

**DARIEN PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING
January 4, 2011**

Place: Auditorium, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:
Conze, Spain, Hutchison, Riccardo, and Voigt (arrived at 9:10 pm)

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Syat

TELEVISED BY: Channel 79

PUBLIC HEARING

Chairman Conze called the meeting to order at 8:00 P.M. and read the following agenda item:

Continuation of Public Hearing regarding Affordable Housing Application Under CGS 8-30g (#2-2010), Coastal Site Plan Review #259, Site Plan Application #278, Land Filling & Regrading Application #249, Christopher & Margaret Stefanoni, Tokeneke Road. Proposing to construct 30 units of age-restricted housing (30% of which are proposed to be affordable housing under Section 8-30g of the Connecticut General Statutes) in a new building with associated parking and regrading, and to perform related site development activities. The subject property is located on the south side of Tokeneke Road at the southeast corner formed by the intersection of Tokeneke Road and Pheasant Run, and is shown on Assessor's Map #66 as Lot #104-A1, within the R-1 Zone. *PUBLIC HEARING WAS OPENED ON NOVEMBER 9, 2010, CONTINUED TO NOVEMBER 30, 2010 AND THEN TO JANUARY 4, 2011. DEADLINE TO CLOSE PUBLIC HEARING IS JANUARY 4, 2011, UNLESS AN EXTENSION OF TIME IS GRANTED BY THE APPLICANT.*

Margaret Stefanoni introduced Mr. Stuart Sachs, Landscape Architect. A revised Planting Plan was distributed. Mr. Sachs said that the landscape plan includes plantings that are native or indigenous to the area. He said that they are illustrated at approximately three-quarters of mature size. He said this is standard for landscape plans. He also noted that the revised plan shows details of the planting in the detention basin to be installed in the northeast corner of the property.

Barry Hammons, Professional Engineer and Land Surveyor, said that he has reviewed the comments from Tighe & Bond dated December 22nd. He will address each of these comments. He said that the plans include the sediment and erosion controls.

Mr. Spain asked questions regarding the approval from the Connecticut Department of Transportation for the driveway curb cut. Mr. Hammons said that he was hired in November of 2009 after the D.O.T. had already seen the initial plans, and he prepared more detailed plans in order to obtain the final letter of approval. Mr. Spain said that the first letter from the DOT recommends no curb cut on Tokeneke Road unless it is directly across the street from Cliff Avenue, and therefore lines up with the traffic light. Mr. Hammons said that the architect had prepared the previous plans and maps for the curb cut on Tokeneke Road, and that he, Mr. Hammons, had no personal or telephone discussion with DOT until November of 2009 when he was preparing the details about sight lines and other engineering requirements.

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Mr. Spain asked about deliveries to the site, and Mr. Hammons said that typically the deliveries would be to the front door where the driver would be able to park and deliver any packages to the front door, or to the unit within the building. The delivery vehicle will be able to turn around within the site, and pull out into Tokeneke Road driving forward rather than backing into the street. He said that large moving vans would probably be the only type of vehicle that would need to back out into the street. Mr. Spain asked about the proper management of snow that would need to be plowed from the parking area and other portions of the site. Mr. Hammons said that they typically anticipate about 20" of snow per winter, which roughly translates into about two inches of rain.

Mr. Sachs said that the plants that have been used on his design will accommodate snow being pushed onto or plowed onto them. He said that there are open spaces between the landscaped plants, and that wherever possible a snow shelf has been left. He said that in winter, some parking areas might be slightly obstructed by the snow plowing operations.

Margaret Stefanoni said that in October of 2009, the letter from the Department of Transportation reflects that she had discussions with the DOT, and she had created the sketches of possible driveway locations. The driveway location was revised per the DOT's suggestions, and then the driveway was sketched onto the site plan by the architect. She said that there were interdepartmental communications within DOT, and eventually the DOT issued the letter of approval regarding the driveway in its proposed location.

Mr. Conze said that he has visited the site and spent time watching the traffic in the area. He said that if there is any car on Pheasant Run trying to exit onto Tokeneke Road, it would obstruct the visibility of anyone trying to leave the site via the proposed driveway. He said that the reaction time of the residents within this senior housing complex will be slower than the typical reaction time of other drivers. He said that the lack of appropriate sight distance would make it unsafe.

David Spear said that a person exiting the site at the proposed new driveway could probably see past any vehicle in Pheasant Run. Although this is not optimum, it is typical of this type of situation. Mr. Conze questioned whether we could afford the risk of creating a situation that might not be safe. Mr. Spear responded to the November 30th comments from Mr. Galante regarding traffic conditions. He said the traffic in the area was counted on four days. The highest traffic count was 12,054 vehicles in a particular day (the DOT count in 2008 registered 11,800 vehicles in a day). The AM peak was 963 vehicles in the hour between 8 a.m. and 9 a.m. He said that the Darien Police Department had a history of seven vehicle accidents in the area, and the State recorded eight vehicle accidents in the area. Mr. Spear said no accident was related to traffic entering or existing Pheasant Run. He said that the 85th percentile of traffic moving in a westbound direction (toward downtown Darien) was 36 miles per hour. Mr. Conze said that four of the accidents involved vehicles turning left from Tokeneke Road into Cliff Avenue. He said that it is clear that there is somewhat of a problem due to the rise in Tokeneke Road. Mr. Spear said that four such accidents in the space of three years is not a very high rate of accidents. He also noted that since this is a residential driveway, not a proposed street, the applicants are not required to obtain a sight line distance based on the 85th percentile of speed or actual speed. They are only required to obtain a sight line based on the posted speed limit and not the actual speed of vehicles. He said that this is a residential driveway, not a minor or major commercial driveway. Mr. Spear said that the level of traffic service in the area is Level B on Tokeneke Road. In the morning, a

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queue of 70 feet is the most that is experienced during the peak morning traffic conditions. In the afternoon, an average queue of 260 feet is sometimes observed during the peak p.m. hour. A 260 foot queue will back up and extend past the subject property and Pheasant Run. He said that a bypass lane is possible if the street is widened by one foot. Mr. Spear said that the 1.5 parking spaces proposed per unit would exceed the senior housing parking recommendation of the International Traffic Engineers, which recommends 1.4 parking spaces per unit. He said that the difference between the traffic study and the traffic report is that the traffic study includes accidents and sight line distances that meet the DOT requirements and the traffic level of service. He said that the queuing will clear out and not be a problem.

Mr. Spain referred to the December 27th letter that was recently submitted and the exhibits thereto. He said that CL&P pole 8682 is almost directly across the street from the site. That is where the traffic counts were done following the November 23rd hearing. He said that the location of the traffic counts and speed measurements were not at the top of the hill where the eastbound traffic would be at its greatest speed. Mr. Spear said that he did not think there would be a significant difference, maybe a plus or minus five miles per hour difference. He said that the traffic light would create gaps to allow left turns by vehicles exiting the site. He has noted that the traffic light is green for Tokeneke Road traffic, unless traffic on Cliff Avenue trips the system to activate a red light for Tokeneke Road traffic which allows Cliff Avenue traffic to exit. In that respect, drivers at the proposed new driveway on Tokeneke Road would have to wait until there was traffic coming from Cliff Avenue in order to have a gap created by the traffic light. Mr. Spear said that we do not have details for speeds at various locations on the road, only where the traffic was measured.

Mr. Conze asked if the level of speed by volume study prepared by the Darien Police Department had been reviewed. Mr. Spear said that he had reviewed it briefly prior to the meeting. Mr. Galante said that he too had received that information earlier in the evening, and it is difficult to tell what direction the speed was measured, but it is assumed that it is eastbound information. It also leads to the conclusion that traffic speed at the crest of the hill is higher than the speed of vehicles in front of the site because it is farther from the traffic signal. Mr. Spear said that the 85th percentile traffic in one direction is 35 miles per hour. Yet the Police Department indicates that it is 37 miles per hour. In the other direction, Mr. Spear estimates the 85th percentile traffic is traveling at 36 miles per hour while the Darien Police Department figures show 44 miles per hour. Again, it was emphasized that older drivers have a longer reaction time than a typical driver, but it was commented that they are more experienced and frequently act in a safer manner than other drivers. Mr. Conze expressed his concern about the number of cars speeding over the rise in Tokeneke Road (located west of the subject site) and heading eastbound. He said that the Pheasant Run sight line is a problem, making it inappropriate to create an additional curb cut in the area, as that would compound that problem.

Mr. Voigt entered the meeting at 9:10 p.m.

Joseph Canas, Professional Engineer, reviewed his December 22nd comment letter. He said that many of the engineering aspects of the plans and reports need coordination and clarification. He said that Section 883a of the Zoning Regulations requires that as a site is being developed, the engineering calculations are to be based on an undeveloped site rather than taking engineering credit for the old impervious surfaces. He said that crediting such impervious surfaces might affect the calculations. He said that the stormwater detention pond wall will hold up to three feet of

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water, and thus would need to be engineered to avoid structural problems. He said that the grade in the pond area will have a steep slope of one foot of vertical rise for every two feet of horizontal run, when it should have a more gentle slope of one foot of rise for every four feet of run. A gentler slope would make it safer in case people fall into the storm water detention area. He also noted that part of the storm drainage system includes a 12" diameter pipe with an invert elevation of 23 when the top of the grade of the adjacent catch basin will be at Elevation 24. This makes it unbuildable, and engineering clarification is necessary. Mr. Canas said he reviewed the Environmental Protection Commission's comments and agreed with most of them. He noted that the oil grit separator in the system is designed to remove 80% of the suspended solids, but not all the pollutants.

Mr. Spain asked if there are any indications of a high water table, and if that would affect the efficiency of the infiltrator system. Test holes were dug, and there was no sign of high ground water. Mr. Canas said that he is comfortable with the results of those test holes. Mr. Canas explained that impervious surfaces such as roofs and driveways eliminate the ability of the soil to absorb water from rain or snow melt. In order to avoid having everything drain in one direction and to drain out very quickly, storm water detention systems are used to provide some cleaning of the water before it is discharged and also to control the rate that the runoff is discharged.

Mr. Hutchison said that as development grows relative to the size of the site, it is more difficult to accommodate the storm water runoff from a quantity and quality perspective. Mr. Canas agreed, and said that the systems become more costly and the site engineer must deal with the specific site conditions such as the soil conditions, ground water and rock configurations. It was noted that the increase of impervious area requires that the engineer deal with a larger total volume of water and a greater volume of water at any given time. Failing to regulate the amount of outflow would subject downstream areas to more extreme rates of flow. Mr. Hutchison said that the more intense the project, the greater the reliance on such engineered systems and the need for more maintenance.

Mr. Spain noted that water quality that is being discharged from the site would be important. He noted that the oil and grit separator might catch some potential pollutants, other pollutants that are soluble, and mixed and bonded to the water, will not be trapped by those systems. They will need substantial areas of infiltration and rain garden areas in order to be properly addressed. Mr. Canas said that if more open space is created, it would be more beneficial to the water quality. The underground infiltrators actually need a pre-treatment area such as the surface treatment areas and the entire system will need to be properly maintained. Mr. Spain expressed concern about the location of the detention system being so close to the Five Mile River.

Mr. Conze referred to the December 27th memorandum from the Environmental Protection Commission. He noted that approximately 65% of the site would be developed with impervious surfaces. This is a substantial increase compared to the existing conditions and that the cumulative impact on water resources is of great concern. He said that the Commission should require some kind of financial assurance regarding the maintenance, repair and replacement of the detailed drainage structures to assure that they would continue to function properly.

Mike Galante of Frederick P. Clark Associates said that he has reviewed the project with respect to traffic flow and safety issues and referred to his letter of January 4, 2011. He said that the applicant has tried to respond to the previous comments, but the accident information provided only goes

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through 2008. It does not reflect the traffic light installed at the Cliff Avenue intersection. There is no information since that light was installed last year. He said that the signal was installed due to traffic volume, and with the installation of the signal, there will likely be a change in the type of traffic accidents experienced in the area. There will probably be more rear end collisions. Mr. Galante referred to the limited sight line in the westerly direction and noted that the speeds actually travelled by motorists in the area exceed those of the posted speed limits. He said that vehicle queuing on Tokeneke Road will be a problem for motorists trying to exit or enter the subject property and that the location of the proposed driveway is of great concern. He said that although the State could allow the residential driveway if the sight lines don't meet the distance requirements, they often do not allow such driveways because it will create a situation that is not as safe as it should be. He said that the crest of the hill (looking in a westerly direction from the proposed driveway) precludes any improvement of the sight line in a westerly direction. He said that a possible bypass lane will work most of the time if it is 19 feet wide and he said he does not know if there is room within the State right-of-way to expand the paved area in this vicinity.

With respect to the number of parking spaces proposed on the site, Mr. Galante said that since it is an age restricted project, 1.4 or 1.5 parking spaces will probably be enough for senior age restricted development. Mr. Conze asked what the State would do with the driveway location if this were for a one or two family home compared to a 30 unit development. Mr. Galante said that as far as he knows, the same, typical requirements of the State would apply and he did say that as far as he knows, the State made this decision regarding the proposed curb cut without having the actual speed data available. He said that if there is no local approval for the use, then the State will not allow the curb cut as proposed.

Mr. Spain said that the Commission is concerned about the traffic and safety aspects and is trying to avoid a situation that is dangerous. Mr. Galante said that factors influencing the safety will be the decision time of the motorist, the ability to actually execute the turning movement into or out of the site and then getting up to speed to avoid holding up other traffic. He said that due to the speed of vehicles traveling along the Tokeneke Road, the sight line distance is approximate 100 ft. shorter than it should be. At the intersection, the traffic analysis takes into account the stopping distance and the sight distance. He said that the stopping distance is not met for the posted speed limit, much less the actual speed travel by 85% of the motorists.

Mr. Spain said that the speed of where the traveling vehicle first allows the driver to notice a problem is more important than the speed measured as it goes by the site. He also noted that coming from downtown Darien (to the west of the site) and traveling east, motorists will be traveling downhill as they approach the site and the nearby traffic light. This will require more force to stop the vehicle that is proceeding easterly. He said that it would make it very difficult for vehicles to make a left turn out of the site. Mr. Galante agreed.

Mr. Spain referred to an article that was submitted to the file regarding older drivers. He said that they continue to drive even when, in many cases, they should not do so, and that 85% of driving is visually oriented. It also notes that older drivers need 10 times more light than younger drivers and left hand turns are more difficult for older drivers than younger drivers.

Mr. Galante said that he generally agrees with those concepts regarding older drivers, but that he is not sure about whether it is more difficult for older drivers to turn left.

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Mrs. Stefanoni noted that in the public hearing regarding the Hoyt Street project, Mr. Galante had said that it is unusual for the State of Connecticut to grant a permit before local applications had been submitted. Mr. Galante agreed. Mrs. Stefanoni noted that Mr. Galante had represented a client in Fairfield and that he had obtained a State permit before the Town approval had been granted and in that case, the sight line distance was 2 ft. less than required. Mr. Galante contended that it is very difficult to get written approval from the State before the Town application is submitted. He has dealt with thousands of such traffic situations and it is very unusual for the State to give their approval in writing before the application has been processed by the Town.

Mr. Conze said that the applicant has asserted that a Traffic Study was not needed because the State had already approved the driveway location, but it has become clear that a detailed traffic study was necessary because of the safety issues involved in this particular case.

Attorney Robert Fuller explained that he has been practicing law for 40 years and has an office in Wilton, Connecticut. He had served for 8½ years as a judge and has specialized in the area of land use and property law. He has been an advisor on many zoning and land use issues and has been a Town Attorney for a municipality. He said that he has participated in lots of litigation and land use and property law matters and serves as Special Counsel regarding such. He has been involved in some affordable housing cases and represented both sides of the issue.

Attorney Fuller submitted a 4 page letter and provided a copy to Mrs. Stefanoni. He said the issues that he had been asked to investigate included the right of access via Pheasant Run. He said that the applicant's proposal is to eliminate the existing driveway that currently serves as the primary access to the residence and to have an emergency driveway from Pheasant Run into and out of the site. He said that Pheasant Run is a private road that was created by a developer by the name of Clark. The subject property was not part of that original subdivision, but it came from a different property owned by the Street family. Street conveyed the land to Rich and subsequently an easement or right to pass on and through Pheasant Run was created in the 1960s. He said that the subject property is not part of the association that owns Pheasant Run. He said using the easement for a 30 unit development would be a material change from the original intent and purpose of the agreement, but that would not be an issue to be decided by the Planning & Zoning Commission. Mr. Fuller noted that Section 8-30g of the State Statutes, the affordable housing provisions, does not create a right to use Pheasant Run for access to the property. He said using the Pheasant Run private road as an emergency access is a different question.

The second issue that Attorney Fuller was asked to examine was the jurisdiction regarding access to the State highway (Tokeneke Road). He said that the State Traffic Commission is part of the Department of Transportation and they have overriding jurisdiction over access to State roads, but they recognize that local permits for land use are necessary. The State will issue approvals for driveways, but local jurisdiction over the land use and the safety and traffic impacts of the use is still exercised by the local community. He said that the State will not issue a final decision about a driveway until after the local decision regarding land use has been reached. He said that one of the issues with respect to access to Tokeneke Road is whether it would be an unconstitutional taking to deny the proposed use with access to the State road, if the Town did not approve the use. He said restriction of a specific use of land is not a total denial of all potential or possible uses. He said that the constitutional taking issue is a very complicated subject, but denial of all access to a State road would probably be a taking if it prohibited all possible uses. He said that under Section 14-311 of

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the Connecticut General Statutes, the State Department of Transportation will listen to what the Town says regarding the proposed use of the land and the access to State roads. He said that he is not familiar enough with D.O.T. review practices to comment on whether they properly issued their letter approving the proposed driveway location.

Jeremy Ginsberg read aloud the comments from the South Western Regional Planning Agency (SWRPA) as contained in their memo of November 2, 2010. They said they strongly support housing of this type and they felt that inter-municipal impact was not likely, but they expressed concern that it may impact runoff in the neighborhood. He read aloud the Department of Environmental Protection comments indicating that the site is within the coastal boundary because it is within 600 ft. of the Five Mile River and that due to the increase in building and impervious surfaces, drainage and storm water management are important. The DEP comments indicate the project appears to be consistent with the Connecticut Coastal Management Act.

Mr. Ginsberg said that the staff has provided Commission members with copies of the submissions provided by the applicant, the consultants and the neighbors.

John McRae, President of the Pheasant Run Home Owners' Association, Inc., reviewed his letter/report dated January 4, 2011. He said that it is critical to look at the actual speed of vehicles passing by the area rather than just the posted speed limits. He said that in a westerly direction, the sight line of approximately 285 ft. is clearly inadequate due to the curvature of the road and the embankment. He noted that other impediments limit sight lines in that direction and those impediments include snow drifts, plowed snow, grass and other vegetation. He said that he took radar gun measurements and that the stopping distance needs to be adjusted because there is a 4.2% down gradient slope coming from the west toward the subject property. He said that he has provided accident data that is more recent and that his counts in the area are greater than the old State counts. He said that the sight line distances, required by the D.O.T. are based on the actual speed, not the posted speed and he said that there is not a specific exemption to allow for less sight line distances than the D.O.T. requirements. He said that he was very surprised by the number of vehicles that actually travel over 60 miles per hour through the area.

Spencer McIlmurray of 27 Pheasant Run reviewed his previously submitted September letter. He said that the property at 266 Tokeneke Road is directly across the street from the proposed driveway. He said there are other driveways near the crest of the hill. There are some driveways on the same side of the road as the proposed new driveway. He said that as a previous member of the Board of Assessment Appeals, several people noted complaints about excessive water from the higher properties flowing to and impacting their lower property. He said a 65% coverage of the site with impervious surfaces will impact other downhill properties because it will direct and shed the water to them to a greater degree than the present development.

Barry Seeman of 7 Pheasant Run said that in December his wife was involved in an accident as she was headed westbound waiting to turn left into Pheasant Run. She was hit from behind. He submitted his previous letter and noted that traffic safety is a key concern in the area. He said the traffic speed was studied by the Department of Transportation in 2007 and they estimated that the east bound traffic speed was 43 miles per hour and the west bound traffic speed was 41 miles per hour. Mr. Seeman said that as we age, our reaction time deteriorates and that the residents of this proposed development would all be senior citizens. He said that 45% of fatal accidents involving

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people over 70 years of age occur at intersections. He said, in this case, the proposed driveway would not properly line up with the intersection and it would require that the residents and their visitors make an unprotected left turn into flowing traffic in order to head westbound toward downtown Darien. If they are traveling westbound from Rowayton, they would need to turn left to get into the site. He said that sidewalks are located on the other side of the street and that the school bus stops in the area. He said that there are many pedestrians in the vicinity, many of whom walk to the nearby Rowayton train station. He said that there are many distractions and significant traffic problems that will be made worse due to this ill conceived project.

Chris Krediet said that sidewalks in the area are on the north side of Tokeneke Road and that a bypass lane for the westbound traffic (toward downtown Darien) should be avoided due to likely impacts to pedestrians and joggers and children that use the sidewalk. He said that this project should not be approved and that there are no reasonable changes that can be made to make it safe or better.

Mrs. Stefanoni said that there is a demand for affordable housing in the community and that they have or will address the Fire Marshal's comments as contained within his Memorandum. He said that storm drainage will be properly managed and that sight line profiles were developed for and submitted to the Department of Transportation before the Department approved the driveway location. She said that the sight line from Pheasant Run looking westerly is worse than the proposed driveway sight line, yet there have been no accidents of vehicles turning out of Pheasant Run. This is despite the fact that three of the households on Pheasant Run include seniors that would qualify for the housing that is proposed. She said that the speeds referred to in the State Report apparently were taken at or near the Norwalk line, but it is not specified. She distributed a memorandum to the Commission. She said that Mr. Spain had asked that some items from the Hoyt Street file and Leroy Avenue files be submitted to and become part of the file for the Tokeneke Road project. They concerned parking requirements at the Leroy Avenue project which indicate the justification for the reduced number of parking spaces at that site was its proximity to the train station and the downtown area. She said that since then, she has learned more about the transportation options available for seniors, thus minimizing the need for on-site parking.

Mrs. Stefanoni said that the speeds traveled by motorists on the road are within the jurisdiction of the police, and it is up to them to enforce the speed limits and make sure that people travel within the posted speed limit. She said that the action by the Department of Transportation to approve the driveway location was not out of the ordinary and that such approval prior to a submission to the Town has happened before. She said that this project received no special treatment. She said that the D.O.T. approved the driveway location using their safety standards and the information provided to them. She said that the Environmental Protection Commission recommendation that a bond be submitted for the maintenance of the drainage system could be incorporated as part of an approval by the Commission. She submitted a statement that going to the Department of Transportation prior to the hearing is not out of the ordinary. She said that all of the issues have been vetted, and acknowledged that there is lots of information before the Commission. She noted that some information submitted by Mr. Spain from the other files includes information about affordable housing, which by its nature is controversial, and that some of the Hoyt Street neighbors are trying to smear the developer which is a common tactic for people opposed to a project. She said that the property is located in a single family, residential zone and it will still be used for residential purposes. She said that senior citizens will want to live in this location. She said that

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the Statutes refer to affordable housing, not specifically senior housing, but in this case, the entire project would be senior housing and units will be available in accordance with the affordable housing statute.

There being no further comments, the following motion was made: That the Commission close the public hearing regarding this matter. The motion was made by Mr. Spain, seconded by Mrs. Riccardo and unanimously approved.

The meeting was adjourned at 11:15 P.M.

Respectfully submitted,

David J. Keating
Assistant Planning & Zoning Director

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