeping both hearings open and also for comments from either the applicant or if the Commission wants to do additional research.

**Chairwoman Rewenko:** Any additional questions? So we've heard the recommendation to consider keeping the public hearing open. So I have a motion?

**3. CONTINUE OR CLOSE HEARING.**

**Commissioner D. Truskauskas:** I motion to continue the public hearing to Monday, April 23, 2018 at 7:00 p.m. in the town hall.

**Commissioner T. Root:** I second the motion.

**Chairwoman Rewenko:** All in favor say aye?

**Commissioners:** Aye.

The Exhibit List for petition to amend the Zoning Regulations is as follows:

- 1) PETITION TO AMEND THE TEXT OF THE 11-20-17 ZONING REGULATIONS
- 2) LEGAL NOTICE OF PUBLIC HEARING
- 3) NOTICE TO NHCOC DATED 2/27/18
- 4) NOTICE TO TOWN CLERK DATED 3/21/18
- 5) NOTICE TO PLANNING COMMISSION FOR 8-3a(b) REFERRAL DATED 2/27/18
- 6) PLANNING COMMISSION 8-3a(b) REFERRAL DATED 3/29/18
- 7) NOTICE TO BOARD OF SELECTMEN DATED 3/1/18
- 8) NOTICE TO TOWN ATTY. MICHAEL D. RYBAK DATED 3/22/18
- 9) NHCOC REFERRAL RESPONSE (RECEIVED IN LAND USE OFFICE 4/9/18)
- 10) TOWN ATTY. MICHAEL D. RYBAK'S EMAIL TO LUC REDMOND REGARDING STATUTES AND REGULATIONS PERTAINING TO ZONE CHANGE PETITIONS, REGULATION TEXT AMENDMENT PETITIONS AND PUBLIC HEARINGS.
- 11) SECTIONS OF HARWINTON'S POCD REGARDING ELDERLY HOUSING AND AFFORDABLE HOUSING SUBMITTED BY ATTY. WILLIAM J. TRACY.
- 12) A SECTION OF U.S. CODE ON FAIR HOUSING/ELDERLY EXEMPTION TO FFHA LAW SUBMITTED BY ATTY. WILLIAM J. TRACY.
- 13) A SECTION OF OPM CONSERVATION AND DEVELOPMENT POLICIES REGARDING GROWTH MANAGEMENT AND HOUSING OPPORTUNITIES SUBMITTED BY ATTY. WILLIAM J. TRACY.



**PUBLIC HEARING #2**

**1. OPEN HEARING – ESTABLISH QUORUM.**

Chairwoman Rewenko called the hearing to order at 8:05 p.m. All regular members present are seated with Alternate Member D. Truskauskas seated for C. Kasey and Alternate Member T. Root seated for M. Szydlo.

**2. BUMPER BROOK ESTATES – PETITION 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.**

Chairwoman Rewenko reads the call to hearing as published in the Republican American on 3/30/18 and 4/6/18. Chairman Rewenko reads the 8-3a(b) Referral of the Planning Commission into the record as follows:

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 24 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 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.

Chairwoman Rewenko reads the Referral Report of the NHCOC into the record as follows:

NHCOC staff has reviewed this referral and finds no apparent conflict with regional plans and policies or the known concerns of neighboring towns. The proposed new multi-family elderly housing zone could create additional housing options in town. The Regional Plan of Conservation and Development (RPOCD) encourages a diversity of housing options in each of our towns including multi-family housing and housing that meets the unique housing needs of our older adult residents. The RPOCD does encourage towns, when possible, to locate this type of housing option closer to existing amenities such as the library, senior center, shopping or public transit stops.

A Zone Change Map prepared by R. R. Hiltbrand Engineers and Surveyors dated 2/22/18 has been submitted.

**Atty. William J. Tracy:** So back again. We've decided to run these two applications together because we thought it would make sense when looking at the whole thing but this particular application is absolutely contingent upon our success with the prior one. So if you adopt the regulation then there is a zone, then this property can be changed. If you don't adopt the regulation then there's nothing to change this to and we go back to the drawing board I guess. The property you've seen, the sheet of the Assessors map passed out previously, the property is at the bottom of Twenty-four Bumper Road and is bisected by the Torrington and Harwinton town line. So a portion of the property lies in Torrington and a portion is in Harwinton. It is bounded by Twenty-four Bumper Road, by Andrews Street in Torrington, and by Route 8 and then there are some lots on Perkins Street in Torrington which are not related to this zone change application. As the applicant noted in the application form there is a series of small parcels with common ownership. Because of reconstruction of Route 8 and Twenty-four Bumper Road many years ago the property was altered

considerably. Before that this was the site of WTOR's transmission station and their antennae up until 1964 when they moved their antenna and it has been vacant ever since. The property used to be bisected by what was then Perkins Street in Torrington and had a much different intersection with Twenty-four Bumper Road and Perkins Hill Road. So when the owner was gathering up parcels we had to get some from the state that were leftover from the reconstruction and reconfiguring of Twenty-four Bumper Road and there was also an abandonment process we asked the town to go through many years ago to eliminate the roadbeds that were there as public highways to consolidate this property into a single developable parcel. It is almost 8 acres in total. In Harwinton there are 5.7 acres, the balance lies across the line in Torrington. In Torrington there is a wetlands and we had been through the Torrington Wetlands Commission and they gave approval. Harwinton Wetlands Commission approval is still pending. But we think that the location, the size of the parcel, lays out quite well for the development that we have in mind for the location and bounded by Route 8 and Twenty-four Bumper Road lends itself more to a more dense kind of development than the TR zone single family house you might see. It is more in keeping with the zoning on the Torrington side, which is R10, and it's a project like that that could be considered in Torrington under their special permit process. If the wetland upland was reversed and in Torrington, we would still be able to make application for this kind of project. So that is why we think it's an appropriate use of this property. It's a small parcel for a kind of industrial use. It doesn't have immediate access to Route 8, which would be important for the industrial user than for the elderly users, and that may be why it sat unused since WTOR moved on. I have Mr. Bayne here, one of the principals of the applicant, and I would ask him if he could talk about the specifics of the project he has in mind.

**Scott Bayne, S&W Customer Home Builders:** Scott Bayne, the applicant. I know there was some question of the configuration and design of the units discussed and how they apply to adult and not elderly. Especially at 55 and older, when you cross that age you want to be considered adult and not an elderly person. The units consist of 1000 square feet, two-story with full basement. The units are all handicapped accessible and all accessible to first floor living with full bathroom with roll in showers, bedroom, kitchen, family room, laundry area and access to rear patio. The second floor has another bedroom with a full bathroom. The majority of people are still ambulatory so walking the stairs is not an issue. When it becomes an issue, the stairs are designed for chair lifts, so if someone wants to keep utilizing the second floor chair lifts can be put in. Each unit is also designed to replicate single family living. There's nobody above you, nobody below you. You have your own space, your own exterior space, so people looking to downsize or transition from a single family dwelling get the same feel without getting into congregant apartment housing where you're walking down the hallway and you have 20 units down the hall and you're sharing laundry facilities, elevators and similar space. This gives you the best transition from single family going into your adult housing but yet controlling and having the same type of environment. So the units, the way they were designed, they're all rolling units. The sidewalk to the front door, there's no steps getting into the units. Inside all the apartments are all ADA compliant doorways, 3 foot wide hallways, so somebody that were physically constricted to a wheelchair at some point later in their occupancy, they can maintain housing in these units as long as they're physically capable. So it will provide them long-term housing where they're not just there and if something happens to them physically they have to be located to a different type of facility. The design here is the project we are just finishing up called Apple Grove Hollow. There's a website called [live@applegrove](mailto:live@applegrove) if you wanted to see the kind of design and context of what we're talking about here today. They're very similar. There was discussion of children living in the units, in these, in Bristol, one person out of the 49 units has a school-aged child living there. So it's not really designed to be children-friendly, it's really meant for one and two people. It's not a great layout for children. Can children live there? Yes, but not what it's designed for. The units are not designed for it though. Regarding the impact study, one of the reasons we looked at this location as fitting this particular type of development. One, because it might be one of the only spots in the area that has city



water and city sewer that we're currently working on with WPCA and it's right on the corner of the property. That is one of the primary functions of this development. Also, the impact to any kind of traffic, housing, as you know the parcel where it is located is a kind of self-contained parcel. It's Harwinton but it's kind of tucked over in the corner but yet will have easier access to the shopping district, health services, public transportation that is predominately in the Torrington area but they're right there and the bus goes in that general vicinity. So I think it's just easier for support services to get to this particular project. So all of these components kind of led to the design and the development for the adult complex.

**Atty. William J. Tracy:** As Scott said, you don't find many parcels in town with the combination of water and sewer. Because of the water availability it's better for fire protection which is three quarters of a mile from the fire house on Scoville Hill road so that's a plus. We have been talking with both Harwinton WPCA and the sewer department in Torrington. We have designed to Torrington specifications, we've been through that, and the capacity exists so we're supposed to meet tomorrow with Harwinton WPCA to talk about how we'll allocate that capacity and how that actually works. The last meeting we had scheduled for that was a snow storm so it was pushed off a little bit. So again, it's because of the existence of that infrastructure there that really makes this parcel unique in a sense where you might locate something like this in this community. And the other thing that the landowner and Mike Criss pointed out was, having activity there, having people live on that site, is going to go a long way to curb the problems with the dumping. The town has, and the landowner has now, been down there and who knows what you'll find on the side of the hill off Twenty-four Bumper Road and the reason is, there's nothing there. It's out of sight, it's on the other side of Route 8, and things have happened that shouldn't. With people there, with activity there, it should stop.

**Commissioner N. Schnyer:** How close are these units to Route 8?

**Atty. William J. Tracy:** The units would be 50 feet at the closest to the highway line of Route 8, which is not where the pavement is, there's still, I think the highway line, the highway width of Route 8 is something like 300 feet. And they will be down below Route 8. Route 8 will be up above so in terms of traffic noise a lot of that will shoot over the tops of these units.

**Chairwoman Rewenko:** Atty. Rybak do you have any questions or comments?

**Atty. Michael D. Rybak:** Yes, because each hearing stands on its own as far as the record is concerned, I would ask Atty. Tracy to state again for the record, whether or not this is an Affordable Housing, zone change (inaudible) general statutes.

**Atty. William J. Tracy:** As I said before, it's not.

**Atty. Michael D. Rybak:** My other question and perhaps that would be handled through the WPCA, when Harwinton entered into the agreement with Torrington for sewer capacity plant, we bought only as much capacity as we could envision for residential build out of the northwest corner of the town currently served by sewers. We pay for that, whether we use it or not, and if we go over that capacity either by adding a project or by boxing out other lots for which that capacity has been reserved now becomes subject to permit, Silano Drive, or Clearview, or Scoville, or Bogue, we would then pay extra. So, since this is in Harwinton, is Atty. Tracy negotiating a direct connection to the Torrington sewer plan using Torrington's customer capacity or are we using Harwinton's reserve capacity?

**Atty. William J. Tracy:** Because of the connections and buildings in residential area in Harwinton we are going to be working through the Harwinton WPCA and the topic will be on how to acquire the capacity that this project needs that T says is available. That's what we are in discussions with so far.

**Atty. Michael D. Rybak:** Perhaps I'm getting ahead but the Commission may be eager to know, is the applicant preparing to pay for purchasing that capacity through the Harwinton WPCA? Additional capacity over and above what we've reserved for our foreseeable needs that is already residentially zoned property?

**Atty. William J. Tracy:** The meeting with WPCA was to specifically address that and to have actual dollar figures to the table which we don't have yet. The mechanics of that haven't been worked out yet but we've



been discussing that. Torrington wants to deal with Harwinton and then let Harwinton deal with. Torrington wants control of the specifics of the infrastructure, the pipe size, the location, the grades, and all of that (inaudible) on an engineer to engineer basis. But the actual mechanics that Mr. Rybak is talking about is something we have to sit down with WPCAQ to talk about.

**Commissioner N. Schnyer:** So all of these units are in Harwinton?

**Atty. William J. Tracy:** All of the units are in Harwinton, yes. You see the line runs.

**Chairwoman Rewenko:** Atty. Rybak, you stated before that we can't put conditions on the project.

**Atty. Michael D. Rybak:** No, not for a zone change for a particular parcel, or parcels. It has to be in the regulations for a specific type of zone. But you cannot locate a parcel by parcel in position of conditions as part of a zone change. A case straight out of the City of Bristol, (inaudible) and there's been a couple since then, it's not going to be upheld. The only one way you can uphold the uniformity requirements is at a Special Permit level. But the dye has already been cast as you have already changed the zone for the property. So you need to have in your regulations everything you feel is appropriate for any kind of land use or site that could arise in the zone change under those regulations. But you cannot condition (inaudible) in a zone change.

**Atty. William J. Tracy:** But even if the zone is changed, for this property, the way we set up the text is another Special permit application is required to deal with all the specifics of traffic, the infrastructure, the sewer, so you get another look at those specifics even after you've changed the zone of the property and you get the detail on how that's going to work as part of the special permit and site plan application.

**Commissioner D. Truskauskas:** Do you know how our sewers are metered now? And do you intend to install, and perhaps this is information you can bring to us if we continue the public hearing, after your meeting with WPCA. Will you install a meter to meter how much sewage is going out of your project since it's not going to go through our system?

**Atty. William J. Tracy:** Yes, there will be a meter coming out of this project.

**Commissioner D. Truskauskas:** When you calculated for 36 units in this parcel did you use the 7.97 acres or 5.7 in Harwinton only that will be in the zone?

**Atty. William J. Tracy:** I tailored it to the 5.7 in Harwinton but I think you can count the whole parcel.

**Commissioner D. Truskauskas:** You think that why?

**Atty. William J. Tracy:** Because it's all under single ownership, it's a single parcel even though it straddles the line.

**Commissioner D. Truskauskas:** Even though only part of it will be in this zone?

**Atty. William J. Tracy:** The town line isn't the property line.

**Commissioner D. Truskauskas:** But it's in a different zone. Atty. Rybak, what's your opinion on that? Would we calculate the land in a different zone for the density of this project because the Torrington parcel is in an R10 Torrington zone not in the E zone?

**Atty. Michael D. Rybak:** There are few cases on straddling town line situations. Involving the town ownership and town project, Farmington Woods is a classics case, I'm sure there's others but that's the one most people know about. These two towns have two tax authorities, and water and sewer. In this case, without benefit of research which I like to do, but if the land is outside the jurisdiction, it gets to count toward your regulations, you zone right up to the town line. For instance, you couldn't put a condition on something on the Torrington side of the line because your regulations don't reach over there. They stop at the town line. I don't know whether that would count as open space, whether that was (inaudible) anyway.

**Commissioner D. Truskauskas:** That was my next question and perhaps you could research that if we continue this hearing. If we change the text or request the applicant and he agrees to change the text that "shall" require that recreation and open space, would that put that in Torrington side, would that meet the text?



**Atty. Michael D. Rybak:** I don't know if this is germane to the debate we're having right now in terms of the site but if you're going to do that, I would ask the applicant to present legal authority for the proposition that that would count toward this under density requirement or any other requirement that Harwinton may have rather than have the tax payers to research it.

**Commissioner D. Truskauskas:** That might be good advice for the next, if we continue the public hearing, to have that information.

**Atty. William J. Tracy:** I initially could actually (inaudible) because it's all part of the common site and under common ownership and available to the residents of the land that it would count.

**Commissioner D. Truskauskas:** These will be just two bedroom units?

**Atty. William J. Tracy:** Yes.

**Chairwoman Rewenko:** Are there any estimates to occupancy? Minimums, maximums that you have in mind as to the number of individuals living in these units?

**Atty. William J. Tracy:** I didn't address that. The existing regulation doesn't address it that but typically occupancy for a two bedroom unit would be two to three people.

**Commissioner D. Truskauskas:** In proposed Section 4.10.3h., regarding a buffer zone around the property lines. Being that, a majority of land in Torrington and wetlands, if we decide to change the zone to this it be difficult to install a buffer zone as required by the proposed text?

**Atty. William J. Tracy:** A fifty (50) foot buffer is required.

**Commissioner D. Truskauskas:** Correct, but would that be installed in wetlands?

**Atty. William J. Tracy:** There's more than 15 feet of upland between the buildings and the wetlands.

**Commissioner D. Truskauskas:** But the proposed text would require that along parallel to the property line.

**Atty. William J. Tracy:** Right.

**Commissioner D. Truskauskas:** Just curious if we adopt that, how would we accomplish that for this parcel?

**Atty. William J. Tracy:** Well, you have the existing vegetation that runs from Andrews Street all the way across the town line.

**Commissioner D. Truskauskas:** Could you provide a photo or something that it's a sufficient of a buffer?

**Atty. William J. Tracy:** (inaudible) vegetated and won't be disturbed. The open area is the upland area. That had been (inaudible).

**Commissioner D. Truskauskas:** For this parcel and that zone (inaudible).

**Atty. William J. Tracy:** How we exactly do that is a site plan issue and we'll get to that but there's more than enough room to do that.

**Land Use Coordinator Redmond:** Speaking of site plan, you are not submitting for the record any site plans for what you are proposing the zone change for?

**Atty. William J. Tracy:** No, I think that would be premature at this point. We are already pushing a little bit with the change of zone you haven't voted on yet. I didn't want to bring the special permit and site plan application and try to crunch all that at the same timeline.

**Land Use Coordinator Redmond:** Not to be voted on but to be reviewed to help the Commission decide on the zone change application, to see what is being presented for the property that might include buffers.

**Atty. William J. Tracy:** That's what we've included in the basic layout but to make a formal site plan application.

**Land Use Coordinator Redmond:** No, that's not what I was asking. I was asking if you could enter the site plans into the record just for the Zoning Commission to view the reason why you were asking for a zone change so they can see what you're proposing to develop on this lot that could help their decision for the zone change.

**Atty. William J. Tracy:** Those plans have been submitted to the Wetlands Commission already and are available to the Zoning Commission to take notice. Correct me if I'm wrong, Mr. Rybak, but they could take notice?

**Land Use Coordinator Redmond:** Could they take notice at this public hearing?

**Atty. Michael D. Rybak:** If Atty. Tracy wants to enter them.

**Atty. William J. Tracy:** If you want, we'll get you a copy. I just didn't think it. I thought it was more than you needed to have.

**Commissioner D. Truskauskas:** I think the more information we have the better to make a more informed decision.

**Atty. William J. Tracy:** We are still not dealing with the nuts and bolts level. As long as you understand that, it's a basic review when you're changing the zone but if you'd like that detail we'd certainly submit that.

**Land Use Coordinator Redmond:** I only ask that because there's a similar situation in the Town of Litchfield and Harwinton received notice of it. It is a change in the text regulations, it is a change of the zone, it is dealing with elderly housing, and maybe even affordable housing, and site plans were all presented and that was the notice we received. That there were four different types of applications going on in one presentation.

**Atty. William J. Tracy:** And I worked in towns that don't want that kind of level of detail because the zone change is a much higher level but we will have some revisions very shortly based on the Wetlands comments so those will be the set of plans given.

**Commissioner T. Root:** The Multi-Family zone and the Elderly Housing zone for this development in particular, do we know what grade Twenty-four Bumper Road is?

**Atty. William J. Tracy:** No.

**Commissioner T. Root:** I have a couple of questions and it goes back to what I mentioned earlier, regarding the Multi-Family zone and the Elderly zone, for this development in particular, the location of it, do you know what the grade of it is?

**Atty. William J. Tracy:** I don't know. It's steep in parts.

**Commissioner T. Root:** There's some language in the Multi-Family zone that we should probably take a look at regarding access and grade. I'm just bringing it up because even though we're talking apples and oranges with zones, we're still looking at emergency vehicle access and town equipment going down Twenty-four Bumper Road. Even though the fire department is close, we don't know what the timing of that would be with the truck plowing and the fire truck going down there in an emergency.

**Atty. William J. Tracy:** Course you could have that issue anywhere.

**Commissioner T. Root:** Maybe not everywhere because roads are not as steep as Twenty-four Bumper but I just wanted to mention that. There is some text in the Multi-Family zone that specifically deals with road access and grade of the road. I think it's something we should keep in mind and because no additional studies are required under the Elderly Housing zone relative to the new Multi-Family Elderly zone. When this zone was created for elderly housing next door back in the 80s, I don't know if this was considered or even talked about, that it would come up in the future. Now, if we're dealing with creating a zone, I mean, this is one location, this could be anywhere that we have to worry about. It's something we have to consider and especially for this development, and this road itself, Twenty-four Bumper Road. It's something we should consider, it being so steep.

**Atty. William J. Tracy:** One advantage there is for this location is, once the fire department gets there, there's water, so that's a benefit. They won't have to go up and down the road for water.

Chairwoman Rewenko opens the floor to public comment at this time.



**Brooke Cheney**, 144 Mansfield Road: The question that was brought up by Don Truskauskas regarding the buffer, is that it's in Torrington. I can't see how Harwinton can enforce the buffer in Torrington. Not sure how you would deal with that. As Atty. Rybak said, there's not many case studies on pieces of property like this. So again, how do you enforce something like this that's not even in your town. So even though it is a single ownership property it is falling under two different zoning regulations.

**Commissioner D. Truskauskas:** The purpose of that question was so that at the next PH for the regulation perhaps we can talk about adjusting that to be at the end of the zone as opposed to just the property line. But we need to have this public hearing to have that question answered to get back to the other public hearing.

**Myrna Watanabe**, 155 Woodchuck Lane: I guess my question is, obviously this is not the real site map so what it's going to be will be different. But I see two things I would question. One is the approximate location of the drainage right of way. Is there a need to get any permission from the state for using this land and is any of this land being used on state property? My other question is, regarding traffic, how much will there be and which direction would the traffic go? Is it going to be through Harwinton or Torrington and what effect will it likely have on our roads?

**Chairwoman Rewenko:** We can write these questions down. Atty. Rybak, any additional comments?

**Atty. Michael D. Rybak:** Whenever you zone a small parcel of land, the question always comes up why it isn't spot zoning and I would just like to hear from Atty. Tracy on why this isn't spot zoning.

**Atty. William J. Tracy:** To address Mr. Rybak's question, we looked at this parcel as a fairly self-contained parcel that could stand alone. It's actually more than a single parcel as existing today that will be consolidated for this project. We are not just re-zoning one piece of land, there are four parcels, I believe. And because of the boundaries of the state highway and the streets and the Torrington line, that it really stood by itself and wasn't a spot zoning as picking out a piece that's in the middle of something else that doesn't match what's around it. That's not really what we're looking at here. It is compatible to what's on the Torrington side, that's the Torrington regulations. And then to the opposite side you have old Route 8. There is a small industrial use of some sort that seems to be visible on the property across from that but that's a relatively small parcel. And then there's another section of Torrington that juts in along the river. So there's really not a lot of connectivity here to other parcels and we looked at as stand-alone and not spot zoning.

**Commissioner D. Truskauskas:** Are these all separate parcels?

**Atty. William J. Tracy:** Yes.

**Commissioner D. Truskauskas:** So they don't meet the five acre requirement? Would they have to be merged before deciding on the zone change?

**Atty. William J. Tracy:** They would have to be merged to use them anyway.

**Commissioner D. Truskauskas:** But before we adopt the zone change you would have to merge them so we're not making the property unusable the way it is? They have to be merged?

**Atty. William J. Tracy:** They are all under common ownership. They're pieces that we're left over from the state and road bed and are not usable by themselves. They're not big enough to do anything with.

**Commissioner D. Truskauskas:** So you would merge them before we switch the zone?

**Atty. William J. Tracy:** Yes, before the site plan application.

**Commissioner D. Truskauskas:** Because if we change the zone, now we are requiring five acres in that zone and we are basically making your land unusable. Let's say if we put that in the zone and you come with a special permit application and we don't like what's on that special permit application and if that land hasn't been merged, before we put this zone on to it you can't do anything on it because the only thing you can do will require five acres. Does that put us into some form of liability?



**Atty. Michael D. Rybak:** It raises an interesting question because every time Zoning amends its regulations it runs the possibility that it could cause a non-conformity as applying to an existing property. This case actually is a non-conformity if you approve the text change and then the applicant has to merge the parcels as part of the zone change but you can't impose that as a condition. Obviously they're going to do that if you approve the text change.

**Commissioner D. Truskauskas:** So you don't see it as a downside for not approving the text change until the parcels are merged? That's not a risk to the town?

**Atty. Michael D. Rybak:** If there's common ownership I think the risk is minimized. It's not like the parcels are going to move off in different directions, that they're held as an assemblage. I don't see it as a major issue and I don't see the fact that you're creating a non-conformity, albeit momentarily. I wouldn't say that would be the case in all cases. And I think Atty. Tracy did give a good explanation why in this particular case it's not spot zoning.

**Commissioner D. Kovall:** If we were to adopt this new zone "E" with all of the parameters being discussed, we're not saying that it applies to this piece of property, it's just a new zone. So that zone could be anywhere, say Hill Road, Birge Park or somewhere else, because now we have a new zone that could be put wherever. Which I think when you come right down to it, that becomes the crux of this discussion that we're having, is that "poof", we're going to have a new zone therefore that zone, again, is not anchored to this site. It's anchored to the town of Harwinton so, pick your spot.

**Atty. William J. Tracy:** To answer that, it's this commission that picks the spot, just like the L.I. zone you have in the book where's it going to be, so you designate its specific properties. That's your call.

**Commissioner D. Kovall:** However, I want to make sure everyone is aware, audience included, that if the commission decides to take this step, it potentially opens a new can of worms, a new issue to be looked at. And not just with you, or your developer, but it opens it to everyone in the world who may want to develop a piece of land for this purpose in the Town of Harwinton so that again, we need to be very cautious.

**Commissioner N. Schnyer:** We already have an over 55 off of Breezy Hill and an over 55 down off of Windmill. Are those special zones?

**Atty. Michael D. Rybak:** The over 55 on Breezy Hill was developed as multi-family, and it was the developers election to be the age of the clientele. What (inaudible) pressed upon is the difference between a set of zoning rules for a particular zone and a floating zone, such as the Multi-Family zone. If you adopt a zone change, you've changed the rules for that zone, period, and your only control at that point is the special permit process. But you could only impose conditions that arise from the regulations. You just can't make them up. With a Floating zone, you have much greater flexibility in deciding which parcel it can come to rest on and what are the conditions that it comes to rest on that you couldn't otherwise impose on a traditional zone change but could impose on a floating zone change. That's the difference between the Multi-Family rules and the Zoning regulation for it and town sponsored elderly housing rules

**Atty. William J. Tracy:** And the other difference I saw, to follow up on, was the Floating zone represents a decision by this commission that that's an appropriate zone for potentially anywhere in town because it's set up that it could be anywhere in town if the Commission is satisfied with the location and conditions that Mr. Rybak talked about. We stayed away from that specifically so we didn't have a zone that it can be anywhere in town, that the commission would have to decide where it would exactly be and where it was not going to be. And that would come up if somebody else wanted to have this text apply on another piece of property. You would have to make that zone change decision and Mr. Rybak, I'm sure, would have to ask then why that's not spot zoning. I can envision many instances where it could be because the parcels are not as unique as this one.

**Commissioner D. Kovall:** I think it's advisable not to tailor a regulation or a new zone with a particular piece of property in mind. Specifically because, and I also don't shy away from any new application that might come up for a Multi Family, that we would not be cable at that time not to judge on its own merits and decide



if that's an appropriate use for the property or not. We have certainly done that for Equestrian Estates, the Bus Depot and other instances where we had to make some difficult choices and difficult public hearings about pieces of property. At this point, there's a lot to chew on. I think that we can probably come to an end point at this time to keep the public hearing open and start at the front end of this as to whether or not we actually want to create a new zone and if we want to create a new zone, what that looks like? I think that the farther we get into the complexity and specialization and the looking at it from the viewpoint of a particular parcel, I think the closer we get into a mess. So again, I think we should continue this and get some additional information.

**Atty. William J. Tracy:** If I may respond, those were the reasons why I tried to stay so close to the existing town sponsored regulation so that it is what you already have it just substitutes the private developer for the town developer.

**Commissioner D. Truskauskas:** Atty. Rybak, regarding your comment on the Special Permit process requiring any conditions that must come out of our regulations. Being the definition is not part of the regulation but the definition does say 62 and older or 55 and older, could we stipulate in our regulations that it be 62 or older? Again, being that the definition does say "or".

**Atty. Michael D. Rybak:** I think you could when you get to the Special Permit phase, you aren't there yet.

**Commissioner D. Truskauskas:** No, if this parcel were to go through and we were to make the zone change for this parcel and we got to the special permit.

**Atty. Michael D. Rybak:** It has to be worded properly in the text amendment that the commission gets to make that decision, not the developer.

**Commissioner D. Truskauskas:** So I guess that's my question. In my assumption that we're having this hearing based on the text we were provided, this hearing almost assumes it was adopted otherwise we really can't have this hearing and this discussion. So assuming this was the adopted text and I ask this question on the parcel were it to go to special permit, could we require it to be 62 and over?

**Commissioner D. Kovall:** My understanding earlier was that Atty. Rybak said that because the applicant is making the suggestion for the text, it sounds like he's running it. We would need to make our own decision about text and then we'd be (inaudible).

**Commissioner D. Truskauskas:** That's as far as changing the text. If we change the text does the special permit allow us to just take that first half of the definition?

**Atty. Michael D. Rybak:** No, I'm looking at it now and I'm not sure how you'd word it otherwise. If the applicant meets one of these two definitions for the applicant's project, you don't get to make that decision, the applicant does. I had to step out of the room for a part of the applicant's presentation, are these going to be condominium units in a common interest community or are they going to be rentals operated by one owner?

**Atty. William J. Tracy:** They will be for single ownership, rental units. The regulation text doesn't absolutely require that, it leaves ownership open to the developer just like any other development. I don't really think you can key a zoning regulation to a specific nature of ownership.

**Atty. Michael D. Rybak:** You can't do that. You can't do that. I was curious as to this particular project for the zone change whether they were owner occupied or tenant occupied.

**Scott Bayne:** They are all rentals.

**Atty. Michael D. Rybak:** And they're approximately 1000 square feet, but that would be both floors, correct? It would be really a 600 plus.

**Scott Bayne:** 620.

**Chairwoman Rewenko:** Any additional comments or motions at this point in time?

**3. CONTINUE OR CLOSE HEARING.**

**Commissioner D. Truskauskas:** I motion to continue the public hearing to immediately follow the first public hearing on Monday, April 23, 2018 at 7:00 p.m.

**Commissioner T. Root:** I second the motion.

**Chairwoman Rewenko:** All in favor?

**Commissioners:** Aye.

The Exhibit List for petition to Change the Zone from Light Industrial to Multi-Family Elderly Housing is as follows:

- (1) PETITION TO CHANGE THE ZONE FROM LIGHT INDUSTRIAL TO MULTI-FAMILY ELDERLY HOUSING  
INCLUDES COPY OF ASSESSOR'S MAP
- (2) LEGAL NOTICE OF PUBLIC HEARING
- (3) NOTICE TO NHCOC DATED 2/27/18
- (4) NOTICE TO TOWN CLERK DATED 3/21/18
- (5) NOTICE TO PLANNING COMMISSION FOR 8-3a(b) REFERRAL DATED 2/27/18
- (6) PLANNING COMMISSION 8-3a(b) REFERRAL DATED 3/29/18
- (7) NOTICE TO BOARD OF SELECTMEN DATED 3/1/18
- (8) NOTICE TO TOWN ATTY. MICHAEL D. RYBAK DATED 3/22/18
- (9) NHCOC REFERRAL RESPONSE (RECEIVED IN LAND USE OFFICE 4/9/18)
- (10) TOWN ATTY. MICHAEL D. RYBAK'S EMAIL TO LUC REDMOND REGARDING STATUTES AND REGULATIONS  
PERTAINING TO ZONE CHANGE PETITIONS, REGULATION TEXT AMENDMENT PETITIONS AND PUBLIC  
HEARINGS.
- (11) SECTIONS OF HARWINTON'S POCD REGARDING ELDERLY HOUSING AND AFFORDABLE HOUSING  
SUBMITTED BY ATTY. WILLIAM J. TRACY.
- (12) A SECTION OF U.S. CODE ON FAIR HOUSING/ELDERLY EXEMPTION TO FFHA LAW SUBMITTED BY ATTY.  
WILLIAM J. TRACY.
- (13) A SECTION OF OPM CONSERVATION AND DEVELOPMENT POLICIES REGARDING GROWTH MANAGEMENT  
AND HOUSING OPPORTUNITIES SUBMITTED BY ATTY. WILLIAM J. TRACY.

9:00 p.m. - Commissioner N. Schnyer leaves at this time.

**REGULAR MEETING**

**1. OPEN MEETING -- ESTABLISH QUORUM.**

Chairwoman Rewenko called the meeting to order at 9:00 p.m. All regular members present are seated with Alternate Member D. Truskauskas seated for C. Kasey and Alternate Member T. Root seated for M. Szydlo.

**2. APPROVE MINUTES OF PREVIOUS MEETINGS: 2/26/18 & 3/26/18**

Approval of 2/26/18 minutes are tabled due to lack of a voting quorum.

D. Truskauskas **motioned** to approve the minutes of 3/26/18, seconded by D. Kovall. Motion passed unanimously with D. Thurston refraining from vote due to his absence at the 3/26/18 meeting.



**3. PUBLIC COMMENT.**

None.

**4. GREYSTONE ELECTRONICS, LLC/WALTER GRAUSTEIN – APPLICATION FOR SINGLE FAMILY DWELLING, 115 HARMONY HILL ROAD.**

Mr. Graustein is present to represent: Plans by Berkshire Engineering, titled Septic System Design, dated 2/28/18, is reviewed. IWWC approval, TAHD approval and driveway permit are all on file. The proposed driveway will be 600' long with a 12% grade. Zoning Regulation 6.4.3 is reviewed for cross-sections and requirements of engineer certification. Commissioner D. Truskaskas states he believes engineer certification should be required but not a cross section. He also would like to see a drainage plan so the Commission would know where the water is going to go when it runs off the driveway. The Commission asks that the applicant return to the next meeting with a drainage plan from Berkshire Engineering.

\*Note from LUC Redmond: After a discussion with Highway Supervisor John Fredsall on 4/10/18, it is Mr. Fredsall's belief that a drainage plan is not required and that all the driveways on that street drain onto the street. To ask Mr. Graustein to provide a drainage plan would be unreasonable and should not be required of him. Follow up discussion will be held at the next meeting where a decision and a motion will be made.

**4. DISCUSSION/POSSIBLE DECISION - PETITION TO AMEND ZONING REGULATION TEXT AMENDMENTS: 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.**

No discussion.

**5. DISCUSSION/POSSIBLE DECISION - PETITION 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.**

No discussion.

**6. COMPLAINTS/ENFORCEMENT ACTIONS.**

ZEO T. Mitchell sent a report stating no new complaints or enforcement actions to report.

**7. ANY OTHER BUSINESS.**

LUC Redmond informs the Commission that the owners of 85 Davis Road are in the process of selling their house and want the town's blessing on an accessory apartment above the garage. There are no permits for this on file. Zoning minutes from July 12, 1999 speak of the accessory apartment that was going to be inspected by then ZEO Leo Reitmann and he was to report back to the Zoning Commission at the next meeting. The inspection was the result of Tim Barry (present owner) who at the time was in the process of purchasing the home and came before the Commission to ensure that the apartment was legal. The 1999 minutes have Leo Reitmann stating that the apartment was built in 1985. Later minutes reflect no further discussion. The accessory apartment is noted on the Assessor's street card as being 676 square feet gross area. Commissioners

ask that LUC Redmond check the Zoning Regulations from 1985 to when the house was built in 1988 to find out when accessory apartments were permitted.

\*1984 Zoning Regulations have no regulations on Accessory Apartments.

7/11/88 Zoning Regulations regulates Accessory Apartments under Special Permit Uses.

Therefore, no regulations were in place at time of construction of the apartment.

**8. CORRESPONDENCE.**

None.

**9. INVOICES.**

None.

**10. ADJOURN.**

D. Truskauskas **motioned** to adjourn the meeting at 9:25, seconded by D. Kovall. Motion passed unanimously.

Respectfully submitted,

Polly Redmond  
Land Use Coordinator

RECEIVED FOR RECORD AT HARWINTON CT  
ON 04/18/18 AT 1:05 PM  
ATTEST NANCY E. ELDRIDGE TOWN CLERK