

SOUTHINGTON PLANNING AND ZONING COMMISSION
Public Hearing & Regular Meeting
December 18, 2007
Town Hall Council Chambers, 75 Main Street, Second Floor

MINUTES

Chairman Zaya Oshana, Jr., called the Southington Planning & Zoning Commission to order at 7:15 pm with the following members in attendance:

Kelly Kennedy DelDebbio, Michael DelSanto, Dawn Miceli, James Sinclair and Patrick Saucier

Others: Mary F. Savage, Town Planner, Mark J. Sciota, Town Attorney, Anthony J. Tranquillo, Town Engineer and John Weichsel, Town Manager

Alternates: Stephen Kalkowski, Alternate Commissioner
Dennis Vachon, Alternate Commissioner

Also Present Representing the Town on the Hillcrest Matters:

Brian Smith, Special Counsel
Joel Norwood, Esquire

Absent: Francis Kenefick, Commissioner
Lisa Conroy, Alternate Commissioner
Brian Zaccagnino, Alternate Commissioner

The Chair seated Alternate Dennis Vachon for Francis Kenefick this evening. A quorum was determined.

The Pledge of Allegiance was recited by everyone in attendance.

Approval of Minutes

A. Regular Meeting Minutes of December 4, 2007

MR. DELSANTO: So moved.

MR. SINCLAIR: Second.

(Motion passed unanimously on a voice vote.)

MR. SAUCIER: Mr. Chairman, I'd like to make a motion to add a few items onto our Agenda:

Item 5-11, acceptance of Cedar Post Drive pending receipt of maintenance bond in the amount of 21,400. Cedar Post Estates, S 1222.

Item 5-12, Briarwood College Dental Building reduction of the 17,700 erosion and sedimentation bond to a new amount of 2,000 to cover landscaping and plantings to be completed in the spring of 2008. SPR 1451.1.

Item 5-13, reduction of E & S bond from 9,000 to a new amount of 3,000, Stoneybrook II, Winding Ridge, S 1733.

Item 15-14, the acceptance of Hazel Court, Five Acre Estates, pending submission of a maintenance bond in the amount of \$27,500, S 1239 and additionally accepting the length of roadway, 375 feet under the same subdivision.

Additionally, I'd like to modify the order of our Agenda today. We would like to Item #4, Hillcrest Orchards, EE #121 to #5 and the old #5, Hillcrest, SPR 1485 to Item 4.

MR. SINCLAIR: Second.

(Motion passed 7 to 0 on a roll call vote.)

Business Meeting

1. **Central CT Contractors, LLC**, Captain Lewis Drive and Townline Road, 17 lot industrial subdivision S #1262.

MS. SAVAGE: Mr. Chair, staff would suggest a table. I don't see the Agent here and this item is not ready for action. I recommend that we --- and he had told me that he may request a table tonight. The plans are still being revised. You have the engineering comments in your packet. I would suggest we table this. Should the Agent arrive during our next item --- we could always come back to this matter. I believe he will not.

MR. SINCLAIR: Move to table.

MR. DELSANTO: Second.

(Motion passed unanimously on a voice vote.)

THE CHAIR: These four items are going to be acted on individually. And, before we move into these items, I'm going to ask Attorney Smith to make some comments for us this evening.

Attorney Smith?

ATTORNEY SMITH: Thank you, Mr. Chairman and members of the Commission. First of all, I'd like to introduce Joel Norwood who is an attorney with my office who assisted me in the drafting of the working

draft motions you have before you that you had requested that we prepared at the close of the last meeting on December 4th.

And, what you have before you are working draft motions for each of the four items that are on your Agenda based on the comments that we had heard and understood from both the meeting and thereafter.

I would note that the first three, ZA 543, ZC 530 and SPR 1485, quite clearly the Commission had requested that they be prepared as denial motions and the reasons. So you will find those in them.

With respect to the earth excavation permit, although we understood the Commission was contemplating a denial, there was really no reasons given at that time although there was some commentary.

So, we have prepared both an approval motion and a denial motion for the Commission to consider when it gets to the earth excavation permit question.

And, again, I would hasten to add that this needs to be the collective decision of the Commission, therefore, you accept all the wording that was given, modify it as you see fit or reject the entire motions that we have drafted. We have no pride of authorship in this, we simply tried to reflect the reasons given by the Commission and put it into proper format for the Commission's benefit.

So, that's it. Thank you.

THE CHAIR: Thank you very much.

2. Hillcrest Orchards, 508-544 Meriden- Waterbury Turnpike, ZA #543

THE CHAIR: Before we move into this, Ms. Savage, do you have any comments to make at this point?

MS. SAVAGE: I do have a comment regarding, referring to the letter from Mr. Smith provided to you with the first working draft of the motions. Item 3 in his memorandum, calls out or actually, is item 6, he calls out a proposed revision to Section 3-08.14 of the regulations. And, what that is is actually a Scribner's error, t o. It was the proposed amendment to add the word "shall" to that section to correct a typographical error.

I researched the regulations which we had adopted and the word "shall" was in them. So somewhere between the finalization of that and the duplication, the word fell out. So, it really is a typographical error. We believe it was the Commission's intent to have that word in there and the next time that we print this regulation, we would correct that error.

So, we don't believe and Attorney Smith can correct me if I'm wrong, that does not require a formal amendment.

ATTORNEY SMITH: No, it does not. That's because that was a mistake. It was literally a Scribner's error. A misprint, if you will.

That can be changed without formal action of this Commission at this point because it already was done in the prior meeting where the Commission approved the original text.

MS. SAVAGE: And, with that, you have two different drafts of motions in front of you. And, certainly, I'm happy to answer any questions you may have.

THE CHAIR: Okay. Before we move into this, I just have a couple of comments to read into the record here as an introduction and background as to the Text Amendment ZA \$543

Hillcrest Orchards, LLC, the owner of the subject property (the "Applicant"), submitted proposed modifications under Connecticut General Statutes ("C.G.S.") Section 8-30g(h) to its previously submitted application, consisting of: a petition to change the text of the Southington Zoning Regulations by amending Section 3-08, Housing Opportunity Development ("HOD") Zone (the "Text Amendment"), assigned Z.A. #543; an application to change the Southington Zoning Map designation for the subject property from R-40 to HOD (the "Zone Change"), assigned Z.C. #530; an application for an Earth Excavation permit to remove approximately 18,000 cubic yards of contaminated soil (the "Earth Excavation"), assigned EE #121; and an application for a site plan proposing a 214-unit residential development known as "Hillcrest Orchards" (the "Site Plan"), assigned S.P.R. #1485.

At its September 4, 2007, meeting, the Commission acted on the applicant's original applications by approving the text amendment with modifications, denying the zone change, and denying the site plan.

The Commission opened the public hearings on the resubmitted Text Amendment, application Z.A. #543; the Zone Change, application Z.C. #530; the Earth Excavation, application EE #121; and the Site Plan, application S.P.R. #1485, on November 7, 2007. The hearings were continued to November 20, 2007, and were closed on December 4, 2007.

The Commission deliberated on all four applications on December 4, 2007, and December 18, 2007, with appropriate consent by the applicant to an extension of all four applications to December 18, 2007 and such further extension as necessary to ensure any decision would be issued after the Conservation Commission has acted on these applications. The Conservation Commission acted on these applications on December 13, 2007.

TEXT AMENDMENT, Z.A. #543

FINDINGS

1. The Text Amendment, Zone Change, Earth Excavation, and Site Plan applications were submitted to the Commission pursuant to C.G.S. Section 8-30g(h), the resubmission provision of the Affordable Housing Land Use Appeals Act.
2. The Hillcrest Orchards application materials, together with further information acquired from the applicant and its experts during the

public hearing, and further information acquired from experts and staff under the Commission's employ and/or direction, and testimony of the public, contained sufficient information necessary for a fair collective determination of the issues. In addition, information acquired on the record for the original applications, which the Commission acted upon on September 4, 2007, provide additional information for a fair collective determination of the issues.

3. The Commission finds that the applications to Change the Zoni Map for the subject property from R-40 to HOD, Earth Excavation, and Site Plan are unified and integrated and apply specifically to the subject property. The Text Amendment, however, does not.
4. The Commission collectively finds that Southington has a documented need for affordable housing; 4.54% of Southington's housing qualifies as "affordable," according to the State of Connecticut, Department of Economic & Community Development's "2006 Affordable Housing Appeals Procedure List" (dated February 1, 2007). Since Southington does not have the State-required 10% affordable housing units, it is subject to Section 8-30g.
5. Throughout the public hearing, the Commission has repeatedly and expressly recognized that there is a need for affordable housing in Southington as defined by Section 8-30g.

THE CHAIR: With that, we are looking from the Commission for a motion on the Zone Text Amendment No. 543.

MR. SAUCIER: Mr. Chairman, I'd like to make a motion to approve the Housing Opportunity Development Zone Text Amendment, ZA 543 with modifications.

The proposed text amendment to Section 3-08 of the Southington Zoning Regulations, the Housing Opportunity Development regulations, which the Commission initially approved on September 4, 2007, is approved with the following amendments. As detailed below, the Commission rejects all of the amendments proposed by the applicant but approves the Staff recommendation to add a new Section 3-08.21. In making its determination, the Commission finds that the testimony and evidence provided by Town Planning and Engineering Staff, the Town's traffic engineer Bruce Hillson, P.E., of Traffic Engineering Solutions, P.C., the reports from the South Central Connecticut Regional Planning Commission and the Central Connecticut Regional Planning Agency; and testimony from members of the public are credible evidence that provides substantial evidence for the following determinations regarding the application to amend the text of the HOD regulations. The Commission also relies on its own knowledge to make collective decisions.

1. **Section 3-08.3.** The Commission rejects the applicant's proposed amendment to eliminate the Special Permit Use application requirement. Requiring a Special Permit Use application is necessary to protect substantial public interests in public health and safety because it will enable the Commission to obtain traffic

information, review building elevations, and ensure that the Commission can evaluate other necessary information. In making this determination, the Commission finds the testimony and evidence submitted by Town Planning Staff and the reports submitted by the South Central Connecticut Regional Planning Commission and the Central Connecticut Regional Planning Agency are particularly credible and in addition to other evidence on the record, constitute substantial evidence to support its determination. In contrast, the Commission finds that the evidence submitted by the applicant is not persuasive. The Commission finds that this interest in protecting public health and safety is not unduly onerous or expensive and assists the recognized need for affordable housing in Southington by ensuring the Commission has adequate information to evaluate the safety of HOD developments. Even if this requirement does not assist affordable housing development, the substantial public interests in public health and safety clearly outweigh the recognized need for affordable housing without this requirement because it is the only way to obtain essential traffic and design information. The Commission therefore finds that such public interest in protecting public health and safety can only be protected by rejecting the applicant's proposed amendment and retaining the special permit use requirement. No reasonable change can be made to the existing text, which already protects those public interests without impeding the recognized need for affordable housing.

2. **Section 3-08.5(A)(3)**. The Commission rejects the applicant's requested amendment to add the term "common interest act community" in lieu of "condominium" because the change negates the intent of the original language. These are defined terms under Connecticut law with distinct definitions: for a definition of common interest community, see C.G.S. section 47-202(7); for a definition of condominium, see C.G.S. section 47-202(8). The Commission finds that the substantial public interest in fire safety can only be protected by the existing text of the regulation. This substantial public interest in fire safety clearly outweighs the need for affordable housing without such requirement, which is not unduly onerous. No reasonable change can be made to the existing text because the existing text is crucial to protect fire safety.
3. **Section 3-08.5(A)(4)**. The Commission rejects the applicant's requested amendment to set the minimum setbacks from "public right-of-way" rather than "road" because ensuring adequate setbacks from internal roads is necessary to protect public safety, protect the health of residents in the site, and ensure adequate transportation. In making this finding, the Commission finds that the evidence submitted by Town Planning Staff is persuasive, while the applicant's arguments are not. Furthermore, the Commission finds that the same public health and safety concerns for requiring setbacks from internal roads remain as the Commission found when it originally approved this provision, a provision that was *drafted by the applicant* in its original application, dated March 29, 2007. The Commission finds that such public interests in public health and safety clearly outweigh the recognized need for affordable housing without such requirements because they are not unduly onerous or expensive and protect the safety of residents. No reasonable change can be made to this section because the existing text is crucial to protect public safety.

4. **Section 3-08.5(A)(7).** The Commission rejects the applicant's requested amendment to reduce the minimum distance between units from 45 to 30 feet because 45 feet is necessary to protect the substantial public interest in public safety, especially for fire apparatus access and appropriate design standards. In making this finding, the Commission finds that evidence submitted by Town Planning Staff is credible, but the applicant's explanation is not persuasive. The Commission finds that such public interests in fire safety clearly outweigh the recognized need for affordable housing without this requirement because public safety and fire safety are paramount. The Commission finds that such public interest in public safety and fire safety can be protected by this amendment. The Commission also rejects the applicant's proposed amendment to delete the last sentence of Section 3-08.5(A)(7) because the 30 feet distance requirement for single family and duplex homes in a condominium is reasonable and consistent with Section 3-08.5(A)(3).
5. **Section 3-08.5(A)(9).** The Commission rejects the applicant's proposed amendment to change the "or" to "and" because the change would negate the intent of the existing text. The Commission finds that the evidence submitted by Town Planning Staff is persuasive because the "or" is necessary to ensure that no building in an HOD zone exceeds 35 feet, which is essential to protect public health and safety, especially to ensure that fire and other emergency vehicles are guaranteed to have access to the buildings. Such public interests in public health and safety clearly outweigh the recognized need for affordable housing without such requirements because such requirements are not onerous and would have little impact on affordability, while protecting residents' safety. No reasonable change can be made to the section because these public interests can only be protected by the existing text.
6. **Section 3-08.5(D).** The Commission rejects all of the applicant's proposed changes to the requirements concerning enclosed play space or open space for active or passive recreation. As explained by the persuasive evidence submitted by Town Planning Staff, the existing regulation text is necessary to protect the substantial public interest in residents' health and recreational opportunities, particularly because parcels sufficiently large to qualify for HOD status are typically far from existing public recreation facilities. The Commission finds that such public interests in public health and access to recreation clearly outweigh the recognized need for affordable housing without such requirements because they are not unduly onerous and are essential to protect the health and recreational opportunities of all residents. No reasonable change can be made because the section's existing requirements are crucial to protect the public interests in health and recreation.

The Commission rejects the Town Staff recommendation to allow, with a two-thirds affirmative vote, the Commission to waive the play space requirements for any type of housing with appropriate findings (not solely for elderly housing) because the current limits on the Commission's discretion are necessary to protect the substantial public interest in residents' health and recreational opportunities. The Commission finds that such public interests clearly outweigh the recognized need for affordable housing without such additional discretion. No reasonable change can be made to this provision because the section's existing requirements are crucial to protect

the public interests in health and recreation.

7. **Section 3-8.10.** The Commission rejects the applicant's proposed amendment to the landscaped screen requirement because the amendment is unnecessary, redundant with other existing regulations, and undermines the regulation as written. As explained in the persuasive evidence submitted by Town Planning Staff, the Commission finds that the proposed amendment does not protect the public interests in abutting property owners' privacy and slope preservation, because a double row of evergreens, as well as existing vegetation, are insufficient to protect abutting property owners' privacy and slope preservation. Furthermore, the proposed amendment is unnecessary because the Site Plan Regulations (Sections 9-02.3, 9-10.1(H) of the Zoning Regulations) already provide that natural features should be preserved as much as possible. The Commission therefore finds that the proposed amendment does not advance any interest in affordable housing. The existing regulation text promotes the public interests in abutters' privacy and slope preservation, which substantially outweigh the interest in affordable housing with the proposed amendment, because the existing requirements are not unduly onerous or expensive and abutters' privacy and slope protection should be preserved. No reasonable change can be made because these public interests can only be protected by the existing requirement.
8. **Section 3-08.11.** The Commission rejects the applicant's proposed amendment to limit the screening requirement to mechanicals serving the entire community because the amendment would undermine the intent of the existing provision, which, as explained by the persuasive evidence submitted by Town Planning Staff, is necessary to protect the public interest in public health and community space. Furthermore, the existing requirements are not unduly expensive or onerous and the public interest in public health and community space clearly outweigh the recognized interest in affordable housing without this requirement.

The Commission rejects the Staff recommendation to insert the following text at the end of the first sentence of this subsection "and/or landscaping materials," because the existing text is essential to protect the substantial public interests in maintaining the public health and community space, which clearly outweigh the recognized need for affordable housing. No reasonable change can be made to the existing text because it is crucial to protect those public interests.

9. **Section 3-08.12.** The Commission rejects the applicant's proposed amendment to modify the parking requirements for a community center, ostensibly in accordance with Section 12 of the zoning regulations, although Section 12-01.1 never mentions community centers in private developments and the applicant never explained how it applies to this situation. The Commission rejects this proposed amendment because the existing regulation text is essential to protect the substantial public interests in internal vehicular safety and adequate transportation. Only the existing text will ensure there is adequate community center parking to prevent pedestrian-vehicular and vehicular-vehicular conflicts that will result from excessive congestion near the community center if the applicant's proposed amendment were approved. The existing text is therefore essential to protect substantial public interests in internal vehicular safety

and adequate transportation, which clearly outweigh the need for affordable housing without such requirements. Such requirements are not unduly onerous and no reasonable change can be made to the existing text because it is crucial to protect the substantial public interests in internal vehicular safety and adequate transportation.

10. **Section 3-08.14.** The Commission rejects the applicant's proposed amendment as unnecessary because the Commission originally approved this section with the word "shall," but it was inadvertently omitted from the printed Zoning Regulations due to a scrivener's error. Thus, there is no need for the Commission to consider the proposed amendment to this section and the printed Zoning Regulations will be corrected by Town Staff to reflect the text as approved by the Commission on September 4, 2007.

11. **Section 3-08.16.** The Commission rejects the applicant's proposed amendment to eliminate the requirement of Phase I environmental reports. The Subdivision Regulations (Section 3-15) already require Phase I assessments for all applications involving land to be deeded to the Town of Southington. The Commission finds that requiring a Phase I Environmental Report is necessary to protect the substantial public interest in public health and safety, as explained by the persuasive evidence submitted by Town Planning Staff. The Commission finds that the contrary evidence submitted by the applicant is not credible. Requiring Phase I is essential because Southington has had many instances of prior industrial and agricultural uses that resulted in soil or groundwater contamination. Phase I is also necessary to determine whether environmental problems exist on a site and whether further testing is required to protect public health and safety. The Commission therefore finds that such public interest in public health and safety will only be protected by the existing text of the regulation. These public interests clearly outweigh the recognized need for affordable housing without Phase I, because Phase I is the least expensive option to protect public health from environmental contamination. Thus, requiring a Phase I is not unduly onerous and ensures HOD residents will receive the same environmental and public health protection as residents in all other areas of Southington. No reasonable changes can be made to the existing text, because Phase I is the only way to protect these public interests.

12. **Section 3-08.17.** The Commission rejects **all** of the applicant's proposed amendments to this section because (1) adequate access is necessary to protect substantial public interests in internal traffic circulation safety and the safety of motorists and pedestrians, (2) the proposed use must remain subject to the Plan of Conservation and Development to ensure the development will not damage substantial public interests in environmental preservation and adequate transportation, and (3) the Commission should retain the discretion to deny zone changes if a development would cause any roads to fall below level of service (LOS) C to protect the substantial public interests in adequate transportation, public health, and the safety of motorists and pedestrians. In making all

of these findings, the Commission finds that the evidence submitted by Town Planning Staff is persuasive, whereas the applicant's evidence is not persuasive.

- a. **Adequate access streets:** The Commission finds that the public interests in internal traffic circulation safety and the safety of motorists and pedestrians clearly outweigh the recognized need for affordable housing in Southington without such requirements because design without these parameters may lead to increased pedestrian/vehicular and vehicular/vehicular conflicts. The Commission finds that such public interest in internal circulation traffic safety, both for pedestrians and vehicles, can only be protected by the existing text of the regulation. Therefore, no reasonable changes can be made to this provision that would still protect this substantial public interest.
- b. **Consistency with the Plan of Conservation and Development:** The Commission finds that the public interest in ensuring orderly and consistent development and conservation, environmental preservation, and adequate transportation clearly outweigh the recognized need for affordable housing without this requirement. In addition, complying with the plan is not unduly onerous or expensive. The Plan of Conservation and Development applies to all proposed development in Southington, and making exceptions for HOD developments would substantially undermine the Plan of Conservation and Development. Therefore, no reasonable changes can be made to this requirement that will protect the public interests in ensuring orderly and consistent development and conservation, environmental preservation, and adequate transportation.
- c. **Discretion to deny any development, which causes the level of service (LOS) on a roadway to fall below LOS C:** The Commission finds that the substantial public interests in public health and safety and adequate transportation clearly outweigh the recognized need for affordable housing without this requirement. The adequacy of the roadway system adjacent to any proposed development directly impacts the safety of the development itself to provide safe ingress and egress. Such safety concerns should be reviewed comprehensively in conjunction with proposed developments. Additionally, this requirement is not unduly onerous because, in most instances, roadway levels of service can be improved by adding signage, signals, and/or turning lanes. No reasonable change can be made to the text that would protect the public interests in public health and safety and adequate transportation because ensuring HOD developments do not cause any road to fall below LOS C is the absolute minimum necessary for adequate transportation and public safety.

The Commission rejects the applicant's legal argument that Pansy Road, LLC v. Town Plan & Zoning Commission, 283 Conn. 369 (2007) precludes the Commission from having enacted a regulation allowing the Commission to deny a proposed development if the development would cause any roadway to fall below LOS C. Pansy Road only applies to site plan review or subdivision approval where the proposed use is *already permitted* by the zoning district where the development is

located. Pansy Road, 283 Conn. at 370.

13. **Section 3-08.20.** The Commission rejects the applicant's proposed amendment to remove the preservation of specimen trees from the preservation requirements of HOD site plans because the existing requirement is necessary to protect the substantial public interest in preserving the environment. As established by the persuasive evidence submitted by Town Planning Staff, the Commission finds that this public interest in preserving the environment clearly outweighs the recognized need for affordable housing without this requirement, which is not unduly onerous or expensive. No reasonable changes can be made to the text, because the existing text is the only way to ensure specimen trees are preserved.
14. **New Section 3-08.21.** The Commission approves the Staff recommendation to add a new section regarding Control of Issue of Certificates of Occupancy¹ because it is necessary to protect the substantial public interests in the public safety of residents by ensuring site plans and site improvements are completed and functioning properly before full occupancy is approved. In making these findings, the Commission finds that the evidence submitted by Town Planning Staff is persuasive and credible. The Commission finds that the substantial public interest in the public health and safety, fire safety, transportation safety, environmental preservation, abutters' privacy and slope rights, and adequate drainage clearly outweigh the recognized need for affordable housing without this requirement. Additionally, the requirement is not unduly onerous or expensive because it merely provides assurances that the project complies with all regulations. This requirement already applies to multi-family housing complexes, in Section 3-04.2(B)(12) of the Zoning Regulations. The precise text as proposed by Staff is the only way to protect those interests and therefore no reasonable changes can be made to the Staff proposal that will protect those interests.

In sum, regarding all of the above-mentioned actions that the Commission is taking regarding the proposed amendments to the HOD text, based on the substantial evidence in the record, the Commission determines the HOD text as amended by the Commission today will not

¹ The text of proposed **Section 3-08.21:** Control of Issue of Certificates of Occupancy: The issue of Certificates of Occupancy shall be limited to 75% of the dwelling units contained in the project until:

- a) All common and/or public improvements, landscaping or erosion and sedimentation control measures have been completed to the satisfaction of town staff. Town staff may support bonding for outstanding improvements due to extenuating circumstances, subject to a 2/3 vote by the Commission. Bonding in lieu of improvements for these developments shall be exception and not the rule.
- b) As-built plans of utilities and public improvements within the development, certified by a registered professional engineer, have been received and accepted by the Town Engineer or his designee.
- c) All recreational facilities shown on the approved final plan have been installed.
- d) The final course of pavement has been installed.

have a substantial adverse impact on the viability of the affordable housing development or the degree of affordability of the affordable dwelling units. Moreover, the substantial public interests in public health and safety, transportation, and environmental conservation and protection substantially outweigh the recognized need for affordable housing without the requirements imposed by the HOD text as amended by the Commission today. Therefore, no reasonable change can be made to the text as amended by the Commission today that would protect those public interests.

MS. KENNEDY DEL DEBBIO: Second.

THE CHAIR: We have a motion for approval with modifications and a second. Is there any further discussion?

(No response)

ROLL CALL:	Ms. DelDebbio:	Yes
	Mr. DelSanto:	Yes
	Ms. Miceli:	Yes
	Mr. Saucier:	Yes
	Mr. Sinclair:	Yes
	Mr. Vachon:	Yes
	Mr. Oshana:	Yes

THE CHAIR: Motion passes 7 to 0.

3. Hillcrest Orchards, 508-544 Meriden- Waterbury Turnpike, ZA #530

THE CHAIR: This is the zone change. Attorney Smith?

ATTORNEY SMITH: Yes, once again, this is the zone change that the proposal was to change the existing zone to the HOD. And, so you would be considering the HOD as it was originally enacted rather than the proposed amendments except for the one you just passed. So, that's for your consideration.

We've drafted this particular motion. Again, you can accept it, modify it or reject the draft motion we have as you see fit.

THE CHAIR; Ms. Savage?

MS. SAVAGE: I have no comments.

THE CHAIR: Very good. Okay.

INTRODUCTION AND BACKGROUND AS TO APPLICATION TO CHANGE THE ZONING MAP FOR THE SUBJECT PROPERTY FROM R-40 TO HOD, Z.C. #530

Hillcrest Orchards, LLC, the owner of the subject property (the "Applicant"), submitted proposed modifications under Connecticut General Statutes ("C.G.S.") Section 8-30g(h) to its previously submitted application, consisting of: a petition to change the text of the Southington Zoning Regulations by amending Section 3-08, Housing Opportunity Development ("HOD") Zone (the "Text Amendment"), assigned

Z.A. #543; an application to change the Southington Zoning Map designation for the subject property from R-40 to HOD (the "Zone Change"), assigned Z.C. #530; an application for an Earth Excavation permit to remove approximately 18,000 cubic yards of contaminated soil (the "Earth Excavation"), assigned EE #121; and an application for a site plan proposing a 214-unit residential development known as "Hillcrest Orchards" (the "Site Plan"), assigned S.P.R. #1485.

At its September 4, 2007, meeting, the Commission acted on the applicant's original applications by approving the text amendment with modifications, denying the zone change, and denying the site plan.

The Commission opened the public hearings on the resubmitted Text Amendment, application Z.A. #543; the Zone Change, application Z.C. #530; the Earth Excavation, application EE #121; and the Site Plan, application S.P.R. #1485, on November 7, 2007. The hearings were continued to November 20, 2007, and were closed on December 4, 2007.

The Commission deliberated on all four applications on December 4, 2007, and December 18, 2007, with appropriate consent by the applicant to an extension of all four applications to December 18, 2007 and such further extension as necessary to ensure any decision would be issued after the Conservation Commission has acted on these applications. The Conservation Commission acted on these applications on December 13, 2007.

II APPLICATION TO CHANGE THE ZONING MAP FOR THE SUBJECT PROPERTY FROM R-40 TO HOD, Z.C. #530

FINDINGS

1. The Text Amendment, Zone Change, Earth Excavation, and Site Plan applications were submitted to the Commission pursuant to C.G.S. Section 8-30g(h), the resubmission provision of the Affordable Housing Land Use Appeals Act.
2. The Hillcrest Orchards application materials, together with further information acquired from the applicant and its experts during the public hearing, and further information acquired from experts and staff under the Commission's employ and/or direction, and testimony of the public, contained sufficient information necessary for a fair collective determination of the issues. In addition, information acquired on the record for the original applications, which the Commission acted upon on September 4, 2007, provide additional information for a fair collective determination of the issues.
3. The Commission finds that the applications to change the Zoning Map for the subject property from R-40 to HOD, Earth Excavation, and Site Plan are unified and integrated and apply specifically to the subject property. The Text Amendment, however, does not.
4. The Commission collectively finds that Southington has a documented need for affordable housing; 4.54% of Southington's housing qualifies as "affordable," according to the State of Connecticut, Department of Economic & Community Development's "2006 Affordable Housing Appeals Procedure List" (dated February 1, 2007). Since Southington does not have the State-required 10% affordable housing

units, it is subject to Section 8-30g.

5. Throughout the public hearing, the Commission has repeatedly and expressly recognized that there is a need for affordable housing in Southington as defined by Section 8-30g.

And, with that, we are looking for a motion on the Zone Change #530.

MR. DELSANTO: Mr. Chair, motion to deny the application to change the Southington Zoning Map designation for the subject Property from R-40 to HOD is denied for the following reasons. The Commission specifically finds in the context of the application to change the Zoning Map for the subject property from R-40 to HOD that the evidence and testimony of Town Planning and Engineering Staff; the Town's traffic engineer, Bruce Hillson, P.E., of Traffic Engineering Solutions, P.C.; the letter submitted in response to the applicant's original applications by John F. Daly, Southington Police Chief, dated June 5, 2007; the testimony of Derek Cole, a professional engineer who testified as a member of the public; the evidence submitted by Richard McDonough, Southington Fire Chief; Mr. Farcas, a former Meriden police officer; Mary Ellen Hobson; Ann Halleck; and other members of the public support the reasons for denial set forth below and all provided credible evidence. In making their collective decisions, the Commission members also rely on their own knowledge and experience with the area of Southington in which the subject property is located. The Commission is not persuaded by the evidence and testimony provided by the applicant attempting to establish that the existing street layout would provide sufficient access and circulation for the amount of traffic that would be generated by an HOD development.

1. Reason: Insufficient Vehicular Access to Site.

Substantial evidence in the record: Town Planning and Engineering Staff; the Town's traffic engineer, Bruce Hillson, P.E., of Traffic Engineering Solutions, P.C.; the letter submitted in response to the applicant's original applications by John F. Daly, Southington Police Chief, dated June 5, 2007; the testimony of Derek Cole, a professional engineer who testified as a member of the public; the evidence submitted by Richard McDonough, Southington Fire Chief; Mr. Farcas, a former Meriden police officer; Mary Ellen Hobson; Ann Halleck; and other members of the public support the reasons for denial set forth below and all provided credible evidence. In making their collective decisions, the Commission members also rely on their own knowledge and experience with the area of Southington in which the subject property is located.

Denying the application to change the Zoning Map for the subject property from R-40 to HOD is necessary to protect substantial public interests in provision of adequate public safety services, e.g., fire, police, ambulatory and other public safety response. Based on substantial evidence on the record, the Commission finds that the street systems surround the site cannot provide sufficient access to the site: Kiefer Road is a narrow road that cannot provide adequate alternative access, and at present there is no access to the site from Rahlene Drive, even as an emergency-only access street. Thus, there are insufficient alternative means of access off the main entrance if it is ever blocked or congested. The Commission finds that such public

interests in adequate public safety services clearly outweigh the recognized need for affordable housing in Southington because insufficient access to the site will impede emergency responders and endanger residents of the site. No reasonable change can be made to the affordable housing development because there is only one genuine access point to the site based on the current street layout surrounding the site. Even the proposed alternative of Kiefer Road exits onto Blatchley Avenue, which in turn exits onto Route 322, the same access road as the main entrance for this site. Blatchley Avenue is 600 feet from the only workable main access point for the subject parcel, which the applicant's own consultants originally noted was too close to Blatchley to be a reasonable second access point.

2. Reason: Traffic Generation and Congestion.

Substantial evidence in the record: Town Planning and Engineering Staff; the Town's traffic engineer, Bruce Hillson, P.E., of Traffic Engineering Solutions, P.C.; the letter submitted in response to the applicant's original applications by John F. Daly, Southington Police Chief, dated June 5, 2007; the testimony of Derek Cole, a professional engineer who testified as a member of the public; the evidence submitted by Richard McDonough, Southington Fire Chief; Mr. Farcas, a former Meriden police officer; Mary Ellen Hobson; Ann Halleck; and other members of the public support the reasons for denial set forth below and all provided credible evidence. In making their collective decisions, the Commission members also rely on their own knowledge and experience with the area of Southington in which the subject property is located. The Commission finds that the applicant's testimony and evidence regarding traffic is neither persuasive nor credible.

As explained during the Motion regarding the HOD Text Amendment, this Commission may properly consider off-site traffic impact when deciding on a zone change application, a power that has *not* been changed by the Connecticut Supreme Court's decision in Pansy Road, LLC v. Town Plan & Zoning Commission, 283 Conn. 369 (2007).

Denying the application to change the zoning map for the subject property from R-40 to HOD is necessary to protect substantial public interests in vehicular and pedestrian safety. The Commission finds that such public interests in vehicular and pedestrian safety clearly outweigh the recognized need for affordable housing because traffic generation from HOD development on the site is projected to be three times greater at peak hours than if the site was developed in accordance with existing zoning. The Commission finds that such levels of traffic are unacceptable and would severely exacerbate traffic congestion, increase the dangers to pedestrian and vehicular safety, and impede orderly transportation in Southington. The Commission finds that such public interests in vehicular and pedestrian safety cannot be protected by reasonable changes to the affordable housing development because there is a history of accidents in the surrounding area, the adjacent intersection of Routes 322 and 120 operates at LOS F, and existing high traffic volumes make the traffic congestion dangerous and unacceptable, even with the applicant's proposed traffic improvements.

The Commission does not find the applicant's ---

(End of Tape #1, Side A)

(Beginning of Tape #1, Side B)

--- traffic study, produced by Barkan and Mess, to be persuasive, because more persuasive evidence from the public reflects higher traffic than reported. Additionally, as explained on the record, the traffic study did not account for new traffic generation that will result from developments that have been recently approved in the surrounding area. Further, as shown by persuasive evidence provided by the Town's Traffic Engineer, Bruce Hillson, P.E., the traffic study makes unrealistic assumptions regarding the direction of travel. In particular, while the traffic study assumes very few motorists will use Kiefer Road as an access point, and that very few motorists will turn left onto Route 322 westbound, based on substantial evidence on the record, the Commission finds it more probable that many motorists will use Kiefer Road whenever the main entrance is congested. Moreover, many motorists will turn left onto Route 322 westbound to access Interstate 84 directly. This use of Kiefer Road and left turns onto Route 322 would overburden the streets and surrounding traffic network. Increased traffic on Kiefer Road and surrounding streets would create unacceptable safety hazards because those streets do not have sidewalks and are too narrow to accommodate traffic levels that would be generated by an HOD development. The use of Kiefer Road as an "alternative" access will not alleviate any net traffic congestion because Kiefer Road is accessed via Blatchley Avenue, which simply exits onto Route 322 approximately 600 feet west of the proposed main entrance to this site. Because none of the streets accessible from this site provide access to multiple arterial or collector streets, changing the zoning map for this property from R-40 to HOD would create unacceptable traffic hazards, as explained persuasively by Derek Cole, a professional engineer who testified as a member of the public. Even though the applicant has offered to make some street improvements, the applicant has not provided any comprehensive information to the Commission whether sufficient improvements are possible, feasible, or sufficient to avoid safety hazards on surrounding streets.

The applicant through its traffic engineer at Barkan & Mess testified that it has not submitted any of its proposed traffic improvements to Route 322 to the State Traffic Commission (the "STC"), which has jurisdiction over these matters. At the December 4, 2007 public hearing, Mr. Mess agreed with Attorney Smith, who recounted a conversation he had with Ms. Robbin Cabelus, Executive Director of the STC, that an applicant may follow a dual-track submission process and submit information to the STC for comment while its applications to the STC and the Planning and Zoning Commission are both pending. There is no evidence on the record that it is reasonably probable that the proposed improvements will be approved by the STC.

The Commission finds that the public interests in adequate public safety services and transportation cannot be protected by reasonable changes to the affordable housing development because even with some improvements to surrounding streets, any HOD development will generate far more traffic than the surrounding network of streets can accommodate.

MR. SINCLAIR: Second.

THE CHAIR: Okay, we have a motion to deny the application with a second. Is there any discussion?

ATTORNEY SMITH: I have a technical correction, if I may, on Page 6 of the motion, the first paragraph starts with the word: deny. It should be denying and it was a typographical error on our part.
(Corrected)

MS. SAVAGE: Denying the application or denying the applicant?

ATTORNEY SMITH: Denying the --- it should be the application.
(Corrected) Two words.

MR. DELSANTO: I amend those changes.

MR. SINCLAIR: Second.

THE CHAIR: Ms. Savage?

MS. SAVAGE: Thank you, Mr. Chair.

I'd like to read a memo for the Commission from our original application and refresh your recollection of this and should find this credible, you may wish to add this to your motion. It's from the Department of Police, Chief Jack Daly.

"Dear Ms. Savage: In response to your request for my opinion, comments and/or concerns regarding the proposed 212 unit common interest ownership community known as Hillcrest Orchards of 508 and 544 Meriden Waterbury Road, the following is my response:

In my opinion, this proposed development is not in the best interest of public safety and is based upon my review of numerous factors. Traffic flow, sightlines and accident history are but a few of the areas taken into consideration when reviewing a request.

My opinion as the Chief of Police and the local traffic authority is based upon personal knowledge of the area and my experience in addition to the knowledge and experience of the members of the Southington Police Department. Our opinion may be one sided as we take only the well being of vehicular and pedestrian traffic into consideration and no other outside factors.

Should you have any further questions, please contact my office.

Yours very truly, Chief Jack Daly."

And, that was dated June 5, 2007. It was part of the original application.

MR. DELSANTO: I will incorporate that letter into my motion for denial.

MR. SINCLAIR: I'll continue to second it.

THE CHAIR: Okay, we have a motion and a second for denial. Is there any further discussion?

(No response)

Hearing none, Ms. Savage, would you call the roll please?

ROLL CALL:	Ms. DelDebbio:	Yes
	Mr. DelSanto:	Yes
	Ms. Miceli:	Yes
	Mr. Saucier:	Yes
	Mr. Sinclair:	Yes
	Mr. Vachon:	Yes
	Mr. Oshana:	Yes

THE CHAIR: The motion to deny passes 7 to 0.

Item 4. Hillcrest Orchards, 508-544 Meriden- Waterbury Turnpike, SPR #1485

This application is in regards to the site plan, SPR 1485. Before we move into this, Attorney Smith?

ATTORNEY SMITH: No. Again, we drafted the proposed denial based on the deliberations that occurred on December 4th. And, again, as I said with the others, you can accept, modify or reject this particular motion as you see fit.

THE CHAIR: Thank you.

Ms. Savage?

MS. SAVAGE: Thank you, Mr. Chair. I'd like to put on the record some recommended conditions should you choose to approve is application that staff thinks should be applied to the site plan.

1. The plans shall be revised to satisfy Section 3-08.5 A 4, minimum setback from the road.

2. The landscape plan shall be revised with the applicant and staff to address the identified concerns.

3. If the plans are revised substantially pursuant to STC action and substantial changes to the offsite mitigation, that the Commission would see the revised proposals.

4. That the applicant comply with engineering checklists dated October 23, 2007, November 20, 2007, November 29, 2007 and December 4, 2007.

5. That the applicant shall address the planning comments dated 10/29/07, 11/7/07 - which are dated in error. Those are the comments based on my testimony at the November 20th meeting. And, my comments of December 4, 2007.

6. The applicant will implement uh --- excuse me. (Pause) The applicant shall be required to implement the safety measured detailed in the November 5, 2007 memorandum from Officer Mullins.

7. No construction vehicles shall access the site via Kiefer and Blatchley.

And, that's it. For the site plan.

THE CHAIR: Okay, very good. Thank you.

INTRODUCTION AND BACKGROUND AS TO SITE PLAN REVIEW, S.P.R. #1485

Hillcrest Orchards, LLC, the owner of the subject property (the "Applicant"), submitted proposed modifications under Connecticut General Statutes ("C.G.S.") Section 8-30g(h) to its previously submitted application, consisting of: a petition to change the text of the Southington Zoning Regulations by amending Section 3-08, Housing Opportunity Development ("HOD") Zone (the "Text Amendment"), assigned Z.A. #543; an application to change the Southington Zoning Map designation for the subject property from R-40 to HOD (the "Zone Change"), assigned Z.C. #530; an application for an Earth Excavation permit to remove approximately 18,000 cubic yards of contaminated soil (the "Earth Excavation"), assigned EE #121; and an application for a site plan proposing a 214-unit residential development known as "Hillcrest Orchards" (the "Site Plan"), assigned S.P.R. #1485.

At its September 4, 2007, meeting, the Commission acted on the applicant's original applications by approving the text amendment with modifications, denying the zone change, and denying the site plan.

The Commission opened the public hearings on the resubmitted Text Amendment, application Z.A. #543; the Zone Change, application Z.C. #530; the Earth Excavation, application EE #121; and the Site Plan, application S.P.R. #1485, on November 7, 2007. The hearings were continued to November 20, 2007, and were closed on December 4, 2007.

The Commission deliberated on all four applications on December 4, 2007, and December 18, 2007, with appropriate consent by the applicant to an extension of all four applications to December 18, 2007 and such further extension as necessary to ensure any decision would be issued after the Conservation Commission has acted on these applications. The Conservation Commission acted on these applications on December 13, 2007.

The site plan review #1485:

FINDINGS

1. The Text Amendment, Zone Change, Earth Excavation, and Site Plan applications were submitted to the Commission pursuant to C.G.S. Section 8-30g(h), the resubmission provision of the Affordable Housing Land Use Appeals Act.
2. The Hillcrest Orchards application materials, together with further information acquired from the applicant and its experts during the public hearing, and further information acquired from experts and staff under the Commission's employ and/or direction, and testimony of the public, contained sufficient information necessary for a fair collective determination of the issues. In addition, information acquired on the record for the original applications, which the Commission used in acting on the original applications on September

- 4, 2007, provide additional information for a fair collective determination of the issues.
3. The Commission finds that the applications to change the Zoning Map for the subject property from R-40 to HOD, Earth Excavation, and Site Plan are unified and integrated and apply specifically to the subject property. The Text Amendment, however, does not.
 4. The Commission collectively finds that Southington has a documented need for affordable housing; 4.54% of Southington's housing qualifies as "affordable," according to the State of Connecticut, Department of Economic & Community Development's "2006 Affordable Housing Appeals Procedure List" (dated February 1, 2007). Since Southington does not have the State-required 10% affordable housing units, it is subject to Section 8-30g.
 5. Throughout the public hearing, the Commission has repeatedly and expressly recognized that there is a need for affordable housing in Southington as defined by Section 8-30g.

With that, we are looking for a motion on Hillcrest Orchards, 508, 544 Meriden Waterbury Turnpike, SPR 1485.

Attorney Smith?

ATTORNEY SMITH: One additional comment, Mr. Chairman. In the draft motion that you have before you, on the last page of that there is what is listed a potential additional issues and conditions. That's not fully written out in text. So, that's something that you can or -- either choose to accept, ignore or modify. That's not meant to be part of the text itself.

THE CHAIR: Right.

MR. SAUCIER: Mr. Chair? I'd like to make a motion to deny the site plan application, SPR 1485.

The Site Plan application is denied for the following reasons: The Commission specifically finds in the context of the site plan application that the evidence and testimony of the Town Planning and Engineering Staff; the Town's traffic engineer, Bruce Hillson, P.E., of Traffic Engineering Solutions, P.C.; the testimony of Derek Cole, a professional engineer who testified as a member of the public; the evidence submitted by Richard McDonough, Southington Fire Chief; Mr. Farcas, a former Meriden police officer; Mary Ellen Hobson; Ann Halleck; and other members of the public support the reasons for denial set forth below and all provided credible evidence that supports the denial described below. In making their collective decisions, the Commission members also rely on their own knowledge and experience. The Commission is not persuaded by the applicant's testimony and evidence attempting to establish that the site plan would provide adequate access, internal circulation, landscaping, and drainage.

1. Reason: Insufficient Vehicular Access to the Site.

Substantial evidence in the record: Town Planning and Engineering Staff; the Town's traffic engineer, Bruce Hillson, P.E., of Traffic Engineering Solutions, P.C.; the testimony of Derek Cole, a

professional engineer who testified as a member of the public; the evidence submitted by Richard McDonough, Southington Fire Chief; Mr. Farcas, a former Meriden police officer; Mary Ellen Hobson; Ann Halleck; and other members of the public all provided credible evidence that supports the denial described below. In making their collective decisions, the Commission members also rely on their own knowledge and experience.

Denying this site plan is necessary to protect substantial public interests in provision of adequate public safety services, e.g., fire, police, ambulatory and other public safety response. Based on substantial evidence on the record, the Commission finds that Kiefer Road provides insufficient alternative access to the site, and at present there is no access to the site from Rahlene Drive, even as an emergency-only access street. The site plan does not adequately provide access at Kiefer Road through the rotary at the edge of the site because it would become heavily congested due to the placement of the school bus stop and motorists exiting the site via Kiefer Road. In making this finding, the Commission finds that the applicant's traffic study and the testimony of its traffic engineers are not persuasive, while it finds that the testimony and report of the Town's traffic engineer, Bruce Hillson, P.E., as well as members of the public identifying that substantial traffic will surround the school bus stop, to be very persuasive. In addition, the Commission finds the testimony of Derek Cole, a professional engineer who testified as a member of the public, particularly persuasive in showing that the applicant failed to demonstrate the traffic capacity of the exit at Kiefer Road and also failed to provide for the traffic at the rotary on school days.

The Commission finds that the public interests in adequate access to emergency services and pedestrian and vehicular safety at the site entrances and exits clearly outweigh the recognized need for affordable housing because insufficient site access would impede emergency responders and endanger vehicular and pedestrian safety. The Commission finds that such public interests in adequate public safety services and vehicular and pedestrian safety cannot be protected by reasonable changes to the affordable housing development because there is only one arterial/collector road available as ultimate access to the site and the current plans do not provide sufficient controls to ensure orderly access and circulation at the proposed alternative access via Kiefer Road. In addition, the Commission finds that the applicant has failed to demonstrate how any proposed street improvements could adequately alleviate these emergency access and vehicular and pedestrian safety concerns.

2. Reason: Site Plan Does Not Conform to the HOD as Amended

Substantial evidence in the record: Town Planning and Engineering Staff; testimony of Derek Cole, a professional engineer who testified as a member of the public; and other members of the public. In making their collective decisions, the Commission members also rely on their own knowledge and expertise. Denying the site plan is necessary to protect substantial public interests in assuring that all site plans comply with the zoning regulations, in ensuring vehicular and pedestrian safety, providing adequate play and recreation areas, providing for the privacy, slope, and drainage of abutters, and ensuring adequate access to the site. The Commission finds that such public interests in public safety, abutters' privacy and drainage, play and recreation area, and emergency access clearly outweigh the

recognized need for affordable housing in Southington because such requirements are not unduly onerous or expensive and are essential to public safety and welfare. The Commission finds that such public interests cannot be protected by reasonable changes to the affordable housing development because the applicant has been given ample opportunity to comply with these requirements but has failed to do so thus far: no plans have shown how sufficient setbacks and adequately designed play or recreation area could be adapted into this site plan, and even with traffic improvements, the adjoining streets provide insufficient infrastructure to construct adequate entrances and exits to the site. Thus, no reasonable changes to the site plan can protect any of these substantial public interests.

a. Setbacks from the Road

The site plan does not comply with Section 3-08.5(A)(4) of the Southington Zoning Regulations, which requires that "the minimum setback from the road shall be 40 feet." This requirement initially appeared in the *applicant's* proposed zoning text amendment dated March 29, 2007. The Commission finds that the testimony and evidence presented by Town Staff is persuasive and that the applicant's explanation regarding the interpretation of the section is not persuasive. Thus, the Commission finds that the term "road," which, unlike the word "street," is not defined anywhere in the Southington Zoning Regulations, and therefore applies to any road, including the internal roads of a private development. The Commission finds that the applicant had adequate notice to amend the site plan in light of this provision, which the applicant wrote. The Commission finds that compliance with this requirement is essential to advance the substantial public interests in pedestrian and vehicular safety, which clearly outweigh the recognized need for affordable housing because affordable housing can be constructed in compliance with the setback requirement and the setback is essential to provide a buffer from internal roads, which is crucial to protect pedestrian and vehicular safety. No reasonable change can be made to the development because the applicant had ample opportunity to comply with this requirement yet has not presented any design that will accommodate forty-foot setbacks from internal roads.

b. Unacceptable Play and Recreation Area

The site plan does not comply with Section 3-08.5(D) of the Southington Zoning Regulations, which requires at least 400 square feet of "enclosed playspace" for children per unit of the development, which would total approximately 85,600 square feet of total enclosed playspace for this site plan. Although the site plan provides 87,458 square feet, the nature of that space is not acceptable. As noted by various Commission members on the record, the playspace is unacceptable because it is broken up into very small areas between buildings that provide insufficient area for active recreation. Thus, the Commission finds that the poorly placed and insufficient play area harms the substantial public interest in the public health of the residents of the development, which clearly outweighs the recognized need for affordable housing because this requirement is not unduly onerous or burdensome and is essential for children's public health. Additionally, the Commission finds that the applicant had adequate notice to amend the site plan in light of this provision and thus no reasonable change can be made to the site plan.

c. Landscaping

The site plan does not comply with Section 3-08.5(D) of the Southington Zoning Regulations, which requires that "[e]ach property line shall be paralleled by a landscaped screen at least 20 feet wide planted to a mixture of evergreen and deciduous trees." Instead, the Commission finds that the current site plan indicates only the vague position of proposed landscaping screens. The Commission finds the testimony and reports of Town Staff persuasive and that the full landscaping should be indicated on the plan to ensure the landscaping is conducted properly. The Commission finds that full landscaping is necessary to the substantial public interests in protecting the privacy, slopes, and drainage of abutters, which clearly outweigh the recognized need for affordable housing because these requirements are not unduly expensive or onerous. No reasonable change can be made to the site plan because the applicant had adequate notice to amend the site plan's landscaping to comply fully with this requirement.

3. Reason: Stormwater Management and Drainage

Substantial evidence in the record: evidence and testimony provided by Town Planning and Engineering Staff; and testimony of Derek Cole, professional engineer who testified as a member of the public. Denying the site plan for inadequate stormwater management and drainage is necessary to protect substantial public interests in adequate stormwater management and drainage. The Commission finds that such public interests in stormwater management and drainage clearly outweigh the recognized need for affordable housing in Southington because any housing development without adequate stormwater management and drainage could become unstable, threaten wetlands and other natural resources, injure abutting properties, and make the development unsafe. The Commission finds that the testimony of the Town Planning and Engineering Staff and the testimony of Derek Cole, a professional engineer who testified as a member of the public, is credible, and shows that the current plans do not provide appropriate direction of water flow, nor do they address the Town Staff concerns regarding drainage towards Kiefer Road or the appropriate number of rain gardens. No reasonable changes can be made to the site plan that would protect the substantial public interests in stormwater management and drainage because the applicant was given ample opportunity to correct its plans, yet the stormwater management and drainage are still inadequate.

That's our findings.

THE CHAIR: We have a motion for denial.

MR. DELSANTO: Second.

THE CHAIR: And, a second. Any other discussion on this?

(No response)

Hearing none, Ms. Savage, would you call the roll, please?

ROLL CALL:	Ms. DelDebbio:	Yes
	Mr. DelSanto:	Yes
	Ms. Miceli:	Yes
	Mr. Saucier:	Yes
	Mr. Sinclair:	Yes

Mr. Vachon: Yes
Mr. Oshana: Yes

THE CHAIR; Motion to deny passes 7 to 0.

Item 5. Hillcrest Orchards, 508-544 Meriden- Waterbury Turnpike, EE #121

Attorney Smith?

ATTORNEY SMITH: Yes, as I stated at the outset of the meeting, Mr. Chairman and Members of the Commission, the Commission had given just a very broadest outline of the concept that it may choose to deny this earth excavation permit at it's meeting on December 4th.

However, since there were no reasons given in either direction, we took the trouble to draft both an approval resolution and a denial resolution so it's up to the Commission which one they choose to read into the record. But you have both available to you.

THE CHAIR: Thank you. Ms. Savage?

MS. SAVAGE: Thank you, Mr. Chair. I have several recommended conditions of approval should you choose to approve the EE and I'd like to read those into the record.

First, that the applicant will implement the earth removal plan in conformance with review comments dated 11/17/07, 11/20/07 and 11/30/07 from Ms. Cyr and plan sheets 34, 35, 36 and 42 revised to November 28, 2007 and the Fuss & O'Neill report revised to November 26th, 2007.

The Commission should stipulate that if the environmental monitor is to change from Fuss & O'Neill, the Town Planner and the Commission shall be notified via certified mail.

The applicant must implement the safety measures detailed in the November 5th, 2007 memorandum from Officer Mullins with regard to the requirement for patrol officers with lights and the traffic safety measures associated with the soil removal plan.

No construction vehicles shall access the site via Kiefer and Blatchley.

The dust control detail shall be revised appropriately.

A qualified contractor for the soil removal operation shall be identified with a 24-hour contact information and information on the contractor's insurance.

And, that the Commission should require the posting of a performance bond to cover the cost of the independent review the soil removal process. If you recall, I provided cost estimates to you. The applicant had testified that Fuss & O'Neill would be the implementer and therefore it is likely that the lower of the cost estimates would apply and that is approximately \$7,600. But we would expect a performance bond be required of the applicant for that.

And, that's all I have.

THE CHAIR: Thank you very much. Okay.

INTRODUCTION AND BACKGROUND AS TO EARTH EXCAVATION, E.E. #121

Hillcrest Orchards, LLC, the owner of the subject property (the "Applicant"), submitted proposed modifications under Connecticut General Statutes ("C.G.S.") Section 8-30g(h) to its previously submitted application, consisting of: a petition to change the xt of the Southington Zoning Regulations by amending Section 3-08, Housing Opportunity Development ("HOD") Zone (the "Text Amendment"), assigned Z.A. #543; an application to change the Southington Zoning Map designation for the subject property from R-40 to HOD (the "Zone Change"), assigned Z.C. #530; an application for an Earth Excavation permit to remove approximately 18,000 cubic yards of contaminated soil (the "Earth Excavation"), assigned EE #121; and an application for a site plan proposing a 214-unit residential development known as "Hillcrest Orchards" (the "Site Plan"), assigned S.P.R. #1485.

At its September 4, 2007, meeting, the Commission acted on the applicant's original applications by approving the text amendment with modifications, denying the zone change, and denying the site plan.

The Commission opened the public hearings on the resubmitted Text Amendment, application Z.A. #543; the Zone Change, application Z.C. #530; the Earth Excavation, application EE #121; and the Si Plan, application S.P.R. #1485, on November 7, 2007. The hearings were continued to November 20, 2007, and were closed on December 4, 2007.

The Commission deliberated on all four applications on December 4, 2007, and December 18, 2007, with appropriate consent by the applicant to an extension of all four applications to December 18, 2007 and such further extension as necessary to ensure any decision would be issued after the Conservation Commission has acted on these applications. The Conservation Commission acted on these applications on December 13, 2007.

EE # 121 Findings:

1. The Text Amendment, Zone Change, Earth Excavation, and Site Plan applications were submitted to the Commission pursuant to C.G.S. Section 8-30g(h), the resubmission provision of the Affordable Housing Land Use Appeals Act.
2. The Hillcrest Orchards application materials, together with further information acquired from the applicant and its experts during the public hearing, and further information acquired from experts and staff under the Commission's employ and/or direction, and testimony of the public, contained sufficient information necessary for a fair collective determination of the issues. In addition, information acquired on the record for the original applications, which the Commission acted upon on September 4, 2007, provide additional information for a fair collective determination of the issues.

3. The Commission finds that the applications to change the Zoning Map for the subject property from R-40 to HOD, Earth Excavation, and Site Plan are unified and integrated and apply specifically to the subject property. The Text Amendment, however, does not.
4. The Commission collectively finds that Southington has a documented need for affordable housing; 4.54% of Southington's housing qualifies as "affordable," according to the State of Connecticut, Department of Economic & Community Development's "2006 Affordable Housing Appeals Procedure List" (dated February 1, 2007). Since Southington does not have the State-required 10% affordable housing units, it is subject to Section 8-30g.
5. Throughout the public hearing, the Commission has repeatedly and expressly recognized that there is a need for affordable housing in Southington as defined by Section 8-30g.

With that, we are looking for a motion for the EE # 121.

MS.KENNEDY DELDEBBIO: I'd like to make a motion to deny the Earth Excavation Permit #121. The earth excavation application is denied for the following reasons: The Commission specifically finds in the context of the earth excavation application that the evidence and testimony of members of the public supports the reasons for denial set forth below. The Commission is not persuaded by the testimony provided by Robert Potterton, P.E., the applicant's consultant, attempting to establish that the plan for earth excavation would avoid traffic dangers at the access point to the site and ensure adequate supervision of the excavation. The Town's traffic engineer, Bruce Hillson, P.E., of Traffic Engineering Solutions, P.C., had requested sight line information for the excavation trucks, but that information was not provided, which further establishes that the earth excavation plan endangers traffic safety. The large number of heavily laden trucks entering and leaving the site will create traffic dangers and track contaminated soil onto public streets. The Commission disagrees with the applicant's assertions that the consulting engineers could ensure the trucks will not track contaminated soil across the property or onto the public streets. The Commission also finds that the applicant failed to submit sufficient information regarding its plan, such as its failure to submit topographical maps. Even if specific parts of the applicant's plans could be changed, the applicant's repeated failure to provide adequate information contributes cumulatively to the reasons for denial. The Commission also finds that the Earth Excavation application is inextricably linked with the Site Plan and must therefore deny the Earth Excavation application in light of its denial of the application for Site Plan Review, S.P.R. #1485. The Commission finds that the substantial public interests in traffic safety, avoiding hazardous materials contamination, and ensuring orderly development in conjunction with site plan review clearly outweigh the recognized need for affordable housing because traffic safety and preventing environmental contamination are paramount. No reasonable change can be made to the earth excavation plan because no plan can adequately protect against traffic dangers and cross-contamination of the soil.

MR. SINCLAIR: Second.

THE CHAIR: WE have a motion and a second for approval.

ATTORNEY SMITH: Mr. Chairman, excuse me. Denial.

THE CHAIR: Excuse me, denial. Attorney Smith?

ATTORNEY SMITH: Yes, thank you, Mr. Chairman. I just wanted to correct a typographical error in the motion. It's Robert Potterton and not Potterson. (Corrected)

MS. DELDEBBIO: So, with that change I make the motion.

MR. SINCLAIR: Second.

THE CHAIR: We have a motion and a second for the denial of the earth excavation permit EE #121 as amendment with the typographical adjustment.

Ms. Savage?

MS. SAVAGE: I have on other point to bring back to your attention. Mr. Hilson did indicate at the last meeting that with regard to the EE plan, he had requested the truck sightlines for the vehicles leaving the site to insure there was adequate sightlines for safety reasons and as of the close of the public hearing, we had not ever received that information so he was unable to determine if there was adequate sightlines for the excavation trucks.

MS. DELDEBBIO: I'd like to include that in my motion.

MR. SINCLAIR: And, my second.

THE CHAIR: Very good. Any further discussion?

(No response)

Hearing none, Ms Savage, would you call the roll, please?

ROLL CALL:	Ms. DelDebbio:	Yes
	Mr. DelSanto:	Yes
	Ms. Miceli:	Yes
	Mr. Saucier:	Yes
	Mr. Sinclair:	Yes
	Mr. Vachon:	Yes
	Mr. Oshana:	Yes

THE CHAIR; Motion to deny passes 7 to 0.

(Attorney Smith and Attorney Norwood left the meeting at this time.)

6. Request for \$3,000 bond in lieu of site plan compliance, 31 Liberty Street SPR #1414.1

MS. SAVAGE: Staff supports this.

MR. SINCLAIR: So moved.

MR. DELSANTO: Second.

(Motion passed unanimously on a voice vote.)

7. Request for \$24,300 bond in lieu of site plan compliance and \$12,000 for erosion and sedimentation and landscaping, Comfort Suites, 64 Knotter Drive SPR #1353.

MS. SAVAGE: Staff supports this.

MR. DELSANTO: So moved.

MR. SAUCIER: Second.

THE CHAIR: We can do this one? Okay.

(Motion passed on a majority voice vote with Mr. Sinclair opposed.)

8. Request for release of \$1,000 E & S bond, St. Aloysius Church, 254 Burritt Street SPR #1325.

MS. SAVAGE: Staff supports this.

MR. SINCLAIR: So moved.

MR. SAUCIER: Second.

(Motion passed unanimously on a voice vote.)

9. Request for 90-day extension for filing Mylar, Florian Estates, 68 and 78 West Street S #1256.

MR. SAUCIER: So moved.

MR. SINCLAIR: Second.

(Pause)

MS. SAVAGE: Sorry, Mr. Chair. Staff supports this.

MR. SAUCIER: So moved.

MR. SINCLAIR: Second.

(Motion passed unanimously on a voice vote.)

10. Readjustment of E & S Bond for \$5,000, Rivercrest SPR #1365.

MS. SAVAGE: Mr. Chair, if I can just explain. At the previous meeting we had an E & S bond of \$17,000 and it was for Phase 1. And, the Commission approved a reduction to \$1500.

As I was doing the paperwork to administratively process that, it came to my attention that there had not ever been a bond posted for E & S for Phase II.

Given that information, staff discussed the matter and we feel that a more appropriate bond amount to see through the completion of the project is \$5,000.

So we are recommending that we readjust the E & S bond for this project to \$5,000.

MR. SINCLAIR: Move to readjust the bond.

MR. DELSANTO: Second.

(Motion passed unanimously on a voice vote.)

11. Acceptance of Cedar Post Drive pending receipt of maintenance bond in the amount of 21,400. Cedar Post Estates, S 1222.

MS. SAVAGE: Staff supports this.

MR. DELSANTO: So moved.

MR. SINCLAIR: Second.

(Motion passed unanimously on a voice vote.)

12. Briarwood College Dental Building reduction of the 17,700 erosion and sedimentation bond to a new amount of 2,000 to cover landscaping and plantings to be completed in the spring of 2008. SPR 1451.1.

MS. SAVAGE: Staff supports this.

MR. SINCLAIR: So moved.

MR. SAUCIER: Second.

(Motion passed unanimously on a voice vote.)

13. Reduction of E & S bond from 9,000 to a new amount of 3,000, Stoneybrook II, Winding Ridge, S 1733.

MS. SAVAGE: Staff supports this.

MR. SINCLAIR: So moved.

MR. SAUCIER: Second.

(Motion passed unanimously on a voice vote.)

14. The acceptance of Hazel Court, Five Acre Estates, pending submission of a maintenance bond in the amount of \$27,500, S 1239 and additionally accepting the length of roadway, 375 feet under the same subdivision.

MS. SAVAGE: Staff supports this.

MR. SINCLAIR: So moved.

MR. DELSANTO: Second.

(Motion passed unanimously on a voice vote.)

ITEMS TO SCHEDULE FOR PUBLIC HEARING

1. GS Property, LLC, application for outdoor storage in conjunction with a new warehouse, 125 Robert Porter Road (SPU #451) January 15, 2008

MS. SAVAGE: Mr. Chair, I had sent you an email regarding the date of the second meeting in January?

THE CHAIR: We're scheduled right now for Tuesday, the 15th, I believe it is. On Tuesday the 15th there is an event scheduled that evening to honor Councilwoman Victoria Triano and to the Commission, we would like to discuss moving that meeting from Tuesday to Wednesday, the 16th.

So, unless there is an issue, I would like to move our meeting from Tuesday, the 15th of January to Wednesday, the 16th of January. That's the night we're going to meet for our second meeting of January.

MR. SINCLAIR: I have a scheduling conflict.

THE CHAIR: Okay, so we would schedule our second meeting for Wednesday, January 16th. And, with that there will be hearing for G S Properties, LLC for outdoor storage?

MS. SAVAGE: Yes.

THE CHAIR: Very good. We'll schedule that for that meeting.

ADMINISTRATIVE REPORTS

MS. SAVAGE: I have none.

RECEIPT OF NEW APPLICATIONS

MS. SAVAGE: I have three new applications. One is the resubdivision application for Pacer Lane. If you'll recall when we recently approved it, we advised them to make some modifications and resubdivide.

We have a site plan application for 125 Robert Porter Road -- - that's that industrial one lot subDdivision you recently approved. It's for an industrial building. And, a SPU application for outdoo storage.

And, we have a site plan application for an addition to retail office space at 965 South Main Street, SPR 1492.

THE CHAIR: Great. Okay, very good.

With that, is there anything that the Commission would like to bring up at this point?

MR. SAUCIER: Hope everybody has a safe and healthy holiday and New Year.

MR. DELSANTO: See you Next Year !!!!

THE CHAIR: I hope everybody has a very Merry Christmas and Happy Holidays to everybody.

I wish everybody a very Happy New Year, Safe, Happy, very prosperous New Year.

We are looking for a motion to adjourn.

MR. SINCLAIR: So moved.

MR. SAUCIER: Second.

(Motion passed unanimously on a voice vote.)

HAPPY NEW YEAR EVERYBODY !!!!