

NEW HAVEN CITY PLAN COMMISSION PLANNED DEVELOPMENT ACTION

RE: ZONING ORDINANCE AND TEXT AMENDMENT (FOR PROPERTY AT 49, 60 AND 200 BROOKSIDE AVENUE AND 205 WILMOT ROAD),
Application and General Plans for Planned Development District (PDD)
Designation of an approximately 97.90 acre tract known as "The West Rock
Development of the Brookside and Rockview Residential Communities", a 433 unit
Residential Community with infrastructure improvements and related Uses
(Property Owner: New Haven Housing Authority; Applicant: Michaels
Development Co. I, LP).

REPORT: 1433-02

ACTION: Planned Development District – Approval with Conditions

PROJECT SUMMARY

ADDRESS: 49, 60 and 200 Brookside Avenue and 205 Wilmot Ave (MBPs 364/1193/00200,
364/1192/00100, 364/1190/00300, 364/119000301)
SITE: 97.90 Acres.
EXISTING ZONE: RM-1, PDUs
PROPOSED USE: 433 Residential Dwelling Units Planned Development District
(Rental and homeownership units, elderly housing, community center additions, reconfigured
utility infrastructure, new streets, and dedicated open space.)
CONSTRUCTION: Wood frame, Masonry, and Composition Siding.
PROJECT COST: \$175 million
FINANCING: Mixed, including CHFA State Housing Tax Credits, Federal Home Loan Bank Funds,
Economic Stimulus Funds (HOPE VI, Capital Fund Recovery Competition Program)
DEVELOPER: New Haven Housing Authority (HANH) with Michaels Development Co. I, LP
ENGINEERING: Diversified Technology Consultants
ARCHITECT: Kenneth Boroson, LLC; Torti Gallas and Partners
TRAFFIC: Wilbur Smith Associates
CITY LEAD: City Plan **CONTACT:** Karyn M. Gilvarg, AIA **PHONE:** 203-946-6379

SUBMISSION

Application and Full-Sized General Plans entitled "West Rock Redevelopment Planned Residential District, New Haven, CT, dated 8/28/09 (sheets C001-C002, CE100-CE105, CD100-CD105, PDD-1, CA100, ABAN-1, SUB1-SUB-3, CL100-CL106, CG100-CG105, CU-101-CU105, CS100-CS502, LP101-LP-305, CT101-CT302, CJ501-CJ517) including existing and proposed conditions, property division, site layout, drainage, utilities, landscaping, photometrics, traffic signage, marking and maintenance plans along with reduced drawings of the site including architectural plans, elevations and aerial views. Also, a 30 page Project Narrative with attached Land Descriptions, Table of Zoning Deviations, Cooperation Agreement between the City of New Haven and the Housing Authority of the City of New Haven and a Traffic Impact Statement, Phases 1 through 6, by Wilbur Smith & Associates, Stormwater Management Plan by Diversified Technology Consultants 10/28/09 and Materials Samples.

Also considered: Copy of Memorandum 10/13/09 to Carl Goldfield, President Board of Aldermen, from Michael Piscitelli, Director of Dept. of Transportation, Traffic and Parking.

Copy of Letter 10/09/09 to Albert Lucas, Director Office of Legislative Services from Daniel Brunet, Chairman, Regional Planning Commission.

Memorandum to Carl Goldfield, President Board of Aldermen, 10/20/09 from Howard Weissberg, Deputy Director, Department of Public Works.

EXECUTIVE SUMMARY

The Housing Authority is proposing a project consisting of 357 rental dwelling units in approximately 90 buildings, 38 homeownership dwelling units located in duplex structures, and 38 elderly housing units on the site of the recently demolished West Rock neighborhoods of Rockview and Brookside. The current proposal seeks to replace the previously existing 491 dwelling units with a combination of 202 multi-

family rental units and 20 homeownership units in the Brookside area while providing 38 senior dwelling units, 155 rental units and an additional 18 homeownership units in the reconstituted Rockview portion of the site. Also included in the project is a new 4,000 sq ft maintenance building and additions to the existing community center.

The proposal also includes a completely redesigned City roadway system incorporating a connection to Woodin Street in Hamden as well as a crossing of Farm Brook to provide direct access between the two neighborhoods.

A new utility system is also proposed, including stormwater, water and sewer as well as underground electric, telephone and cable television lines.

Six Planned Development Units were recently approved for a total of 101 units on approximately eight acres in the southern portion of the Brookside neighborhood as submitted as Attachment #6 in the applicant's application narrative entitled "The West Rock Development of the Brookside and Rockview Residential Communities". These Planned Development Units are currently in effect and will be until such time as the PDD is approved. The applicant has indicated that construction activity will commence within the boundaries of the PDUs before such time as the PDD is approved and will be conducted in accordance with the terms and conditions of the PDU approvals. It is anticipated that the detailed plans and site plan reviews for the PDUs will be incorporated into the forthcoming Detailed Plan and Site Plan review for the PDD when it is approved.

The applicant is proposing six phases of construction extending over a period of approximately six years.

PUBLIC HEARING

Mr. Talbot, Deputy Director Zoning, introduced the proposal for 357 rental units, 38 homeownership units, 38 elderly units, a community center and maintenance building in the northwest corner of the City, replacing an existing residential development of 491 units known as Brookside and Rockview. The project also involved a new roadway system and infrastructure improvements, with a connection between the two project areas by a bridge and a connection to Woodin Avenue in Hamden. Mr. Talbot distributed Section 65 of the Zoning Ordinance, noting the Commission needed to take into account the four objectives under Section 65a when considering an application for Planned Development designation. He read sections of the draft report which addressed each objective and how the proposed plan met the standards.

Mrs. Ford introduced the **Inland Wetlands** components of the project, noting the Commission should review and approve the wetlands application prior to any zoning approval. She noted the Commission had classified the application as a Class C application requiring a public hearing with particular findings to be made.

Attorney Gregory Pepe, representing the applicant, said there would be minimal intrusion into significant wetlands on a site of roughly 212 acres, where less than 100 acres were to be developed with less than 2 acres of disturbance.

Andy Bevilacqua, Diversified Technology Consultants, delivered a PowerPoint presentation, noting the direct impact to the approximate 26 acres of wetlands within the 100 acre development was .2 acres and the impact to the inland wetland setback was 1.8 acres. The design philosophy followed the standards of Phase I using stormwater basins adjacent to the wetlands to provide improved water quality. The basins were separated from the wetlands by 2' berms and eventually they would appear as wetlands, planted with wetlands vegetation. Stormwater from the site would collect in sediment forebays where sediment would fall out, with micropools for longer storage. The system was designed to accommodate a 100 year storm. The prior development had no stormwater management whatsoever, so the proposed measures would substantially improve the stormwater management situation and stormwater quality. There was one outfall into wetlands.

The largest impact was the new bridge connecting the two project parts. It included retaining walls and a sediment basin on the Rockview side with access to it. Mr. Bevilacqua reviewed the alternate locations for the crossing, options A & B involving steeper roads and more fill and option C, the preferred alternative which provided for easier access and less fill. He then reviewed the options for the type of crossing which including Option A using twin 12x9 box culverts, Option H, a 50' span bridge with abutments, and the preferred Option F, a 42' arc bridge with some minor channel realignment, retaining walls and clear areas for animal passage. The bridge would be a town road with sidewalk. There was a considerable reduction in wetland impact with the retaining walls.

Mitigation measures included significant wetland plantings to filter the stormwater, essentially creating additional wetlands in the process.

To address previous comments by the City Engineer, the large deep basins on the Rockview side had been diminished in depth and height. The bridge alignment had been coordinated with an improved stream channel so it wouldn't trap debris. A management plan had been developed for maintaining the stormwater management basins to be executed by Michaels Development. Mr. Mattison asked how maintenance would be monitored.

Peter Wood of Michaels Development said Michaels would execute an operating agreement between itself and the Housing Authority (owner of the property) to require a maintenance plan for the stormwater management system within the development including catchbasins and detention basins.

Mr. Miller said the bridge and retaining wall details would be subject to review by the Engineering Department at the next stage, Detailed Plan Review. He would be looking for a stone fascia which would appear on both the bridge and walls. He said the hydraulics conformed to the City's standards.

Mr. Mattison then moved on to questions from the general public.

Jacqueline Schulz, 62 Thorpe Drive in Hamden, said her property abutted Farm Brook which had been subject to extreme flooding. She asked how far up the brook would be cleared and how it would be maintained in the long term. Mr. Bevilacqua said they had identified areas where debris was lodged and needed cleaning. Mr. Pepe noted brook maintenance would not be a long term responsibility of the developer. Mr. Miller said there were no controls on the debris placed by people upstream, but there now would be controls on the human contribution within the Michaels development. Clearing of the brook upstream of the development would help prevent flooding in the future.

Kristine Burton, 36 Thorpe Drive, asked whether the new project would increase flooding downstream. Mr. Miller noted the project stormwater improvements would improve the flow as seen today. Mr. Bevilacqua said their intent was to follow the primary area where the flow was carried and identify areas where debris should be removed.

Mr. Mattison then asked if there were any speakers. As there were none, he closed the hearing on the Inland Wetlands application and asked a motion to table. Upon motion by Mr. Lemar, the Commission voted unanimously (4-0) to table the item until the next meeting of the Commission.

Mr. Mattison then asked for a presentation from the applicant on the **Planned Development application** for the redevelopment of the Brookside-Rockview area.

Attorney Gregory Pepe gave an overview of what would be presented. He would first touch on the objectives of Section 65 and how the project met these objectives. Next Karen Dubois-Walton of the Housing Authority of New Haven would describe the Housing Authority's involvement and history in the project. Peter Wood of Michaels Development would describe the collaborative arrangement between the developer, Authority and the City. The architects and engineers would follow with their presentation.

Mr. Pepe proceeded with his presentation noting a major component of the Comprehensive Plan of Development of the City was development of quality housing stock for residents and senior citizens thus improving the surroundings. The site had been used for housing in a fashion which needed improvement and with the PDD apparatus there was a tool for doing so. The site was of sufficient size and open space to meet the criteria.

Karen Dubois-Walton, Executive Director of the Housing Authority, noted redevelopment of the site had been planned for quite a long time. The Authority had successfully redeveloped other sites (Monterey Place, Quinnipiac Terrace and East view) where the process was inclusive of the community. There was a Memorandum of Understanding from 10 years ago which had established the West Rock Implementation Committee with representation from the tenant councils, town of Hamden, New Haven, Housing Authority, and SCSU. This project was the largest so far and it had recently triggered stimulus funds.

Peter Wood, Michaels Development Company, said they had been selected in 2007 as a partner of the Housing Authority. He noted there had been approval of 6 Planned Developments Units for Phase I of the project. A Cooperation Agreement provided for the taxes that would be assessed, abandonment of existing public roads and dedication of new roads to the City, new sewers and utilities. The City had contributed \$9 million in capital money for the infrastructure improvements. The two primary financing sources were CHFA (private mortgages, private equity & tax credit sales), Housing Authority and other HUD resources. The Authority was contributing operating subsidy.

Jeremy Lake of Torti Gallas, Master Planners and Architects from Silver Spring, Maryland, walked through the site showing the existing conditions and natural surroundings. The proposed site plan for 431 units showed an integrated system of streets and blocks with primary roads with bike paths on the outside of the development and central green spaces.

Specific principles promoted walkability with sidewalks on both sides of the streets, units had front porches, there were tree belts, on street parking, and minimal travel lanes. Also promoted were safety and security with semi-public and semi-private spaces. This project was sustainable, following the green communities check list. It promoted a sense of place with architecture modeled after typical Connecticut styles.

The bridge, connections to Hamden and to Ribicoff elderly housing provided for connectivity.

Kenneth Boroson, 315 Peck Street, reviewed the architectural styles of the project, using arts and crafts, colonial, Italianate, national and Victorian, and presented the materials boards showing the typical materials and colors which would be used. He then reviewed the various combinations of floor plans and elevations of the buildings including the maintenance building and the community center.

Greg Pepe noted there had been a wetlands hearing prior to the Planned Development hearing so wetlands issues had been covered. He asked Mr. Bevilacqua to cover traffic and parking issues.

Andy Bevilacqua noted parking was in the rear of the units to keep the cars and utility type uses to the rear of the buildings. 1 space per unit was provided for the rental units, 2 spaces per unit were provided for the homeownership units, and ½ space for the senior units. There were 24 spaces for the community center, and 17 at the management building. There were additional spaces on street to the tune of about ½ space per unit. Traffic was covered under the Wilbur Smith Traffic Study, which concluded that this development did not cause any substantial traffic impact.

Regarding other site amenities, lighting would be similar to Quinnipiac Terrace with a combination of pedestrian scale street lighting and standard cobra heads. Open space included many open areas associated with the wetlands, and there were pocket parks and common greens.

Mr. Pepe noted to get the project started, there had been 6 PDU applications brought before the Board of Zoning Appeals and then City Plan Commission for Detailed Plan Review. It was the intention of the

developer that the PDUs with their conditions would be sunsetted once the PDD was approved rolled into the PDD.

He further noted there would be 38 homeownership units in Phase I and 38 senior units which would be part of the project.

This ended the presentation of the developer.

Mr. Mattison asked if there were questions from staff and Commissioners.

Ms. Gilvarg asked for clarification on several of the architectural styles, such as the national style which was explained as a simple style like a Vermont farmhouse. She asked whether we could expect the units to be constructed in the general styles or would they be specifically like the elevations and of the materials proposed. Mr. Wood said the design development plans were at 60% with 90% drawings to be complete within the month. He said he wouldn't be able to guarantee adherence exactly to the plans once value engineered, but it was the developer's intent to follow the presented styles.

Ms. Gilvarg noted there were no basements and asked about storage for residents. Mr. Wood said the units were slab on grade and there was extensive storage in an outside shed and spacious closets, exceeding CHFA storage requirements.

Ms. Gilvarg asked if units would have their own open space and would there be room for garden plots and prescribed paths for walking within the natural areas. Mr. Wood replied there were rear patio areas behind each unit, and there was a gardening area in the vicinity of the community center. There were sidewalks and bike paths along the outside roadways but no pathways in the wetlands, due to safety concerns.

Mrs. Ford asked about the landscape plan and trees. Mr. Bevilacqua noted extensive street trees were provided and also in the parking areas, in species in conformance with City standards. A detailed landscape plan would be part of the Detailed Plan Review.

Ms. Gilvarg asked about underground utilities. Mr. Wood replied all utilities were underground, including electric, gas, cable, phone, and water. She asked about lighting of parking lots. Mr. Wood replied the lower residential fixture would be used to light those areas.

Mr. Lemar asked about negotiations for the connection to Woodin Street in Hamden. Karen Dubois Walton replied that the Hamden planner had served on the West Rock Implementation Committee and she had committed to opening the roadway to Hamden.

Mr. Lemar was concerned about the long stretches of roadway which had caused speeding in the past.

Mr. Wood replied there would be traffic calming measures recommended by the City such as roundabouts, narrow roadways, and speed humps.

He asked about the reallocation of number of units should certain funding not be available. Mr. Wood said in a 5 to 8 year build out there was such risk but Michaels had contributed substantial resources to the project and intended to proceed. They owned 35,000 affordable units around the country and this West Rock Plan represented the best of what they knew how to do. Changes would have to come back to the Commission.

Mr. Mattison was concerned about the past history of the project and why Michaels was convinced the proposed project would succeed. There were things beyond the developer's control such as isolation from the City and completion of the connection to Hamden which could have an impact if it did not take place. How could a replay of the old housing projects be prevented? Ms. Dubois-Walton replied this was a beautiful part of the city and many of the former residents were ready to return. The old model was not a way to build community. The new model with mixed incomes and ages, difference in architectural and design detail and roadway improvements had proven successful. They would continue to pursue the connection of Wilmot Road to Hamden.

Mr. Wood added that once a community was built opposition from outside sources seemed to disappear. He hoped it would provide opportunities to Hamden as well as New Haven. Ribicoff Cottages might later be included in the redevelopment plan as well as a senior complex at 122 Wilmot Road.

Mrs. Ford asked for an update on the existing bridge on Brookside Avenue which has been noted in the approvals for Phase I as something that would need to be improved. Mr. Wood replied that they had been required to remill and replace up to the bridge from their property and to repair or replace the Brookside Avenue bridge as part of the project. There would be further investigations of the condition of the culverts as the project progressed. They were also looking into adding sidewalks out to Wilmot Road.

Mr. Mattison asked if there were any questions from the public.

Anstress Farwell asked if there was a bus route considered to serve the project. Ms. Gilvarg replied there was existing bus service. Mr. Wood said there would be further work on bus service at the detailed plan review stage.

She asked if there was a zoning table in the application. Ms. Gilvarg said yes. Regarding compliance with the new state law, she asked if there was any expansion of the non conformity or any less restrictive uses. Mr. Pepe replied the reduction in the non conformity was a less restrictive use in itself. There were fewer units here than before. Mr. Talbot said there were no existing non conforming uses to be expanded on the property.

Mr. Mattison then asked for speakers from the sign up sheet.

Honda Smith, 133 Harper Avenue, a member of the WRIC, said the community had been very involved in the process and supported the project. Crime statistics showed a low crime rate, and the Housing Authority had helped to rebuild. She had been offended by the chair's remark about the project. People had continued to keep the community together. Mr. Mattison said he had been referring to the buildings, and not the people. She encouraged the Commission to approve the PDD so the project could move forward.

Anstress Farwell, 129 Church Street, Suite 419, said it was a remarkable project, and her comments were not critical in any way of the project itself. The Urban Design League was concerned that a proposed PDD was going forward without the zoning ordinance being revised to comply with State Statute 8-2m. The City Plan Department had initiated an amendment which had remained tabled since July 2008. She had just met with City officials and understood that the intent was to take the matter off the table and proceed with it, she hoped in a collaborative open process. She said the PDD shouldn't move forward without assuring its legality. She submitted her written comments for the record.

As this concluded the speakers on the sign up sheet, Mr. Mattison closed the hearing at 9:10 PM and asked for a motion to table the matter. Upon motion by Mr. Lemar, the Commission voted unanimously (4-0) to table the matter until the Commission's next meeting. Mr. Mattison said he expected that reports would be issued next month.

It is noted that the following materials were part of the record:

Copy of Memorandum dated 10/13/09 to Carol Goldfield, President Board of Aldermen, from Michael Piscitelli, Director of Dept. of Transportation, Traffic and Parking.

Copy of Letter dated 10/09/09 to Albert Lucas, Director Office of Legislative Services from Daniel Brunet, Chairman, Regional Planning Commission.

Memorandum to Carl Goldfield, President Board of Aldermen, 10/20/09 from Howard Weissberg, Deputy Director, Department of Public Works.

PLANNING CONSIDERATIONS

Required information for consideration of this matter including a Traffic Impact Statement (TIS) has been provided in the submission narrative, along with supporting documents. The Commission also has in hand the review of the Traffic Impact Statement from the Department of Transportation. Commission consideration will focus on the proposal, the required findings for Section 65.A Planned Development District (PDD) standards of the New Haven Zoning Ordinance, and concerns expressed at the public hearing.

Zoning Relief Required

Please refer to Appendix B

The attached table indicates that all proposed uses are permitted uses in the existing RM-1 District as well as in the PDUs. Also, proposed open space complies with requirements for the district and PDUs.

Differences proposed from RM-1 and approved PDU standards include minimum lot size, lot width, lot area per dwelling unit, building setback requirements, and distance between larger structures. It is important to note that nearly all of the required changes (with the exception of distances between larger structures) relates to the single family home ownership properties and is in no way a reflection of overall site density, which would permit approximately twice the number of dwelling units proposed if the RM-1 zone was left in place.

It should be noted that Section A(v) of the applicant's narrative which deals with zoning-related considerations is entitled "Underlying Zoning Provisions" and makes reference in the text to "underlying zoning requirements". It is a concern of the Commission that the term "underlying" in this context is not only misleading but legally incorrect. Currently, the property that is the subject of the application is within the RM-1 zoning district, as modified in particular locations by the six approved planned development units. This will remain the zoning classification of the property until the effective date of this approval of planned development district designation, which will have the effect of amending the zoning classification and changing it to a new zoning district, based on the terms of this approval. At that point, none of the subject property will have a "underlying zone". The term "underlying zone" therefore, by both definition and operation, applies only to planned development units or other zoning mechanisms with an explicit **overlying** function such as the Whalley Avenue Overlay District, the City's three Historic Districts or the Coastal Management District.

Site and Neighborhood

The 97.9 acre site is located in the northwest corner of the City. Residential areas of Hamden are located to its immediate north and east, Westville Manor and West Rock Park to the west, and two New Haven public schools, Katherine Brennan and Clarence Rogers, to the south.

The site is bisected in a north to south manner by Belden Brook, is bordered on the southwest by Wintergreen Brook and on the east side by Farm Brook. There are wetland systems associated with each of these watercourses and it is in and adjacent to these systems where the majority of the passive open space will be located.

Portions of the site devoted to development are in approximately the same locations as the previously existing Brookside and Rockview neighborhoods, i.e., in the upland areas between the three watercourses.

Demolition

All previously existing structures on the site have been demolished except for 195 Wilmot Road, the

existing community center.

Traffic, Access and Parking

Traffic

Two separate traffic impact studies have been submitted by the applicant, the first for Phase I (PDUs 1 through 6) dated 11/11/08 and the second for Phases 2 through 6 (the balance of the project) dated 8/12/09. Although subject to detailed review by the Department of Transportation, Traffic and Parking the most recent report indicates that projected traffic volumes will result in nearly all level of service ratings of "A" for all unsignalized intersections examined while contributing to some decreases in level of service at the Fitch Street/ Wintergreen Avenue signalized intersection.

Access

Site access is provided by means of a redesigned roadway system of over two miles in total length that not only provides a rational and effective internal pattern of access but also provides direct vehicular access between the Rockview and Brookside neighborhoods by means of a structural crossing of Farm Brook. The plan also includes a Wilmot Road connection to Woodin Street in Hamden. All proposed roadways will be built to City standards and incorporated into the City street system upon completion, acceptance and formal inspection by the City Engineer.

The proposed road way incorporate design features such as reduced width, speed bumps and round-about intersections as a way of reducing vehicular speed and eliminating traffic signals. Non-vehicular access is provided for by means of bicycle lanes and sidewalks

Internal vehicular access for rental units is provided through a series of private alleyways with parking spaces. These alleyways are located behind proposed rental structures.

Parking

On -site parking is proposed at levels slightly in excess of City requirements but at a level that recognizes the practical limitations of providing only one parking space per dwelling unit. A total of 382 spaces are provided for the rental units where 357 would be required in the current RM-1 district while home ownership and senior housing parking is provided at the typical level of 96 spaces. There are an additional 41 spaces for the community center and management building for a total of 519 spaces where 476 would be required in the existing RM-1 District.

The plan also calls for an additional 414 on-street parking spaces for a project total of 933 spaces.

Utilities, Trash Disposal and Mail Service

Sanitary Sewer, Storm Flow, and Water Service The application package includes a utility plan showing water, sewer and storm drainage improvements. In addition, a storm water management plan has been submitted. The City Engineer will require that the system shown in the forthcoming detailed plans be sized to accommodate site drainage, be compatible with the City's sewer separation program, and alleviate existing problems, if any. The plans submitted with the PDD application are schematic in nature and will be developed in further consultation with City staff.

Trash collection and recycling for rental units will be provided by a private hauler under contract with the development's management company. Dumpsters are provided in the rental area at the rear of the proposed buildings in the parking areas. Homeownership units will be serviced by municipal trash and recycling collection, although the City may contract this out to the management company as this run is distant from existing public works runs.

Mail delivery in the rental area will be in cluster box units strategically located within the parking areas. Homeownership units will be provided with individual curbside boxes. The mailboxes should be visible from the street and in areas where they can be clearly seen by residents at all times

Site Design, Building Massing, Height, and Unit Design

Prior to razing, the former West Rock neighborhoods of Brookside and Rockview were comprised of 491 two-story rental apartments, originally constructed by the State of Connecticut in the early 1950's. The brick and siding faced units were located in barracks-like structures in groups scattered across the site, not all had direct access to City Streets and there were few units with defined open space "belonging" to the unit. Landscaping was minimal.

The current proposal seeks to re-establish both neighborhoods with a combination of 202 multi-family rental units and 20 homeownership units in the Brookside area while providing 38 senior dwelling units, 155 rental units and an additional 18 homeownership units in the reconstituted Rockview portion of the site. All units are designed to have doors fronting on public streets. Also included in the project is a 4,000 sq. ft. maintenance building and additions to an existing community center.

Residential building types, forms and "architectural vernaculars", or styles, vary considerably. Although the submitted narrative makes reference to four styles submitted plans and elevations show five: Victorian, Italianate, Arts and Crafts, Colonial and National. All five styles were chosen due to their prevalence in the City. All 36 homeownership units are duplex-type structures units, each on its own lot and constructed in either the Arts and Crafts, Colonial or National style. The 357 rental units are located in structures ranging from 2 to 6 units of either two or three stories in height and incorporating the full range of styles and each with it a separate entryway. All 38 elderly units are contained in one large three story structure.

Active Open Space and Amenities

The primary locations of active open space are the two traditional "greens" located in both the Brookside and Rockview neighborhoods. What the applicant refers to as "primary" open space areas are both located in proximity to the new roadway crossing of Belden Brook. In order to facilitate the neighborhood use of these spaces as well as to reinforce their centralizing functional role elements of the project such as the community center, senior housing, and the management office are located either in or close to the greens.

Site Development, Sedimentation and Erosion Control

Site erosion control plans have been submitted for the plan. These plans, while adequately dealing with discrete sections of the site, do not necessarily reflect the phased nature of the project. The Detailed Plan and Site Plan review will require much more detail as well as more information on construction phasing, soil storage areas and practices, haul routes, lay down areas and so forth.

Phasing

The applicant has shown plans with a 14 step construction sequence and has made reference in the narrative to six phases. Detailed plan review will require integration of these two different time frames and a narrative taking in to account conditions on the entire site during each phase of construction. This is due to staff's understanding of the fact that early phases of the plan will require significant amounts of fill from other portions of the site and that both areas will require effective sedimentation and erosion control practice simultaneously.

Provisions should also be made in the phasing plan for Commission review of any significant revisions to the plan after initial Commission approval.

FINDINGS AND RECOMMENDATIONS

Findings

When evaluating changes to the zoning map and text of the City Section 64.(d)(2)a. of the New Haven Zoning Ordinance requires that the Commission consider "errors in the existing ordinance; changes that have taken place in the city and in patterns of construction and land use, the supply of land and its peculiar suitability for various purposes, the effect of a map change on the surrounding area, the purposes of zoning, and the comprehensive plan of the City of New Haven."

In addition, Section 65.(a) regarding Planned Developments of the New Haven Zoning Ordinance requires certain findings based on specific objective standards that provide evidence of the fact that the tracts of land that are the subject of a PDD application "are developed, redeveloped or renewed as integrated and harmonious units, and where the overall design of such units is so outstanding as to warrant modification of the standards contained elsewhere in this ordinance".

The following represents application of each of the four standards of Section 65.(a) as well as the more general considerations of Section 64.(d)(2)a.) to the West Rock proposal. The plan should be:

(1) In accordance with the comprehensive plans of the city, including all plans for redevelopment and renewal;

This proposal may be fairly characterized not only as one that is in essential harmony with portions of the current 2003 Comprehensive Plan of Development, most particularly those that deal with housing, neighborhoods and the natural environment, but also as one driven by and designed in close response to elements of the comprehensive plan.

In the recommendations section of the Housing and Neighborhood Planning (Chapter IV C) of the comprehensive plan reference is made to the need to "Encourage the development of dramatically new neighborhood forms as part of revitalization programs at select locations, including West Rock..." Given previous conditions on the site, this proposal, with its emphasis on diversity of building form, types of occupancy (rental, elderly and homeownership), its attention to both inter and intra neighborhood connectivity and accessibility (of both pedestrian and vehicular nature), and a "greener" and more environmentally sustainable system of storm water and traffic management, can and should be considered a "dramatic" change in neighborhood form.

Also, by limiting the proposed area of development to the portion of the Housing Authority property currently located in RM-1 and PDU districts and minimizing impacts to adjacent wetlands and other significant topographic features, the proposal addresses concerns expressed in the Environment chapter of the comprehensive plan. In that section, in reference to the Wintergreen, Belden and Farm Brooks it explicitly states that "Redevelopment of the West Rock public housing developments should take care to preserve and protect these valuable environmental assets...". In addition, the provision of a traditional-type green for both the Brookside and Rockview neighborhoods addresses recommendations found in both the Environment and Neighborhood Planning chapters of the comprehensive plan concerning open space and the plan directive to retain New Haven's unique "sense of space".

(2) Composed of such uses, and in such proportions, as are most appropriate and necessary for the integrated functioning of the planned development and for the city;

As described in the "Planning Considerations" section of this report this proposal makes extensive and meaningful use of concepts such as a variety of building design and form, active open space, designed density and diversity of occupancy in order to facilitate the development of a residential

community that is fully integrated and self-sustaining in terms of its economic and social character. Furthermore, other site-related design features such as an improved roadway network (with dedicated bicycle lanes), access to Woodin Street and a direct connection between the Rockview and Brookside neighborhoods should help to ensure the successful integration of the entire West Rock neighborhood into the surrounding New Haven and Hamden neighborhoods and end the physical isolation of this community.

(3) So designed in its space allocation, orientation, texture, materials, landscaping and other features as to produce an environment of stable and desirable character, complementing the design and values of the surrounding neighborhood, and showing such unusual merit as to reflect credit upon the developer and upon the city;

The unusual merit of this project is due to its consideration of both the locational and topographic character of the site, along with high quality physical improvements appropriate to the site and the neighborhood, designed in a manner that enables the New Haven Housing Authority to meet the needs of its clients in an efficient and effective manner.

The project design acknowledges the suburban nature of the site as well as that of neighborhoods to the east and north in a roadway system that while maintaining a sort of informal grid system is also sensitive its topographic limitations (and design opportunities). It uses the new roadway system to establish a meaningful connection to those neighborhoods as well as to provide an improved level of connectivity between Brookside and Rockview. It also respects the integrity of the abutting single family neighborhoods by locating the 38 homeownership units in their general vicinity.

The designs of the two neighborhoods themselves are of unusual merit in that they each provide the diversity of form, architectural style, and housing opportunity necessary for the creation of a stable neighborhood. In addition, amenities such as the community center and the two greens are intended to enhance the community experience, while pedestrian walkways and bicycle lanes, in providing a level of non vehicular circulation, create not only efficiencies of time and physical resources but also increased opportunities for social interaction.

(4) So arranged as to provide a minimum of 250 square feet of usable open space per dwelling unit on the tract, except 125 square feet in the case of elderly housing units, subject to the specific minimum standards enumerated in section 15(a)(1)g. of this ordinance.

This qualitative objective has been met as indicated in the "Zoning" section of this report. Actual calculated usable open space values include a minimum of 1390 sq ft per rental unit, 525 sq ft per homeownership unit and 125 sq ft per elderly unit.

In addition this proposal is subject to the provisions of Connecticut General Statute 8-2m which states as follows:

Sec. 8-2m. Floating and overlay zones and flexible zoning districts. The zoning authority of any municipality that (1) was incorporated in 1784, (2) has a mayor and board of alderman form of government, and (3) exercises zoning power pursuant to a special act, may provide for floating and overlay zones and flexible zoning districts, including, but not limited to, planned development districts, planned development units, special design districts and planned area developments. The regulations shall establish standards for such zones and districts. Flexible zoning districts established under such regulations shall be designed for the betterment of the municipality and the floating and overlay zones and neighborhood in which they are located and shall not establish in a residential zone a zone that is less restrictive with respect to uses than the underlying zone of the flexible zoning district. Such regulations shall not authorize the expansion of a pre-existing, nonconforming use. Notwithstanding the provisions of this section, no planned development district shall be approved which would permit a use or authorize the expansion of a pre-existing nonconforming use where the underlying zone is a residential zone.

The Commission has previously requested advice of counsel as to the appropriate interpretation of this statute, and the requirements it imposes on various actions which the City may take. (*See Appendix C. Letter to K. Gilvarg from Robinson and Cole, July 16, 2008*). Based upon the advice received, to comply with Conn. Gen. Stat. § 8-2m, there are three restrictions placed upon the enactment of new planned development districts:

1. The flexible zoning districts established under such regulations shall be designed for the betterment of the municipality and the floating and overlay zones and neighborhood in which they are located.

The Commission finds that the proposed planned development district is designed for the betterment of the City and the neighborhood in which it is located, substantially for the reasons stated in the Findings 1 through 3 above.

Specifically, the proposal is in essential harmony with relevant portions of the current 2003 Comprehensive Plan of Development, most particularly those that deal with housing, neighborhoods and the natural environment, and is driven by and designed in close response to elements of the comprehensive plan.

This proposal places emphasis on diversity of building form, types of occupancy (rental, elderly and homeownership), and pays special attention to both inter and intra neighborhood connectivity and accessibility (of both pedestrian and vehicular nature), and a “greener” and more environmentally sustainable system of storm water and traffic management. This represents a dramatic change in neighborhood form, which the Commission finds is for the betterment of the City and the neighborhood.

The provision of a traditional-type green for both the Brookside and Rockview neighborhoods addresses recommendations found in both the Environment and Neighborhood Planning chapters of the comprehensive plan concerning open space and the plan directive to retain New Haven’s unique “sense of space. The Commission finds that this is for the betterment of the City and the neighborhood.

The proposal makes extensive and meaningful use of concepts such as a variety of building design and form, active open space, designed density and diversity of occupancy in order to facilitate the development of a residential community that is fully integrated and self-sustaining in terms of its economic and social character. Other site-related design features such as an improved roadway network (with dedicated bicycle lanes), access to Woodin Street and a direct connection between the Rockview and Brookside neighborhoods should help to ensure the successful integration of the entire West Rock neighborhood into the surrounding New Haven and Hamden neighborhoods and end the physical isolation of this community. The Commission finds that this is for the betterment of the City and the neighborhood.

The project design acknowledges the suburban nature of the site as well as that of neighborhoods to the east and north in a roadway system that while maintaining a sort of informal grid system is also sensitive to its topographic limitations (and design opportunities). It uses a new roadway system to establish a meaningful connection to those neighborhoods as well as to provide an improved level of connectivity between Brookside and Rockview. It also respects the integrity of the abutting single family neighborhoods by locating the 38 homeownership units in their general vicinity. The Commission finds that this is for the betterment of the City and the neighborhood.

The designs of the two neighborhoods themselves are of unusual merit in that they each provide the diversity of form, architectural style, and housing opportunity necessary for the creation of a stable

neighborhood. In addition, amenities such as the community center and the two greens are intended to enhance the community experience, while pedestrian walkways and bicycle lanes, in providing a level of non vehicular circulation, create not only efficiencies of time and physical resources but also increased opportunities for social interaction. The Commission finds that this is for the betterment of the City and the neighborhood.

Accordingly, based on the foregoing, the Commission finds that the requirements of this provision of Conn. Gen. Stat. § 8-2m are satisfied, and it is appropriate to approve the proposal.

2. The flexible zoning districts shall not establish in a residential zone a zone that is less restrictive with respect to uses than the underlying zone of the flexible zoning district.

Attached to this Report is a document detailing the differences between the characteristics of the existing zoning district and the proposed zoning district. The uses allowed in both the existing and proposed districts are identical. Accordingly, the proposed zoning district is not less restrictive than the existing zoning district.

Further, the dimensional requirements of the existing and proposed districts do not create a district that is less restrictive than the underlying district. There are some criteria as to which the existing district may be viewed as imposing a stricter zoning regime than the proposed zoning district. For example, lot area, lot width, building coverage and required yards are all less restrictive in the proposed zoning district in that they allow smaller lots to serve buildings which cover a greater portion of the lot. However, the proposed zoning district requires a far greater proportion of the property be set aside for open space. In essence, the proposed zoning district trades a greater density of buildings in a smaller area for a greater amount of undeveloped and open spaces. The Commission finds that on balance, this allocation of development density is not less restrictive than the existing zoning district.

The Commission reiterates that it does not believe that the term "underlying zone" as used in Conn. Gen. Stat. § 8-2m has any application to this proposal. As such, the Commission has compared the proposed district to the existing district in an attempt to meet the spirit of the statute rather than the inapplicable language of the statute.

3. No planned development district shall be approved which would permit a use or authorize the expansion of a pre-existing nonconforming use where the underlying zone is a residential zone.

Although the existing zoning district is a residential zone, the proposal is for new development to replace a development which was demolished. Upon approval of the new zoning district proposed by this Application, the new development will be in full compliance with the zoning regulations. As such, there is not only no existing non-conforming use to consider, but there is also no expansion of any such use, nor any proposed non-conformities. This requirement is therefore not applicable to this application.

The Commission again reiterates that it does not believe that the term "underlying zone" as used in Conn. Gen. Stat. § 8-2m has any application to this proposal. As such, the Commission has compared the proposed district to the existing district in an attempt to meet the spirit of the statute rather than the inapplicable language of the statute.

Review of the statutory language indicates that this plan as proposed is in full compliance. No uses are proposed that are not permitted in an RM-1 District or the approved PDUs, there are, or rather were, no existing nonconforming uses on the site to expand, and there would not be, upon approval of this proposal, an "underlying residential zone" on this property.

The Commission also notes for the record additional findings as described in the applicant's submitted narrative entitled "The West Rock Development of the Brookside and Rockview Residential

Communities”, Section A i) Objectives of the PDD.

Recommendations

Based on the preceding considerations the proposed West Rock development is found to be in accord with the comprehensive plans of the City of New Haven as the Future Land Use element of the New Haven Plan of Development designates and the New Haven Municipal Coastal Plan designates the area residential (R).

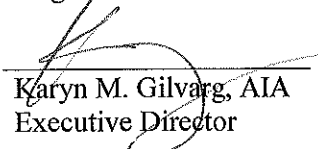
The General Plans for the PDD demonstrate appropriate use of the property in terms of its treatment of form, circulation, and open space while providing much needed housing opportunities to a broad range of residents to the extent that the Commission has determined that the proposal is in accordance with the objectives of Section(s) 65.A. and 64(d)(2)a.. Submission of detailed plans for review and approval, in accordance with text recommendations and conditions of approval and Section 65.E requirements will assure the project continues to meet requisite design standards.

It is the opinion of the City Plan Commission that the West Rock Development General Plan fully complies with the standards of Section 65.E of the Zoning Ordinance, and that the resulting development would have a positive effect on the economic health and quality of life within neighborhood and the City. The Commission therefore approves the Application and General Plans for PDD designation with the following conditions:

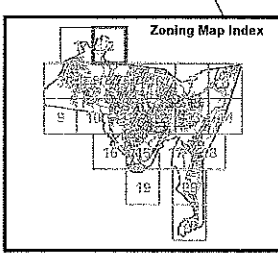
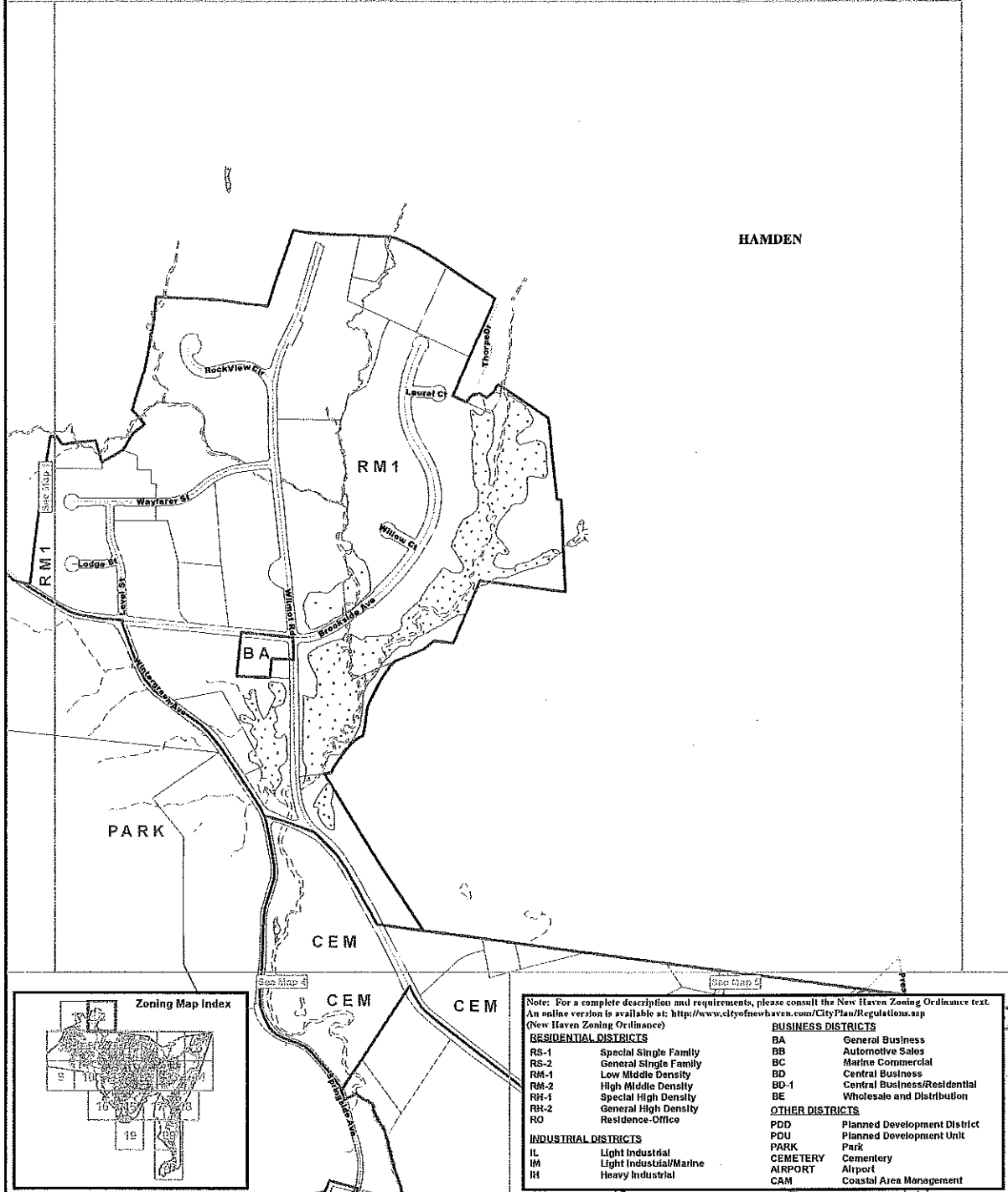
CONDITIONS OF APPROVAL

- 1) Approval from the Town of Hamden for connection of Wilmot Road to Woodin Street as well as for the four proposed driveway curb cuts on Woodin Street is required.
- 2) A maximum of 433 dwelling units (357 rental, 38 homeownership and 38 elderly) shall be permitted.
- 3) This report and the Application and General Plan text shall be recorded on the Land Records of the City of New Haven within 60 days of publication of Board of Aldermen approval for the PDD designation to be considered in effect. A certified copy of the recording on the Land Records and verification of a full contractual arrangement by the submitting professional design team (architect, engineer and landscape architect) shall be furnished to the Commission prior to Detailed Plan submission for each project component.
- 4) The Commission shall be given prior notice of any change in development principals, and any change in the approved submitting professional design team shall be for cause and require prior Commission approval.
- 5) Any required Federal or State permits for traffic improvements or storm water discharge shall be secured prior to issuance of any permit for new construction.
- 6) All necessary on or off site utility improvements are required to be completed at developer cost from its funds or by City Agreement, and to the satisfaction of the City Engineer.
- 7) Detailed plans shall be submitted within 18 months of the effective date of PDD designation, unless the Commission grants an extension upon written request of the Developer, who shall state a basis for the delay. If no Detailed Plans are submitted and no extension requested, the zoning of the tract shall revert to the RM-1 (Low-Middle Density Residential) designation.

ADOPTED: November 18, 2009
Edward Mattison
Chairman

ATTEST: 
Karyn M. Gilvarg, AIA
Executive Director

EXISTING ZONING

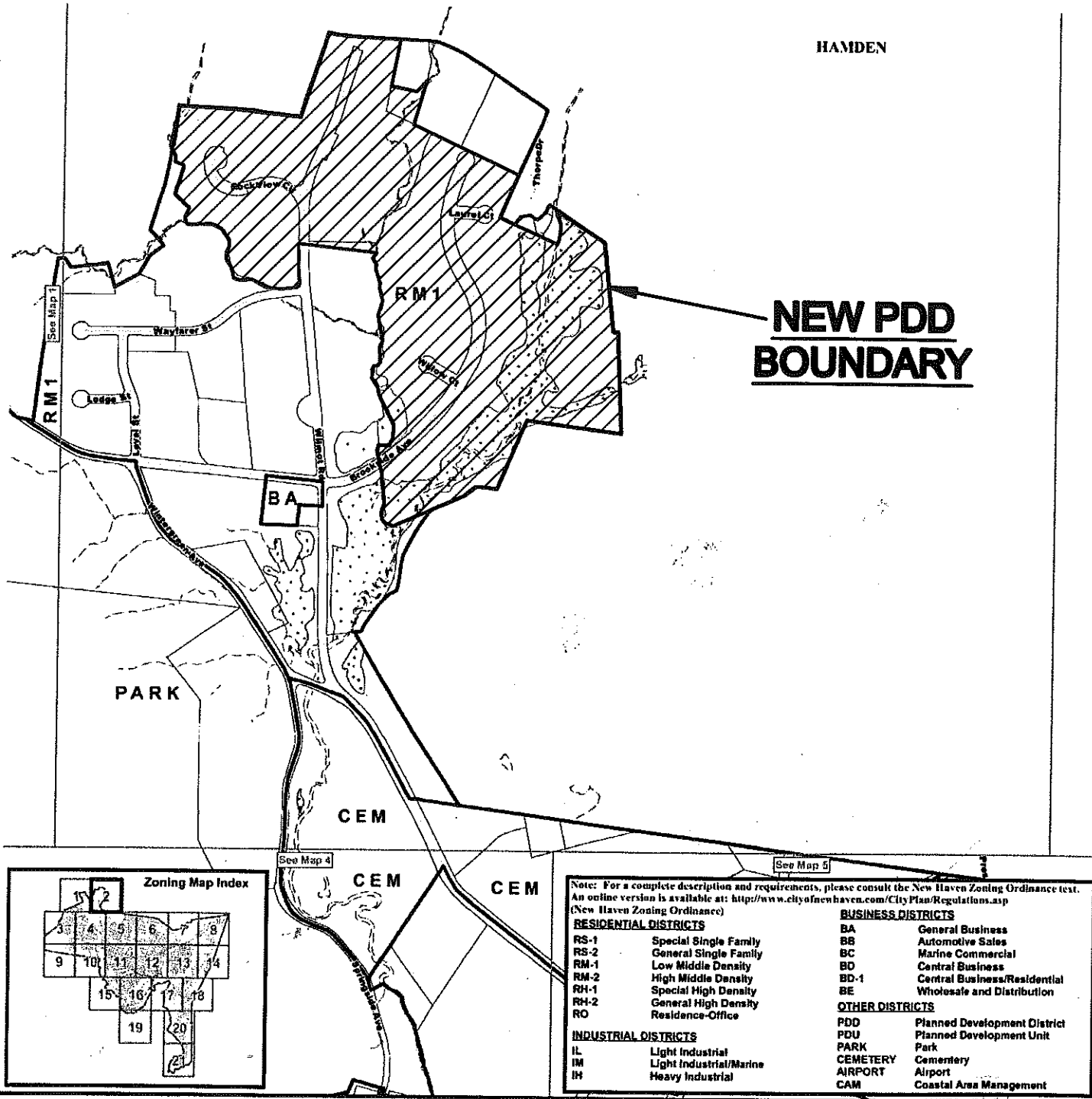


Note: For a complete description and requirements, please consult the New Haven Zoning Ordinance text. An online version is available at: <http://www.cityofnewhaven.com/CityPlan/Regulations.asp> (New Haven Zoning Ordinance)

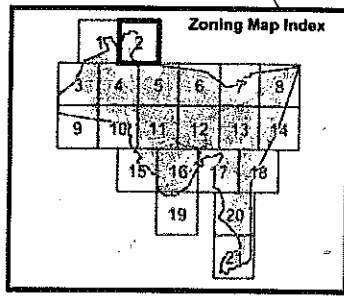
RESIDENTIAL DISTRICTS	BUSINESS DISTRICTS
RS-1 Special Single Family	BA General Business
RS-2 General Single Family	BB Automotive Sales
RM-1 Low Middle Density	BC Marine Commercial
RM-2 High Middle Density	BD Central Business
RH-1 Special High Density	BD-1 Central Business/Residential
RH-2 General High Density	BE Wholesale and Distribution
RO Residence-Office	OTHER DISTRICTS
INDUSTRIAL DISTRICTS	PDD Planned Development District
I Light Industrial	PDU Planned Development Unit
IM Light Industrial/Marine	PARK Park
IH Heavy Industrial	CEMTERY Cemetery
	AIRPORT Airport
	CAM Coastal Area Management

<p>City of New Haven, Connecticut John DeStefano Jr., Mayor</p>	Legend Zoning Boundary Zoning Grid Boundary PDU Boundary Local Historic District Coastal Area Management Water Airport Parcel Boundary Hydrology Wetland Railroad Centerline City Boundary	Data Location <small> Wdlgplan: Q:\working\GIS\2007\zoning.mxd Zoning.mxd Zoning_Pkg.aprx Wdlgplan: Q:\working\GIS\2007\zoning.mxd - Watersay Wdlgplan: Q:\working\GIS\2007\zoning.mxd - GreenDistrict_LD Wdlgplan: Q:\working\GIS\2007\zoning.mxd - Park_Pkg.aprx Wdlgplan: Q:\working\GIS\2007\zoning.mxd - Coastal Area Management Wdlgplan: Q:\working\GIS\2007\zoning.mxd - Airport Wdlgplan: Q:\working\GIS\2007\zoning.mxd - CAM </small>	ATTENTION: DISCLAIMER This is a reproduction of the official zoning map of the City of New Haven. The official zoning map is on file at the City Plan Department. Use this map for zoning purposes only. In the event of inconsistency with the zoning data contained herein, consult Article II of the New Haven Zoning Ordinance. For purposes other than zoning, every reasonable effort has been made to assure the accuracy of the map and data provided; nevertheless, some information may not be accurate and no warranty is made by the City of New Haven as to the accuracy, reliability or completeness of these data for individual or aggregate use with other data.
		<p>Zoning Map No. 2</p> <p>Produced by the Office of Information Technology Geographic Information System</p>	

HAMDEN



**NEW PDD
BOUNDARY**



Note: For a complete description and requirements, please consult the New Haven Zoning Ordinance text. An online version is available at: <http://www.cityofnewhaven.com/CityPlan/Regulations.asp> (New Haven Zoning Ordinance)

RESIDENTIAL DISTRICTS		BUSINESS DISTRICTS	
RS-1	Special Single Family	BA	General Business
RS-2	General Single Family	BB	Automotive Sales
RM-1	Low Middle Density	BC	Marine Commercial
RM-2	High Middle Density	BD	Central Business
RH-1	Special High Density	BD-1	Central Business/Residential
RH-2	General High Density	BE	Wholesale and Distribution
RO	Residence-Office	OTHER DISTRICTS	
INDUSTRIAL DISTRICTS		PDD	Planned Development District
IL	Light Industrial	PDU	Planned Development Unit
IM	Light Industrial/Marine	PARK	Park
IH	Heavy Industrial	CEMERY	Cemetery
		AIRPORT	Airport
		CAM	Coastal Area Management

<p>City of New Haven, Connecticut John DeStefano Jr., Mayor</p>	<p>2003</p>	Legend Zoning Boundary Zoning Grid Boundary PDU Boundary Local Historic District Coastal Area Management Water Airport Parcel Boundary	Hydrology Wetland Railroad Centerline City Boundary	Data Location <small>W:\zoning\03\working\GIS\03\Working.mxd Zoning_Grid_03.mxd Zoning_Pdu_03.mxd W:\zoning\03\working\GIS\03\NewHaven_IL.mxd W:\zoning\03\working\GIS\03\NewHaven_IM.mxd W:\zoning\03\working\GIS\03\NewHaven_IH.mxd W:\zoning\03\working\GIS\03\NewHaven_PDD.mxd W:\zoning\03\working\GIS\03\NewHaven_PDU.mxd W:\zoning\03\working\GIS\03\NewHaven_Park.mxd W:\zoning\03\working\GIS\03\NewHaven_Cemery.mxd W:\zoning\03\working\GIS\03\NewHaven_Airport.mxd W:\zoning\03\working\GIS\03\NewHaven_CAM.mxd</small>	ATTENTION: DISCLAIMER This is a reproduction of the official zoning map of the City of New Haven. The official zoning map is on file at the City Planning Department. Use this map for zoning purposes only. In the event of uncertainties with the zoning data contained herein, consult Article II of the New Haven Zoning Ordinance. For purposes other than zoning, every reasonable effort has been made to assure the accuracy of the map and data provided; nevertheless, some information may not be accurate and no warranty is made by the City of New Haven as to the accuracy, reliability or completeness of these data for individual or aggregate use with other data.
		<p>Zoning Map No. 2</p> <p>Produced by the Office of Information Technology Geographic Information System</p>	 1 inch equals 700 feet.	Data Source <small>Zoning, IRII: City of New Haven, City Planning Department, 2003 Hydrology: City of New Haven, Aerial Photography, 1997 Parks: City of New Haven, Director of the Avenue, 2003 Historic Districts: City of New Haven, City Planning Department, 2004 Railroads: City of New Haven, Aerial Photography, 1997 Coastal Area Management: NOAA, 2001</small>	

NEW HAVEN ZONING MAP
1"=700FT (APPROX.)

APPENDIX A DETAILED PLAN SUBMISSION REQUIREMENTS

Detailed Utilities and Service Plan, in accord with text, with:

- Water Service, as approved by the South Central Regional Water Authority and the City Engineer.
- Fire Apparatus access and fire hydrant locations, as approved by Fire Department, City Engineer.
- Storm and Sanitary treatment, including flow calculations, as approved by Water Pollution Control Authority, City Engineer.
- Electric Service, including transformer and meter placement, as approved by United Illuminating.
- Gas Service, including meter placement, as approved by Southern Connecticut Gas Company.
- Telephone and Cable Service, including any equipment and wiring on the exterior of buildings, as approved by SNET and Comcast, or other providers.
- Drive layouts and grades (including topo, cut and fill), as approved by the Department of Traffic and Parking and City Engineer.
- Trash Disposal Plan, in accord with State mandated separation and recycling requirements, as approved by Department of Public Works.
- Mail Service Plan, showing location and design of mail boxes, as approved by US Postal Service.
- Snow Removal and Storage Plan.

Schedule of required roadway and ramp improvements.

Schedule of right-of-way donations, new public streets, signalization and intersection improvements on and off site related to the project.

Soil Erosion and Sediment Control Plan, in conformance with State of Connecticut standards and New Haven Zoning Ordinance and Regulations. The Developer shall submit a certified estimate of the cost of completion of project site work (e.g., landscape, walks, lighting, public access amenities) and the Commission may, as an SESC plan element, require a passbook bond, escrow or other acceptable guarantee for up to 150% of the estimated cost of completion of said elements as a performance guarantee.

Detailed Building Plans, including rendered elevations fully depicting the architectural character of the project, its materials, and its relationship to surrounding properties.

Master Signage Program. A design handbook based on the standards of section 5.9.3 of the General Plan application shall be a required element of the Detailed Plan submission.

Operations Plan, detailing methodology, days and times of demolition and blasting, if any, and notification procedures to affected parties.

Traffic Operations Plan, detailing street closures, alternate routes, signage, lighting and other operational measures to minimize local traffic disruptions shall be a required element of the Detailed Plan submission.

Phasing Plan, with sub-phases of project and detailed construction schedule for each project phase including any fill, excavation or temporary earth materials storage on any other portion of the site not included within the boundaries of the phased area.

Appendix B
West Rock Redevelopment
Planned Development District
Zoning Table

Zoning District - RM-1	Section	Standard (Permitted or Required)	Proposed
Use - Residential Single Family, Two-family, Multi-Family	13(a)(1)	Permitted by right	Permitted by right
Use - Community Center	12(b)(2)b	Special Exception	Special Exception
Use - Child Day Care	13(b)(3)(d)	Special Exception	Special Exception
Use - Parks, Passive Recreation, Playgrounds	12(b)(1)a	Permitted by right	Permitted by right
Use - Police Station	12(b)(1)b	Permitted by right	Permitted by right
Minimum Lot Area	13(a)(1)a	6,000 sq ft	2,400 sq ft
Minimum Average Lot Width	13(a)(1)b	50 ft	30 ft
Minimum Lot Area Per Standard Dwelling Unit	13(a)(1)c	3,500 sq ft	2,300 sq ft
Minimum Lot Area Per Elderly Dwelling Unit	13(a)(1)c	1,750 sq ft	1,750 sq ft
Maximum Building Coverage	13(a)(1)d	30% of lot area	40% of lot area
Maximum Building Height	13(a)(1)e	35 ft	35 ft
Minimum Front Yard	13(a)(1)f	20 ft	15 ft
Minimum Rear Yard	13(a)(1)f	25 ft	20 ft
Minimum Side Yard	13(a)(1)f	8ft one side 12ft other side	15 ft and 0ft for Duplex
Minimum Parking Count - Residential Housing - Rental	13(a)(1)g	1 space per dwelling unit	0.84 Spaces per dwelling unit off-street
Minimum Parking Count - Residential Housing - Homeownership	13(a)(1)g	1 space per dwelling unit	1 space per dwelling unit
Minimum Parking Count - Elderly Housing	13(a)(1)g	1/2 space per dwelling unit	1/2 space per dwelling unit
Minimum Parking Count - Brookside Management Building	12(b)(2)b	1 space per 4 occupants at capacity. Spaces within 300 ft of building	1 space per 4 occupants at capacity. Spaces within 300 ft of building
Minimum Parking Count - Rockview Community Building	12(b)(2)b	1 space per 4 occupants at capacity. Spaces within 300 ft of building	1 space per 4 occupants at capacity. Spaces within 300 ft of building
Minimum Horizontal Distance Between Two Buildings (4 or More Dwelling Units)	22(c)(5)a	50 ft	11 ft
Minimum Horizontal Distance Between Two Buildings in Single Ownership	23(b)(1)a	1.5 ft for each foot of avg. height 25 ft legs on sight triangle 2.5 ft to 10 ft	11 ft 25 ft legs on sight triangle 2.5 ft to 10 ft in height
Minimum Corner Visibility	28	in height	height
Minimum Parking Space Size	29(b)	180 sq ft	180 sq ft
Minimum Open Space - Residential Housing - Rental	65(a)(4)	250 sq ft per dwelling unit	1390 sq ft per dwelling unit
Minimum Open Space - Residential Housing - Homeownership	65(a)(4)	250 sq ft per dwelling unit	525 sq ft per dwelling unit
Minimum Open Space - Elderly Housing	65(a)(4)	125 sq ft per dwelling unit	125 sq ft per dwelling unit

ROBINSON & COLE LLP

BRIAN R. SMITH

280 Trumbull Street
Hartford, CT 06103-3597
Main (860) 275-8200
Fax (860) 275-8299
bsmith@rc.com
Direct (860) 275-8224

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July 16, 2008

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CITY PLAN DEPT.
105 CHURCH ST.
NEW HAVEN, CT 06510

Karyn M. Gilvarg, AIA
Executive Director
New Haven City Plan Department
165 Church Street
New Haven, CT 06510

Re: **Opinion Regarding Selected Issues of Planned Development Districts
Under Section 65 of the New Haven Zoning Ordinance and Section 8-2m of
the Connecticut General Statutes**

Dear Ms. Gilvarg:

On March 31, 2008, you requested an opinion from the New Haven Corporation Counsel regarding the impact of Public Act 06-128, codified as Conn. Gen. Stat. § 8-2m, on Section 65 of the New Haven Zoning Ordinance. The New Haven Corporation Counsel has referred your request to us as New Haven special counsel so that we may render advice. Specifically, you asked:

(1) Is the language of Public Act 06-128 binding on the City, given the time of its passage, prior to the Connecticut Supreme Court decision in *Campion v. Board of Aldermen*, 278 Conn. 500 (2006), and given the content of that decision?

(2) Was Public Act 06-128 enacted in conformance with Section 2-14 of the Connecticut General Statutes?

Additionally, during our conversations, you requested advice on a third question:

(3) Whether new zoning regulations concerning planned development districts must incorporate any language contained in or based upon Public Act 06-128.

This opinion is limited to addressing only these three questions, and is based on statutory construction and a review of case law that may shed light on these questions. However, this opinion is not meant to be an exhaustive analysis of the validity of General Statutes § 8-2m. No opinion is offered concerning the validity of Section 65 of the New Haven Zoning Ordinance or of any regulations concerning planned development districts in New Haven. Further this opinion does not offer any



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Karyn M. Gilvarg, AIA
July 16, 2008
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advice concerning the validity of the specific planned development district addressed in *Campion*.

In rendering this limited opinion, we have reviewed the following statutes and ordinances (the "Laws"):

1. Public Acts 06-128, § 2 and 06-196, § 290, collectively codified as General Statutes § 8-2m; and
2. General Statutes § 2-14.
3. City of New Haven Zoning Ordinances § 65.

Except as noted below, the conclusions stated herein are based solely on the above reviews and are limited solely to the application of the Laws to the City of New Haven (the "City") as of the date of this opinion.

I. Applicability of General Statutes § 8-2m to the City

In *Campion*, the Connecticut Supreme Court held that planned development districts, such as those enacted by the City in response to an application from a private property owner, are authorized by the special act empowering the City to create zoning districts. See An Act Amending an Act Creating Zoning Districts In the City of New Haven; 19 Spec. Acts 1006, No. 490 (1925) (the "1925 Special Act"). Shortly after the Court's decision in *Campion* was released, the General Assembly enacted Public Act 06-128, Section 2 of which was later codified as § 8-2m, and which provides that:

The zoning authority of any municipality that (1) was incorporated in 1784, (2) has a mayor and board of alderman form of government, and (3) exercises zoning power pursuant to a special act, may provide for floating and overlay zones and flexible zoning districts, including, but not limited to, planned development districts, planned development units, special design districts and planned area developments. The regulations shall establish standards for such zones and districts. Flexible zoning districts established under such regulations shall be designed for the betterment of the municipality and the floating and overlay zones and neighborhood in which they are located and shall not establish in a residential zone a zone that is less restrictive with respect to uses than the underlying zone of the flexible zoning district.



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July 16, 2008
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Such regulations shall not authorize the expansion of a pre-existing, nonconforming use. Notwithstanding the provisions of this section, no planned development district shall be approved which would permit a use or authorize the expansion of a pre-existing nonconforming use where the underlying zone is a residential zone.

The language of § 8-2m on its face indicates that it is targeted to a limited number of municipalities in the State, in that it specifically applies only to municipalities that (1) were incorporated in 1784, (2) have a mayor and board of aldermen form of government, and (3) exercise zoning pursuant to a special act. Conn. Gen. Stat. § 8-2m. Our research indicated that only one Connecticut municipality satisfies all three criteria: the City of New Haven. *See State of Connecticut, Register and Manual*, at 366, 511, 374-627 (2007).

Statutory interpretation is governed by Conn. Gen. Stat. § 1-2z. “The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.” Conn. Gen. Stat. § 1-2z. When a statute is not plain and unambiguous, interpretive guidance may be found in the legislative history and circumstances surrounding its enactment, the legislative policy it was designed to implement, and in the relationship to existing legislation and common law principles governing the same general subject matter. *Department of Transportation v. White Oak Corp.*, 287 Conn. 1 (2008).

One could interpret this statutory provision as intended to apply to the City, even though the City is not identified by name. Assuming, for the sake of argument, that the language of General Statutes § 8-2m is not plain and unambiguous, the legislative history of Public Act 06-128 § 2 is clear that the General Assembly intended it to apply to the City. When presenting the amendment that became § 8-2m, Senator Looney explained that the provision “deals with a situation in the City of New Haven, reacting to a decision last year and the State Appellate Court concerning the issue of planned development districts.” Conn. Sen. April 28, 2006 (test. of Sen. Looney). Senator Harp likewise indicated that the statute addresses “a big issue in New Haven, and I believe that this amendment clarifies what the City of New Haven can do” regarding planned development districts. Conn. Sen. April 28, 2006 (test. of Sen. Harp). Similarly, on the House floor, Representative Megna also indicated that the statute “clarifies the use of overlay zones within the City of New



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Haven.” Conn. House May 2, 2006 (test. of Rep. Megna). In further discussion, Representative Miller specified that the amendment arose because of opposition where a “restaurant was located into a nonconforming zone, and it continued to expand into a residential neighborhood. . .and I think this [statute] is one way to preserve that residential area, the New Haven area around the waterway.” Conn. House May 2, 2006 (Test. of Rep. Miller).

Because the legislature is empowered to enact statutes, a statute is valid and binding unless invalidated by a court of competent jurisdiction as unconstitutional, which the courts will not do unless the statute is invalid beyond a reasonable doubt. *Sweetman v. State Elections Enforcement Comm’n*, 249 Conn. 296, 320 (1999) (citations omitted). Accordingly, based on the plain language and legislative history of § 8-2m, the statute applies to the City, unless and until it is repealed or rendered invalid by court decision.

II. Relationship of *Campion* to § 8-2m

Public Act 06-128 was signed into law by the Governor on June 2, 2006. The language of the Public Act itself specifically stated that Section 2 (which was codified as § 8-2m) carried with it an effective date of October 1, 2006. See P.A. 06-128; LCO No. 5039. However, Public Act 06-196, § 290, signed by the Governor on June 7, 2006, stated that “Section 2 of public act 06-128 shall take effect from passage.” See P.A. 06-196. As such, § 8-2m is effective from June 2, 2006.

The Supreme Court officially released its decision in *Campion* on June 6, 2006. The *Campion* decision itself makes no mention of Public Act 06-128, Public Act 06-196, or § 8-2m. Similarly, none of the briefs presented to the Court make any reference to those legislative enactments. There is no evidence to suggest that the Court was even aware of the statute before releasing its decision.

Instead, the narrow issue presented in *Campion* was whether planned development districts were authorized pursuant to the 1925 Special Act governing zoning in the City. Section 1 of the 1925 Special Act provides the board of aldermen with the broad power to “divide the city of New Haven into districts of such number, shape and area as may be best suited to carry out the provisions of [the] act. . .” 1925 Special Act § 1; *Campion, supra*, 278 Conn. at 514. The court concluded that the creation of planned development districts was no different than the creation of any other new zoning district. *Id.* As such, because the 1925 Special Act authorized the City to create new zones, and to alter zones previously created, the creation of planned development districts was authorized by the 1925 Special Act. *Id.* at 515.



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While *Campion* holds that the City may create planned development districts under the 1925 Special Act, General Statutes § 8-2m contains language which details the circumstances under which planned development districts and similar flexible zoning districts may (or may not) be enacted.

As noted, this opinion does not address whether the enactment of § 8-2m has any effect on the specific land use applications at stake in *Campion* itself. In that context, the relationship between the effective date of § 8-2m and the issuance of the decision in *Campion* may be important, but that issue is beyond the scope of this opinion.

For purposes of this opinion, however, the timeline is quite simple. On its face, the legislative framework from which the City derives its zoning authority was altered as of June 2, 2006, the revised effective date of § 8-2m. Enactments of planned development districts and zoning regulations concerning planned development districts which occur subsequent to that date are subject to the provisions of § 8-2m.

III. The General Assembly's Compliance with CGS § 2-14 in adoption of Public Act 06-128

Based on our discussions with you, it is our understanding that you no longer require a response to this question. Accordingly, this opinion does not address this issue.

IV. Requirements for zoning regulations

You have also asked whether General Statutes § 8-2m mandates the inclusion of any special language in zoning regulations adopted to cover planned development districts or similar flexible zoning tools. By its terms, the first sentence of § 8-2m confers authority to enact planned development districts and similar flexible zoning tools, an authority which *Campion* established had already existed under the 1925 Special Act. However, the subsequent clauses of § 8-2m provide what are, in effect, limitations on that authority. These limitations can be divided into two categories: (a) requirements for zoning regulations which related to such districts, and (b) requirements for decisions to enact an individual flexible district. Each category will be addressed in turn.



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(a) Requirements for zoning regulations

There are two clauses of § 8-2m which relate to the zoning regulations themselves.

- The regulations shall establish standards for such zones and districts.
- Such regulations shall not authorize the expansion of a pre-existing, nonconforming use.

The language of the first clause imposes a mandatory requirement that any regulations concerning flexible districts contain standards for such zones and districts. The statute does not contain any definition of the term “standards”. There is no language in the statute itself or in the legislative history which provides guidance as to what exactly these “standards” must include.

However, in *Campion*, the plaintiffs argued that the City’s current zoning regulations, set forth in Section 65, lacked standards for planned development districts. The Court responded: “Section 65 of the New Haven zoning ordinance does not lack adequate standards and is not impermissibly vague.” *Campion, supra*, 278 Conn. at 525. While we can not provide any opinion as to whether a particular set of regulations are in compliance with § 8-2m without a detailed review of the regulations themselves, the holding in *Campion* will guide a review of the standards included in new regulations. This holding suggests that standards similar to those contained in Section 65 at the time *Campion* was litigated should continue to be sufficient, so long as the requirements of General Statutes § 8-2m as noted in here are adhered to.

The second clause of § 8-2m also prohibits regulations which authorize the expansion of a pre-existing nonconforming use. Again, absent a review of the specific regulations at issue, we can not opine as to whether a particular set of regulations are in compliance with § 8-2m. However, § 8-2m does prohibit the inclusion of language in such regulations which would authorize the expansion of such nonconforming uses.

(b) Requirements for adoption of flexible districts

There are two clauses of § 8-2m which relate to the process by which a new, specific planned development district may be adopted.



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- Flexible zoning districts established under such regulations shall be designed for the betterment of the municipality and the floating and overlay zones and neighborhood in which they are located and shall not establish in a residential zone a zone that is less restrictive with respect to uses than the underlying zone of the flexible zoning district.
- Notwithstanding the provisions of this section, no planned development district shall be approved which would permit a use or authorize the expansion of a pre-existing nonconforming use where the underlying zone is a residential zone.

Each of these clauses focuses on the uses which could be authorized pursuant to a flexible district, and the first clause provides some general language about the purpose of the adoption of flexible districts.

These clauses are problematic in their interpretation and application, particularly since the terms on which they rely are not defined. For example, the concept of a "less restrictive" zone can vary depending on the intent of the proposed user. A "residential zone" can range from a zone that permits residential uses as its principal permitted uses to an industrial zone which happens to permit congregate housing. While the term "underlying zone" presumably refers to the zoning district in which the land is located at the time of the application, the creation of a planned development district creates a new zoning district, and as such, there is no "underlying zone" after adoption. Finally, the term "expansion" is not defined with any specificity.

It is clear to us, however, that any review of the application of these clauses will need to be conducted on a case by case basis, and conclusions may be drawn only as the specific facts are presented and determined for a given application. The City will need to exercise caution in applying § 8-2m to a specific application, and prior to making any decision, will need to ensure that the administrative record is adequate and complete and supports the decision which is made.

V. Summary and Opinion

In conclusion, our opinion is the following:

(1) General Statutes § 8-2m (Public Act 06-128) is a general law which applies to the City; governs its regulations adopted on or after June 2, 2006 unless and



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until future legislative or judicial actions amend, repeal, or invalidate the statute in whole or in part; requires that zoning regulations adopted concerning planned development districts may not authorize the expansion of a non-conforming use; and requires that such regulations must contain standards.

(2) On and after June 2, 2006, whenever the City adopts flexible districts, they must be designed for the betterment of the municipality and the floating and overlay zones and neighborhoods in which they are located and shall not establish in a residential zone a zone that is less restrictive with respect to uses than the underlying zone of the flexible zoning district. Also, no planned development district may be approved which would permit a use or authorize the expansion of a preexisting nonconforming use where the underlying zone is a residential zone.


This opinion is rendered as of the date hereof, and we disclaim any undertaking to advise you hereafter of developments hereafter occurring or coming to our attention, whether or not the same would (if now existing and known to us) cause any change or modification herein.

The above opinion is limited solely to the matters expressly set forth above. No other opinions are intended, nor should any be inferred. Further, we do not opine herein as to the laws of any jurisdiction other than those of the State of Connecticut.

This opinion is provided in connection with a request for opinion made by the Executive Director of the New Haven City Plan Department, and may not be relied upon or quoted or otherwise used by anyone other than the New Haven City Plan Department, the New Haven City Plan Commission, or the New Haven Board of Aldermen, nor delivered to any other person, without our express prior written consent.

Very truly yours,

ROBINSON & COLE LLP

By 
Brian R. Smith,
A partner of the firm

