

**TOWN OF EAST WINDSOR  
PLANNING AND ZONING COMMISSION**

**Public Hearing #1598  
September 13, 2011**

**\*\*\*\*\*Draft Document subject to Commission Approval\*\*\*\*\***

The Meeting was called to order in the Town Hall Meeting Room, 11 Rye Street, Broad Brook, CT. at 7:00 P. M. by Chairman Ouellette.

**ESTABLISHMENT OF QUORUM:**

Chairman Ouellette welcomed new Alternate Member Richard Sullivan to the Commission. A quorum was established as five Regular Members (Devanney, Gowdy, Ouellette, Thurz, and Wentworth) and two Alternate Members (Sullivan and Zhigailo) were present. Chairman Ouellette noted all Regular Members would sit in, and vote, on all Items of Business this evening. Following in accordance with the service rotation schedule Alternate Members would join the Board regarding discussion and action on all Items of Business if Regular Members step down from service. Those Alternate Members having participated in discussion of pending Agenda Items during previous Meetings will continue to participate in that Agenda Item this evening.

Also present was Town Planner Whitten.

**GUESTS:** Selectmen Richard Pippin; Kathy Pippin, Board of Finance.

**EXECUTIVE SESSION/Per CGS 1 – 200(B)(6)(D) for purposes of discussing legal opinion memo with Attorney/Client Privilege:**

**MOTION: To GO INTO EXECUTIVE SESSION at 7:02 p.m. Attending: Chairman Ouellette, Commissioners Devanney, Sullivan, Thurz, Wentworth, and Zhigailo; Town Planner Whitten; Attorney Whitney; First Selectman Menard. The Recording Secretary and Commissioner Gowdy left the room.**

**Devanney moved/Wentworth seconded/In Favor: Unanimous**

**MOTION: To COME OUT OF EXECUTIVE SESSION at 7: 34 p.m.**

**Devanney moved/Wentworth seconded/In Favor: Unanimous**

**ADDED AGENDA ITEMS:** None.

**PUBLIC PARTICIPATION:** No one requested to speak.

**APPROVAL OF MINUTES/August 9, 2011:**

**MOTION:** To APPROVE the Minutes of Public Hearing #1597 dated August 9, 2011 with the following amendments:

Page 3, **PERFORMANCE BONDS – ACTIONS; PERMIT EXTENSIONS; ROAD ACCEPTANCE; Mansions at Canyon Ridge; Correction of Motion: “To REDUCE the Landscaping Bond for Phase 2 to \$60,000– RELEASE THE \$60,000 LANDSCAPING BOND, TO BE REPLACED WITH A \$6,000 BOND TO COVER minor landscaping plantings.”**

Page 19, **NEW BUSINESS: Gerald Wilcox** – Request for Site Plan Approval....; Condition #9: “All public health and safety components of the project must be satisfactorily completed prior to occupancy. In cases where all of these components have NOT been completed.....”

Page 19, **NEW BUSINESS, Gerald Wilcox** – Request for Site Plan Approval....; General Conditions; Condition #10: “In accordance with Section ~~13.5.4~~ 900.3h of the Zoning Regulations.....”

**Devanney moved/Gowdy seconded/VOTE: In Favor: Unanimous**

#### **RECEIPT OF APPLICATIONS:**

Chairman Ouellette acknowledged receipt of the following Applications:

1. Application of Chestnut Point Realty LLC for Modification of approved Site Plan for additional parking area at Chestnut Point Care Center, 171 Main Street, East Windsor. [R-1 Zone; Map 101, Block 9, Lot 2]
2. Application of Walter E. Bass, Jr., for a Zone Change from A-1 to MFDD for property located on Winkler Road and North Road. [Map 114, Block 24, Lot 5]
3. Application of Walter E. Bass, Jr. for a Special Use Permit to allow a 20-unit multi-family residential condominium complex (McLellan Way) located on Winkler Road and North Road. [Map 114, Block 24, Lot 5]
4. Application of Advanced Wheels of Technology, Inc. for Site Plan Approval for modification and addition parking at 230 Main Street, East Windsor, owned by UPS Capital Business Credit. [M-1 Zone; Map 91, Block 12, Lots 29 & 30B].

#### **LEGAL NOTICE:**

The following Legal Notice, which appeared in the Journal Inquirer on Friday, September 2, 2011, and Friday, September 9, 2011, was read by Chairman Ouellette:

1. Application of West River Farms, LLC, c/o Kahan, Kerensky & Capossela, LLP for a proposed Text Amendment to Section 801 (*Planned Residential Development – PRD*) of the Zoning Regulations to allow a PRD in a Multi-Family Development Zone (MFDD).

**PERFORMANCE BONDS – ACTIONS; PERMIT EXTENSIONS; ROAD**

**ACCEPTANCE: Hillside Farms** – Request from J. R. Russo & Associates for release of the remaining maintenance bond for the Hillside Farms Active Adult Community:

Chairman Ouellette noted receipt of the following: 1) letter dated 9/8/2011 from J. R. Russo & Associates requesting release of the remaining Maintenance Bond; and 2) memo from Town Engineer Norton dated 9/12/2011 recommending release of the remaining bond.

The Commissioners agreed that if Town Engineer Norton is satisfied then they would go with his recommendation.

**MOTION TO APPROVE the release of the \$20,000 bond for E&S Maintenance for Hillside Farms located off Depot Street Map 98, Block 53, Lot 16.**

**Devanney moved/Gowdy seconded/**

**VOTE: In Favor: Unanimous (Devanney/Gowdy/Ouellette/Thurz/Wentworth)**

**OLD BUSINESS: Newberry Road Enterprises/Steve Dearborn** – Special Use Permit for a Modification to Volume Reduction Facility at property located at 68 Newberry Road, East Windsor, CT. [M-1 Zone; Assessor's Map 93, Block 19, Lot 6] (*Hearing closed 7/25/2011; Action Continued; Deadline for decision 9/29/2011*):

LET THE RECORD SHOW Commissioner Gowdy stepped down from service; Commissioner Zhigailo joined the Commission in his place.

Chairman Ouellette noted the Town Planner Whitten had given a clarification of what occurred at the last meeting; the pending issues are the setback distance, and the height of the stockpiles. Some operations don't fit neatly into the Regulations, and the Commission should do it's very best to look at the Zoning Regulations to find similar applications which would be related to the proposed activity.

Regarding the issues of setback distances and height of stockpiles, Chairman Ouellette noted the Commission spent many meetings with the Applicant. The numbers discussed have varied, the Commission has heard from a concerned neighbor regarding the stockpiles, Town Planner Whitten has referenced all along the 100' set back distance, and that it should be considered in this Application. Chairman Ouellette noted that on the proposed conditions of approval the 100' set back distance is referenced in Condition #20. Chairman Ouellette noted that Town Planner Whitten has suggested the 100' set back distance should be the same as similar applications; Chairman Ouellette noted he supports her recommendation.

Commissioner Wentworth suggested that the problem, as he sees it, is even with the passage of this Application this is doomed; it will go into appeals and he understands there are ways for that to be avoided. He would like to pass it but..... Chairman Ouellette questioned if Commissioner Wentworth was comfortable with the 100' setback distance; would he like to see more? Commissioner Wentworth indicated - not more; it won't fly without the 100'. Even if there is a compromise, it won't fly. No matter what we do it won't pass. Commissioner

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Wentworth suggested it seemed to him that Mr. Dearborn should do what he can to fix it so he can operate.

Chairman Ouellette noted that during the Public Hearing the Commission discussed ways it could work, and the Applicant didn't go with that. Chairman Ouellette felt the Commission had tried. Commissioner Wentworth indicated he was aware of that; he felt this needs to find another way to go.

Commissioner Devanney cited Section 814 references the 100' setback distance; she felt the Commission needs to stick with that. Maybe the other, the wood chips, could go to 50' but to be consistent go with 100' set back. Commissioner Devanney was comfortable with the 35' stockpile height.

Commissioner Wentworth recalled that Mr. Wilcox had stated there was a difference between wood chips and dirt near his property; Commissioner Wentworth felt if there was a compromise on that maybe someone can find success here.

Chairman Ouellette questioned Town Planner Whitten if there was anything more she would like to bring to the Commission? Town Planner Whitten recalled that when this was originally approved the Commission held to the 100' set back distance. She noted Section 814 is the most similar to this proposal. Chairman Ouellette clarified that the Applicant can ask for the lesser distances. Town Planner Whitten concurred, noting that barring specific regulations it's a common practice in case law to refer to other similar sections in the regulations. Chairman Ouellette clarified that Town Planner Whitten was saying that Zoning Regulations can never be all encompassing; Town Planner Whitten concurred.

Commissioner Zhigailo questioned that the piles that are non-conforming now, and the time lines for rectification are ..... Town Planner Whitten noted the conditions of approval reference State Statutes; Site Plans are void if the Applicant doesn't start within a year. An exception can be granted, but only by Commission approval. Commissioner Zhigailo then stated that if he starts working on the setbacks he would have a year to get to them; it isn't a hardship; it's not like he can't do anything until he moves something, and the neighbor will see that he is working on it. And because of the Regulations we have a 100' set back distance; he would have a year to work on it.

Town Planner Whitten noted this Application is for Site Plan Modification and Expansion, but it's also for compliance. Chairman Ouellette noted that if this Application is approved the conditions of approval will become valid; that means the hours of operation listed in Condition #17 are valid. This Approval supersedes the previous conditions. Town Planner Whitten concurred, noting that was correct.

Commissioner Wentworth indicated that he understood that the top soil stockpile is part of this problem, but if it's used for landscaping it's not a problem; landscaping doesn't mean moving mountains. If it could come in under these guidelines we don't have a problem. Town Planner Whitten reiterated that the Applicant desires to stockpile, screen, and sell the topsoil, so if he makes it part of the landscaping he can't do that. Commissioner Wentworth suggested that if he used it for landscaping he can alleviate the problem. Town Planner Whitten reiterated that she was not saying, or suggesting, this isn't a permitted use. It doesn't quite fit the regulations for a contractor's storage yard because they don't usually screen or sell the topsoil. It also doesn't fit

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earth excavation because he's not excavating from the site but we have that section in the regulations, Section 814 specifically says the 100' setback distance. Town Planner Whitten suggested if he creates mountains then that changes the topography. Commissioner Wentworth questioned again that if he landscapes with it? Commissioner Wentworth questioned that if he rakes it around, that doesn't do it? Town Planner Whitten questioned if Commissioner Wentworth was talking about laying down 6" of soil or are you talking about.....  
Commissioner Wentworth questioned if there was a way he can alleviate this problem? Town Planner Whitten replied – yes, by moving it 100' from the setback and be compliant.  
Commissioner Wentworth questioned if he rakes it around and leveling it off; that doesn't do it? Town Planner Whitten suggested that didn't serve the Applicant's purpose, nor did she feel it served the purpose to try to come up with different layouts ; if he changes the topography by doing something different that creates different issues – it's hard to give you an answer (on hypothetical situations), if he creates a landscape berm that creates a problem. Commissioner Wentworth felt a business owner who wouldn't be very happy tonight, but he will have food for thought.

Chairman Ouellette noted any applicant has the ability to come back for modifications. Chairman Ouellette queried the Commissioners for more comments, debate, or discussion. No one raised any points of discussion.

Town Planner Whitten noted the modifications are reflected in Conditions #19 and #20.  
Chairman Ouellette called for a motion.

**MOTION TO APPROVE the Application of Steve Dearborn, requesting a modification to Site Plan approval, and a Special Use Permit per Chapter 807 of the Zoning Regulations to expand a volume reduction facility for processing of wood /brush products into mulch; topsoil; and storage of mulch and millings at 68 Newberry Road, and per Chapter 502 for a contractors storage yard. M-1 Zone. (Map 93, Block 19, Lot 6).This approval is granted subject to conformance with the referenced plans (as may be modified by the Conditions) and the following conditions:**

**Referenced Plans:**

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- 1/4 Improvement Location Survey prepared for Newberry Road Enterprises, LLC, 68 Newberry Road, East Windsor CT ,prepared by Landmark Surveys, LLC, 62 Lower Butcher Rd, 860/875-8204 scale 1" = 60', sealed by Guy Hesketh, PE, FA Hesketh & Assoc. Inc. 6 Creamery Brook East Granby, CT 06026 860/653-8000 dated 12/1/2010, last revised 7/20/11
  - 2/4 Detail Sheet last revised 7/20/11
  - 3/4 Wetlands Replication Notes
  - 4/4 Improvement Location survey - 1"= 40' dated 5/24/11, last revised 7/20/11

**-Conditions which must be met prior to signing of mylars:**

1. All final plans submitted for signature shall require the seal and live signature of the appropriate professional(s) responsible for preparation of the plans. (PE and LS)

2. The conditions of this approval shall be binding upon the applicant, land owners, and their successors and assigns. A copy of this approval motion shall be filed in the land records prior to the signing of the final plans.

**Conditions which must be met prior to the issuance of any permits:**

3. Two final full sets of mylars, with any required revisions incorporated on the sheets shall be submitted for signature of the Commission. One shall be filed on the Town Land Records, and one filed with the Planning and Zoning Department
4. Special Use Permit shall be filed on the land records in the Town Clerks Office.
5. An erosion control and sedimentation control bond, in an amount to be determined by the Town Engineer, shall be required for the work associated with the construction of the water quality basin.

**Conditions which must be met prior to certificates of compliance:**

6. All public health and safety components of the project must be satisfactorily completed prior to occupancy. In cases where all public health and safety components have been completed, the Zoning Officer may issue a Certificate of Zoning Compliance provided a suitable bond is retained for any remaining site work.
7. The Fire Marshall must review application and sign annual zoning permit application. Concerns such as height of wood chip piles, and adequate management of saw dust should be considered and addressed.
8. This application specifically allows the storage and processing of wood products on the subject site. This includes wood mulch, sawdust and other similar wood by-products. Additionally, storage and processing of topsoil, and asphalt millings is permitted. The applicant may sell at wholesale or retail finished by-products.

**General Conditions:**

9. Conditions as set forth in Chapter 807 of the East Windsor Zoning Regulations shall be adhered to.
10. In accordance with Chapter 900.3.h of the Zoning Regulations, site plan approval shall become null and void in one year from date of approval if the activities have not commenced and the site plan shall be considered disapproved, unless an extension is granted by the Commission. **All improvements must be completed within five years of the date of approval**, otherwise the approval shall become null and void, unless an extension is granted by the Commission

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11. A Zoning Permit shall be obtained prior to the commencement of any site work.
12. A Zoning permit is required annually with documentation that the site and activities are in conformance with the original permit. Documentation shall be in the form of an “As Built” plan showing location of all stockpiles, impervious surfaces (inclusive of asphalt millings and gravel surfaces), and spot grades.
13. This project shall be constructed and maintained in accordance with the filed plans. Minor modifications to the approved plans that result in lesser impacts may be allowed subject to staff review and approval.
14. Any modifications to the proposed drainage or grading for the site plan is subject to the approval of the town engineer.
15. Additional erosion control measures are to be installed as directed by town staff if field conditions necessitate.
16. By acceptance of this approval and conditions, the applicant, owner and/or their successors and assigns acknowledge the right of Town Staff to periodically enter upon the subject property for the purpose of determining compliance with the terms of this approval.

**Additional Conditions:**

17. Hours of operation are 6 am - 7 pm Monday – Sunday, with the exception that the business will be closed on Sundays from September – March. These hours will include utilization of on site equipment such as tub grinders, skid steer and loaders.
18. Topsoil removed from the excavation of the water quality basin is to be stored on site. Excess material is to be trucked off site and disposed of elsewhere.
19. **All wood chip stockpiles processed or otherwise, shall be located a minimum of 100 feet from any property line. This shall include the storage and use of all grinding machinery and loading activity. The maximum height shall be 35 feet.**
20. **Soil and Amesite Stockpiles shall be located a minimum of 100 feet from any property line and not exceed the height of 35 feet.**
21. **Conditions as set forth in #18 and 19 above shall be shown on the plans. Final plans are to be approved by the Town Planner before signing or filing.**
22. A bond shall be posted and maintained by the applicant to ensure compliance with all conditions of the approval, including, but not limited to, provisions for protecting the Town of East Windsor in the event a facility terminates operations

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with a large amount of material on the site.

23. Truck trips shall not exceed 30 trips per day.
24. Field Markers shall be placed along property lines demarcating the required setback approved. These markers should be visible from the road

**Devanney moved/Thurz seconded/**

**VOTE:**           **In Favor:**       **Devanney/Ouellette/Thurz/Wentworth/Zhigailo**  
                  **Opposed:**       **No one**  
                  **Abstained:**     **No one**

LET THE RECORD SHOW Commissioner Gowdy returned to service on the Board.

**CONTINUED HEARING: Newberry Village, LLC** – Renewal of Special Use Permit and request for Site Plan Modification to eliminate sidewalks and change phasing for Newberry Village active adult housing development located at Newberry Road and Winkler Road, owned by Newberry Village LLC and LTP Realty, Inc. [Zoned ARHD; Map 104, Block 17, Lots 19-6 & 19] (*Deadline to close hearing 9/13/2011*):

Chairman Ouellette read the Hearing description. Appearing to continue discussion on this Application were Jay Ussery, of J. R. Russo and Associates, LLC, representing the Applicant; Attorney Carl Landolino; and Jim Giorgio, the Applicant.

Mr. Ussery reported this is an Application for Newberry Village, which is an Active Adult common-interest community located on Winkler and Newberry Road. He reported they have met with Town Staff to review the regulations on the following pending issues:

- **Sidewalks** – under the latest revision of the regulations Section 800 indicates that sidewalks are NOT required, while public sewer and water are required. If sidewalks are being proposed they must be shown on the plans.

Mr. Ussery noted they are not proposing sidewalks, and have prepared a plan which no longer shows sidewalks within this development.

- **Traffic** – A traffic study for the proposed 92 unit project was submitted to the State Traffic Commission (STC) during the previous application in 1986. Based on the information provided the STC said a Certificate wasn't required.

Mr. Ussery reported that in lieu of sidewalks Mr. Giorgio is offering entryway improvements which include low block walls with appropriate plantings and ornamental grasses at 4 locations along Newberry and Winkler Roads. The proposed improvements



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will be similar to a comparable project known as Ogdenbrook Estates in Vernon (the wall at Newberry Village will be block rather than stone); copies of the improvements were submitted to the Commission for consideration.

Commissioner Thurz cited concern that the previous application was approved with sidewalks. That application has expired; the applicant is now seeking re-approval of the project without sidewalks. He cited concern that this process is setting a precedent that reapproval of expired projects can occur with different project specifications. Town Planner Whitten concurred that sidewalks were required under the previous application but the applicant could have modified the approval to eliminate the sidewalks under the waiver process. The Town has changed the regulations; sidewalks are no longer required. The Commission must decide if it continues to prefer the addition of sidewalks.

Attorney Landolino suggested the current regulations provide more flexibility. The Commission may want to require sidewalks under certain circumstances. The neighbors have said they don't want sidewalks; the Inland Wetlands Commission doesn't want the sidewalks due to the sensitivity of the area. Commissioner Thurz suggested usually sidewalks aren't that big an issue; they're usually put in at the end of the phase. Attorney Landolino suggested this isn't a subdivision with children. Commissioner Thurz suggested a lot of elderly people like to walk as well. Commissioner Devanney agreed, noting that the older someone gets it's harder to get around; she felt the sidewalk would be the best place for people to walk. Attorney Landolino felt walking on the street was more level than walking on the sidewalks. Commissioner Gowdy noted he wasn't in favor of sidewalks due to liability issues, but he noted sidewalks are always an issue because of concerns as to who shovels them. He can understand the residents not wanting the sidewalks; elimination of sidewalks will be a benefit to their pocketbooks.

Commissioner Devanney requested clarification that if the applicant came in last year and asked for an extension would the application be considered under the previous regulations because the permit hadn't expired? Town Planner Whitten replied affirmatively. Attorney Landolino interjected that they could have asked for a modification; Town Planner Whitten concurred.

Mr. Ussery reviewed similar projects elsewhere in town; he felt Hillside Farms doesn't have sidewalks, and Coleman Farms doesn't have sidewalks but does have a walking trail. Town Planner Whitten clarified that Hillside Farms has a walking trail. Mr. Giorgio suggested that Coleman Farms has sidewalks near the clubhouse.

Chairman Ouellette requested a clarification that if the motion to remove the sidewalks is denied..... Town Planner Whitten indicated then the sidewalks wouldn't be eliminated. Chairman Ouellette questioned that the proposed wall improvements would be off the table; Mr. Giorgio replied from the audience - "yes". Town Planner Whitten noted a landscaping plan is required under the regulations. Chairman Ouellette questioned that when a landscaping plan is required is this (the wall improvements) what you had in mind? Town Planner Whitten noted there is a landscaping plan already in

place for this community. Mr. Giorgio suggested he was trying to enhance the entryway to replace the sidewalks.

Commissioner Sullivan indicated he didn't see how sidewalks will even fit in. They also go through a cycle of freezing and thawing and sometimes deteriorate.

Chairman Ouellette opened discussion to the public:

**Kathy Pippin:** felt that if people are spending money on these homes their will should prevail.

Town Planner Whitten noted that under the previous regulations under the SDD there was no specific section for landscaping, but there is a requirement for open space and recreational space and that's what was provided. A 25' wide landscape buffer was required and that could be waived. The landscape plan was submitted and approved, and now they are saying they will provide a little better landscape plan.

Chairman Ouellette indicated he didn't feel the sidewalks need to be required. He noted he is an advocate for sidewalks but not in this project. Large trucks and school buses don't drive through this project, and the residents have requested to forego the sidewalks.

Chairman Ouellette asked if the Commission was ready to close the Public Hearing?

**MOTION: To CLOSE THE PUBLIC HEARING on Newberry Village, LLC – Renewal of Special Use Permit and request for Site Plan Modification to eliminate sidewalks and change phasing for Newberry Village active adult housing development located at Newberry Road and Winkler Road, owned by Newberry Village LLC and LTP Realty, Inc. [Zoned ARHD; Map 104, Block 17, Lots 19-6 & 19].**

**Devanney moved/Wentworth seconded/**

**VOTE: In Favor: Unanimous (Devanney/Gowdy/Ouellette/Thurz/Wentworth)**

Chairman Ouellette suggested he felt the majority of the Commission felt sidewalks were not required. He noted Commissioner Thurz is not in favor of removing the sidewalks. Commissioner Thurz agreed this is a tight site; he is in favor of changing his position. Commissioner Devanney agreed, and noted she is now in favor of removing the sidewalks as well. Chairman Ouellette questioned if Commissioners Thurz and Devanney were in favor of the proposed improvements? Both Commissioner Thurz and Commissioner Devanney suggested they liked the proposed improvements. Town Planner Whitten noted that under Section 800.6 the Commission can consider an adverse environmental impact with regard to installation of sidewalks; she noted that a recommendation to eliminate the sidewalks was made by the Inland Wetlands Commission. Commissioner Zhigailo noted the Applicant inherited the conditions that were there. She was concerned with the width of the road due to a concern for snow

stockpiles along the edges but she would agree to the elimination of the sidewalks as long as there is an edge that people can walk on. Commissioner Zhigailo noted she talked to residents who were in favor of elimination of the sidewalks. She also noted as Mrs. Pippin said the residents live there and they should be given some consideration.

**MOTION TO APPROVE the elimination of sidewalks.**

**Devanney moved/Gowdy seconded/**

**VOTE: In Favor: Unanimous (Devanney/Gowdy/Ouellette/Thurz/Wentworth)**

**MOTION TO APPROVE the new landscaping plan. .**

**Devanney moved/Gowdy seconded/**

**VOTE: In Favor: Unanimous (Devanney/Gowdy/Ouellette/Thurz/Wentworth)**

**MOTION TO APPROVE Application of Newberry Village LLC for renewal of a special use permit and request for Site Plan Modification to eliminate sidewalks and change phasing for Newberry Village active adult housing development located at Newberry and Winkler Road, owned by Newberry Village LLC and LTP Realty, per Chapter 800 – [Map 104, Block 17, Lots 19-06 & 19 Zoned ARHD] (as may be modified by the conditions) and the following conditions of approval: Town of East Windsor Planning and Zoning commission, Site Plan Motion and conditions, Special Permit – Certified Notice of Approval, filed with the town clerk on 6/29/05, in volume 287 pg 954, as may be amended (Please see attached approved motion.)**

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**Referenced Plans:**

All plans, files, and documents submitted in the 2005 approval as listed in conditions of approval attached.

“Resubdivision Plan”, Newberry Village, An active Adult Community declarant Newberry Village LLC, Newberry Rd and Winkler Rd, East Windsor CT, prepared by J.R. Russo and Associates, 1 Shoham Road, Eat Windsor, CT 06088, 860/623-0569 phone, 860/623-2485 fax, sheet 1 of 1, scale 1” = 100’ dated 11/26/08, last revised 3/28/11

Permit Renewal Exhibit Plan, Newberry Village, Newberry Rd & Winkler Rd, East Windsor CT Map 15, Blk 17 Lots 19-6 & 19-7, Zone A1, for Newberry Village LLC PO Box 495, Broad Brook, CT 06016 prepared by J.R. Russo and Associates, 1 Shoham Road, Eat Windsor, CT 06088, 860/623-0569 phone, 860/623-2485 fax, sheet 1 of 1, scale 1” = 120’ dated 6/21/11

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**Conditions that must be met prior to signing of mylars:**

1. The applicant shall submit a paper copy of the final approved plans to the Town Planner for review and comment prior to the submission of the final

mylar copies for signing by the Commission.

2. Two sets of final mylar plans shall be submitted to the Commission for signature. All plans shall require the seal and live signature of the appropriate professional(s) responsible for preparation of the plans. (One paper set of the Floor Plans and Elevation shall be submitted for signature.)
3. The final plans shall contain the street numbers (unit numbers) assigned by the East Windsor Assessor's Office.
4. The conditions of this approval shall be binding upon the applicant, land owners, and their successors and assigns. A copy of this approval motion shall be filed in the land records prior to the signing of the final mylars.

**Conditions that must be met prior to the issuance of any permits:**

5. One copy of any revised final site plan shall be filed on the land records.
6. A copy of the Special Use Permit and all conditions of approval must be filed on the land records
7. A landscape bond, suitable to the town, shall be submitted for any additional street trees, landscaping and wetlands plantings that are approved with this renewal. The applicants landscape specialist shall prepare an estimated cost to the Town Planner and the final amount shall be determined by staff. Said bond shall be in place prior to any permits being issued.
8. A **Zoning Permit** is required for each building.
9. Foundation as-built surveys for each building shall be submitted and approved before framing and/or the issuance of a Certificate of Occupancy. Builder should be aware that minimum separating distances (18' minimum if not parallel, 22 ' minimum if parallel (See sec 5.1.17.15) are from fully built units, inclusive of walls and siding.
10. Additional requirements and procedures may be implemented by the Town Planner.

**General Conditions:**

11. This special permit/site plan approval shall expire **five years from date of approval.** Failure to complete all required improvements within that time

shall invalidate the approval. The developer may request an extension of time to complete the improvements from the Commission, in accordance the Connecticut General Statutes. The Commission shall require proper bonding be in place prior to the approval of any such extension.

12. All conditions as stated below from the 6/29/05 filed motion and conditions of approval.

**Devanney moved/Gowdy seconded/**

**VOTE: In Favor: Unanimous (Devanney/Gowdy/Ouellette/Thurz/Wentworth)**

**MOTION: TO TAKE A FIVE MINUTE BREAK.**

**Gowdy moved/Devanney seconded/VOTE: In Favor: Unanimous**

The Commission RECESSED at 8:35 p.m. and RECONVENED at 8:45 p.m.

**NEW HEARING: West River Farms, LLC, c/o Kahan, Kerensky & Capossela, LLP** – Proposed Text Amendment to Section 801 (*Planned Residential Development – PRD*) of the Zoning Regulations to allow a PRD in a Multi-Family Development Zone (MFDD). (*Deadline to close hearing 10/18/2011*):

Chairman Ouellette read the Hearing description. Appearing to discuss this Application was Attorney Joseph Capossela, of Kahan, Kerensky & Capossela, representing the Applicant; Lorraine Hicks, Paralegal with Kahan, Kerensky & Capossela; Jay Ussery of J. R. Russo and Associates, LLC; and Jeffrey Respler, a principal in West River Farms, LLC.

Attorney Capossola reported that the Application is for a text amendment not specific to any particular site. He is here with Mr. Respler, who now owns the Victory Outreach approval. Attorney Capossola noted he has been involved with this project since 2005; he offered a brief history of the application and its revisions.

**July, 2005 Application submitted** on behalf of Victory Outreach for a Special Use Permit and Site Plan to construct a 44 unit Active Adult Community. At that time there was a 260 unit cap on construction of Active Adult units; the Planning and Zoning Commission (PZC) was considering revising that cap. The PZC ultimately denied removing or modifying the 260 cap.

**September 12, 2005 Pending Application withdrawn** for the 44 unit Active Adult Community. In its place an **Application submitted** for a 41 single family detached unit non-Active Adult Community. Application was submitted under Section 8A, Special Development District (SDD).

**October 25, 2005 Application approved** for the 41 unit single family detached units submitted under Section 8A, SDD.

Mr. Ussery displayed the original plan approved in October, 2005. The proposal included 12 acres located along Schanck Road, and Scantic Road, while retaining the land along the Scantic River for use by Victory Outreach. The plan included a Drainage Easement to the Town of South Windsor; that deed was executed. Attorney Capossela noted that the church was going to stay at the property and use the land to the rear while developing the 41 units.

Attorney Capossela reported that during that time Bishop Saunders obtained loans on the property. Bishop Saunders passed away in 2007. In 2009 Attorney Capossela was contacted by Kevin Saunders, who advised him that the bank was going to foreclose on the property.

When potential buyers approached the Town regarding this development they were told the approval didn't exist, as it was originally approved under the property addresses of 329 and 343 Scantic Road; property address 341 Scantic Road had been omitted from the property description when the approval was granted.

**June, 2009 Re-Approval granted** now including the clarification that 341 Scantic Road was a part of the current development approval.

**March 15, 2011 Title taken** by Rockville Bank, who began looking for buyers, one of whom was Mr. Respler. Mr. Respler contacted Mr. Ussery, who designed the 41 single family detached unit development. They met with Town Staff regarding a proposal for a Planned Residential Development (PRD) allowed under Section 801.3, and were encouraged to come before the Commission for a preliminary discussion of the proposal.

**March 24, 2011 Preliminary discussion occurred** with the PZC. Mr. Respler and Mr. Ussery came away with the feeling that the preliminary plan was in the spirit of the PRD Regulations; Mr. Respler continued to pursue negotiations with Rockville Bank.

Mr. Ussery showed the Commission the preliminary plan they presented in March, which includes a Town road which comes in off Scantic Road. The proposal provides for a 61 single family PRD with reduced lot sizes, narrower pavement width, reduced setbacks, higher density and encourages open space – which would be 24 acres along the Scantic River which would be deeded to East Windsor and South Windsor or a Land Trust. The open space would continue the Scantic River Linear Park.

**June 21, 2011** Mr. Respler engaged Attorney Capossela to assist with the purchase of the property from Rockville Bank; West River Farms LLC is now the entity which owns this approval.

Attorney Capossela reported they reviewed the East Windsor Zoning Regulations relative to the proposal for 61 units. The subject property was purchased in 1956 by the USA for a Nike Site. In 1983 it was sold for use by the church, which tried to develop some houses in 2005. That venture failed, which may have been due to the decline of the housing market. Attorney Capossela noted housing trends have changed; instead of McMansions people are now down-sizing. Mr. Respler understands the current market trends and believes this concept would work, but this site doesn't allow for development of a MFDD (Multi-Family Development District). During a recent rezoning initiative the Town rezoned this parcel from an A-1 Zone (in which a PRD would have been allowed) to an MFDD (in which PRDs are not allowed). Attorney Capossela felt a PRD made better sense because: 1) a PRD would provide less density than a MFDD, 2) home ownership is generally more desired to town leaders than rentals, and 3) current market trends support reduced lot sizes.

In response to Attorney Capossela's question of how many apartments would be allowed under a MFDD Mr. Ussery addressed specifics of the regulations. Two units are allowed for each acre contained in the parcel; this 25 acre parcel would generate 50 units. The regulation also allows an additional 2 units for every additional acre of Open Space dedicated; the additional 23 acres of dedicated Open Space would allow an additional 46 units. Under the MFDD a total of 90+ units – condos or apartments – could be constructed. Attorney Capossela recalled that the plan approved in 2005 left the church in place; the church is now gone so this plan would include development of the land previously allowed for the church as well. Mr. Ussery reported that in actuality, taking out land for slopes, etc., approximately 88 units could be developed under the MFDD.

Town Planner Whitten questioned if they had prepared calculations for single family dwelling units? Attorney Capossela indicated they had not.

In support of this text amendment Attorney Capossela suggested in 2005 the site was zoned A-1. The SDD was an overlay zone, but that went away when the Commission changed the regulations and made this site an MFDD. For that reason Attorney Capossela felt the Commission saw this as a high density site, but didn't allow the PRD, which he felt was somewhat of a contradiction. The PRD is allowed in an A-1 Zone so no text amendment would have been required to propose the current development. Attorney Capossela felt the PRD was left out of the MFDD as an oversight. He suggested the proposed text amendment is intended to add the MFDD land which would be susceptible to PRDs, and would give the PZC the ability to adjust to changing market conditions. Attorney Capossela noted that Vernon recently updated their Plan of Conservation and Development, in which Attorney Len Jacobs recommended that cluster development should be encouraged to cut down on road lengths, and encourage open space.

Attorney Capossela then reviewed the points of the proposed text amendment.

Attorney Capossela noted the text amendment isn't just for this site specifically, but Town Planner Whitten had suggested there is only one other site in Town where this text amendment would apply. Town Planner Whitten concurred, noting the other site is Scantic Glen. Attorney Capossela suggested the limited site availability would eliminate opening the flood gates on development.

Commissioner Wentworth questioned if they talking about ownership or rentals? Attorney Capossela indicated that for this site they are talking about conventional lots which would be pushed together on part of the land to allow giving another part of the land as open space to the Town. A PRD is a conventional subdivision of single family homes owned by the individual; no condos, no rentals.

Commissioner Gowdy felt the consensus of the people in town are against MFDDs because they could be apartments which would bring in a lot of kids, which would increase the schools, and increase the taxes. He noted that the Mansions at Canyon Ridge, which is a 200+ unit apartment complex, has produced only 3 school-aged children. He considered that maybe an MFDD isn't a bad idea but he would rather see 60 units rather than 90; he isn't sure there isn't a place in town that an MFDD would work. Attorney Capossela suggested there is a place for Sumner Chapman's apartments (Mansions at Canyon Ridge), and there is a place for what Mr. Respler wants to do. Commissioner Gowdy recalled that he was against Mansion at Canyon Ridge because of adding school-aged kids and the increase in taxes but he admitted he was wrong. He thought this was a good idea. Attorney Capossela noted that approval of the text amendment would then require that they return to the Commission with a Site Plan, etc; approval of the text amendment allows modification of the development.

Commissioner Gowdy questioned if there was a Plan B? Attorney Capossela suggested they didn't look at a Plan B. This isn't about 90 units vs. 60 units; this is about are we providing what the community needs? Someone may think the open space is garbage but others may not. If the Commission doesn't allow the text amendment you would be left with a MFDD which would allow development of 90 units.

Town Planner Whitten noted that modifying Section 801.6c to eliminate the word "other" it allows more flexibility for PRDs but that could also open doors for future development. Mr. Respler suggested that comparatively to what could have been built on this site they can create a beautiful development.

Commissioner Devanney questioned the size of the proposed houses? Mr. Respler suggested 1700 to 2200 square feet.

Chairman Ouellette questioned when the current permit expires? Town Planner Whitten felt the Commission gave them an additional 5 years; Attorney Capossela concurred, noting he felt it expired in 2016. Attorney Capossela suggested the plan approved in 2005 couldn't have been built; there are boundary line issues.



Chairman Ouellette noted he is in favor of the concept of the open space but is concerned with East Windsor's ability to control the use; approximately 9% of the open space is NOT in East Windsor. He questioned how that would be dealt with? Attorney Capossela suggested they had preliminary discussions with South Windsor and would have additional discussions with the East Windsor Conservation Commission. He noted he didn't have an answer at this time but that would be a legitimate question during the Site Plan approval process. Town Planner Whitten noted that they understand that issue needs to be addressed. Chairman Ouellette noted the issue came up regarding the drainage easement; Attorney Capossela suggested they needed a Wetlands Permit from South Windsor. Chairman Ouellette clarified that none of that is an issue with regard to a decision on the proposed text amendment.

Chairman Ouellette questioned Town Planner Whitten that PRDs can't be developed on any other sites? He noted the Commission took in an application this evening that could be impacted. Town Planner Whitten noted there are currently no other sites, but there are future developments that could come in under the MFDD. She suggested the Commission think of Hillside Farms or Coleman Farms with a lot line around all the units, that would be a PRD. Attorney Capossela noted the PRDs are already allowed in an A-1 Zone. Chairman Ouellette suggested he has reservations as to how developments are clustered with regard to what's around them. Attorney Capossela suggested the Commission could build in buffers, bigger setbacks; PRDs are only allowed in sewered locations.

Chairman Ouellette queried the Commissioners for additional comments. No one requested to speak.

Chairman Ouellette opened discussion to the audience. No one responded.

**MOTION: To CLOSE THE PUBLIC HEARING on West River Farms, LLC, c/o Kahan, Kerensky & Capossela, LLP – Proposed Text Amendment to Section 801 (Planned Residential Development – PRD) of the Zoning Regulations to allow a PRD in a Multi-Family Development Zone (MFDD).**

**Devanney moved/Gowdy seconded/**

**VOTE: In Favor: Unanimous (Devanney/Gowdy/Ouellette/Thurz/Wentworth)**

**MOTION TO APPROVE the Application of West River Farms, LLC c/o Kahan, Kerensky & Capossela, LLP for a proposed text amendment to section 801 (Planned Residential Development – PRD) of the Zoning Regulations to allow a PRD in a Multi-Family Development District (MFDD)**

**The proposed change shall become effective fifteen days from the date of notice in the paper, and filed in the land records.**

**Conditions:**

- 1. A copy of the final motion and text amendment shall be filed in the Office of the Town Clerk on the effective date by the applicant. Said amendment shall bear the signatures of the Chairman and Secretary of the Commission, and the approval and effective date of the amendment.**

**Devanney moved/Gowdy seconded/**

**VOTE: In Favor: Unanimous (Devanney/Gowdy/Ouellette/Thurz/Wentworth)**

**REASONS FOR APPROVAL:** Chairman Ouellette suggested the approval of this text amendment adds greater flexibility to the Zoning Regulations. And, as Attorney Caposella said, it appeared to be an oversight that the MFDD was not included in the PRD Regulations. Commissioner Devanney also felt the MFDD should have been included in the PRD Regulations. Commissioners Gowdy, Thurz, and Wentworth agreed with comments made by Chairman Ouellette and Commissioner Devanney.

**NEW BUSINESS/Applebrook Farm – Request from Sharon and Tom Muska for off-site temporary sign waiver:**

Town Planner Whitten noted the sign waiver was discussed during the Hearings for the Farm Regulations. It was felt that Staff could work with farmers regarding their requests; she will meet with the Muskas to review placement of their sign. Ultimately a form will be created to replace the need for a farmer to submit a letter.

The Commission discussed the waiver request, and agreed, by consensus, that the request should be handled administratively.

**BUSINESS MEETING/(1) Correspondence:**

- 2011 HOPE Regional Housing Forums, Thursday, September 15, 2011, 8:30 a.m. to 10:00 a.m., The Lyceum, 227 Lawrence Street, Hartford. Commissioners were encouraged to attend.

**BUSINESS MEETING/(2) Staff Reports:**

- Zoning Enforcement Officer Newton has recently completed another sign and automotive sweep.
- Add discussion of the Temporary Sign Regulations to a meeting agenda prior to December.
- Chairman Ouellette questioned the status of the EDC's request for special signs along Route 5 which would be based on the signage in South Windsor? Town Planner Whitten noted Assistant Town Planner Whitten had researched sign regulations for South Windsor and found East Windsor actually allows *larger*

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signage presently. Chairman Ouellette suggested reviewing that request along with the Temporary Sign Regulation.

- Chairman Ouellette questioned the status of the study completed by Milone and MacBroom? Town Planner Whitten recalled that the Commission decided NOT to pursue the recommendations at present, but to keep the draft on file if the opportunity presents itself in the future. She noted the consultants for the study of the Route 140 corridor have received a copy.

**SIGNING OF MYLARS/PLANS, MOTIONS:**

- Mitchell mylars
- Mitchell motion
- Wilcox Motion

**ADJOURNMENT:**

**MOTION: To ADJOURN this Meeting at 9:58 p.m.**

**Gowdy moved/Wentworth seconded/VOTE: In Favor: Unanimous**

Respectfully submitted,

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Peg Hoffman, Recording Secretary, East Windsor Planning and Zoning Commission  
(7371)