

STATE OF CONNECTICUT  
SITING COUNCIL

**PETITION NO. 1312** - Candlewood Solar LLC petition for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed construction, maintenance and operation of a 20 megawatt AC (26.5 megawatt DC) solar photovoltaic electric generating facility located on a 163 acre parcel at 197 Candlewood Mountain Road and associated electrical interconnection to Eversource Energy's Rocky River Substation on Kent Road in New Milford, CT

OCTOBER 24, 2017

**RESPONSES TO COUNCIL INTERROGATORIES**

Intervenor, Rescue Candlewood Mountain's, responds to the Council's interrogatories as follows:

1. Rescue Candlewood Mountain's membership list:

Please see attached list.

2. Concerns regarding stormwater and wetlands with the Dunham Farms project.

RCM believes that a full and fair response to this question might be best addressed through cross examination. However, in response, RCM attaches the original decision by the inland wetland agency and the minutes from the planning and zoning meeting which discuss the project. Clearly, the two projects have some differences, but the concerns raised by the municipality for stormwater management remain applicable. For example, the effects of deforestation and grading in both projects will significantly impact stormwater dynamics on site. In addition, the failure of the project proponents in both matters to submit fully detailed adverse impacts to wetlands resources prevents a meaningful analysis on the balance between public necessity and environmental compatibility. Waiting until the D&M phase effectively bypasses this aspect of the

proceeding, rendering the appearance of balance a meaningless gesture.

Respectfully Submitted,

RCM,

By \_\_\_\_\_  
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## CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing was deposited in the United States mail, first-class, postage pre-paid this 24th day of October, 2017 and addressed to:

Ms. Melanie Bachman, Esq., Executive Director, Connecticut Siting Council, 10 Franklin Square, New Britain, CT 06051 (1 orig, 15 copies, plus 1 electronic) (US Mail/electronic).

And electronic copies to:

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Keith R. Ainsworth, Esq.

### RCM Membership List

Kathleen Roberts Ford Joachim, Doug Joachim, Pam Morgan, Pat Welch, Russ Posthauer, Jr. , Page Carter , Sue Carter ,Carl Dunham ,Nancy Saggese, Helen Applebaum , Debra Schueler , Jamie Diaferia, Susan Diaferia, Dom Diaferia, Melissa Pezzola ,Michael Merrill , Donald Pezzola , Gregory Maroun , Stecks Nursery and Landscaping , Albert Watson, Elizabeth Watson, Sue Randolph, Steve Randolph Alice Miller , Ilana Laurence, Patricia Laurence, Stuart Laurence, Jonathan Laurence Donny Pezzolo Jr , Katie Pezzolo , Kyle Kovacs , Kelly Kovacs, David Kellogg Devon Dobson, Kelsey Dobson, Phil Dobson, Tom Dobson, Lisa Moisan, Kat Benzova Michael Patzig, Liba Furhman, Ari Rosenberg, Lisa Ostrove , Michael Ostrove, Sophie Ostrove, Daniel Ostrove, John Macklin ,Tamar Macklin, Jennifer Shelov, Josh Shelov Sarah Dillon, Andrew Havill , John Havill, Janet Levy , Ross Levy, Nancy Macklin Robert Macklin, Michael Scofield, Jay Umbarger , Lynn Umbarger, Naomi Goldstein Paula Goldstein, Marty Fridson, Elaine Sisman, Nili Baider, Alberto Baider Daniella Baider, Allegra Baider, Larry Thaler, Sherry Thaler, Julie Bailey Bob Bailey, Norma Hart, Troy Hart, Barbara Stasiak, Jim Stasiak, Karin Shelov Beth Shelov, Mark McCloskey , Jacquie McCloskey, Chris McCloskey, Brian Tivnan Candlelight Farms Aviation LLC , Terry McClinch , Sven Olsen, Mary Olsen Kirsten Torracco, Michael Torracco, Gary Hida, Lisa Hida, Eileen F Barber, John Barber Lawrence Lombardo, Kathryn Joleen Lombardo, Robert Carrozzo, Cheryl S Gould Tom Castagnetta, San Castagnetta, Dan Castagnetta, Ron Sypher, Barbara Sypher Nancy Walsh, Tima Winkley, Kenneth Winkley, Eli Noam, Nadine Strossen

**Town of New Milford - Inland Wetland & Watercourse Agency**

**Adopted Resolution of Denial**  
**Dunham Farm - Application A07-003**

**Background**

1. The New Milford Inland Wetlands and Watercourse Commission (Commission) received an application (A07-003) on January 22, 2007 for regulated activities in conjunction with a 508 unit active adult community, construction and relocation of approximately 7,600 linear feet of access road and an extensive stormwater management system. The applicant modified the project in an effort to reduce the wetland related impacts of the project. The original application proposed 1.89 acres of direct wetland impacts, 45 linear feet of watercourse disturbance and 8.27 acres of upland review area disturbance. Following modification, the application requested authorization for 445 units necessitating 1.64 acres of direct wetland impact, 45 linear feet of watercourse disturbance and 9.04 acres of upland review area disturbance. The applicant proposed 1.75 acres of wetland mitigation.
2. The Wetlands Commission determined that the proposal was a significant activity and set a public hearing as required by the Inland Wetlands and Watercourses Act (the "Act") and the Town of New Milford Inland Wetland and Watercourses Regulations with the latest revision date of February 14, 2000 (the "Regulations").
3. The public hearing commenced on Thursday, March 29, 2007, was continued to April 19, 2007; May 17, 2007; May 31, 2007; June 7, 2007 and closed on June 21, 2007 after a time extension was granted in accordance with Regulations Section 10.2.
4. The Planned Development Alliance of Northwestern Connecticut, Inc (PDA) intervened in this proceeding pursuant to CGS Section 22a-19 on March 26, 2007, (exhibit 46) and participated in the public hearing as intervenors.
5. Relevant testimony and evidence submitted at the Public Hearing has been documented and considered. Information received for the record is noted in exhibits 1 through 156 for application A07-003.
6. The applicant, expert witnesses retained by the applicant, the intervenors expert witnesses retained by the intervenors, the Commission, the Commission's professional staff, Town-employed consultants, and interested public parties participated in the public hearing.
7. Commission members and professional staff conducted visual inspections of the proposed activities on the subject properties. Commission members who have visited the property include Roger Moretz, Cathy Setterlin, Kathleen Nelson, Jim Anderson, Thomas Lappala,

Richard Rosiello, and Angela Dimmitt.

8. The applicant had the opportunity to address, in detail, the issues and concerns raised by the Commission, Commission professional staff, Town-employed consultants, intervenors, intervenors' experts, and concerned citizens, so as to develop a project that met or exceeded the requirements for the protection and preservation of wetlands and watercourses and general health and safety of the residents of the Town as set forth in the Act and Regulations.

## **COMMISSION FINDINGS AND REASONS FOR DENIAL**

The Commission finds that given the project design, an increase in impervious surface, the piping of stormwater, localized water diversion, slope of the land, soils conditions, and first hand knowledge of the site, via visits to the property, the potential for impacts to wetlands and watercourses reaches far into, and beyond, the regulated area and is thus subject to regulatory jurisdiction. This project is a significant activity with a serious potential to degrade and/or damage the wetlands, watercourses, wildlife habitat, vegetative habitat, and water quality within the project's regulated area and on adjacent areas. These regulated areas will inevitably be impacted by the proposed regulated activities unless proper measures are taken to manage the construction and post construction phases of this development and all feasible and prudent alternatives are taken to minimize impact to wetlands and watercourses.

Based on a thorough review of all application materials initially submitted and as supplemented during the course of the public hearing, the New Milford Inland Wetland and Watercourses Commission hereby denies application A07-003 for the reasons stated below. The Commission's decision to deny the project is based primarily upon three global concerns. The Commission finds that the application contains (A) a procedural defect, (B) incomplete and insufficient information, and (C) finds that additional prudent and feasible alternatives need to be addressed. The Commission finds that the applicant has not satisfied its burden of proof showing that there are no feasible and prudent alternatives that would minimize the project's impact on wetlands and watercourses located on the property, adjacent to the property and downgradient from the properties that are effected by the proposed regulated activities.

### **A) Procedural Defect**

A procedural error exists with the application because a portion of the proposed work occurs within a Town right-of-way and on Town property. No letter of permission was provided for work on the Town's property. Section 7.7 of the Regulations states "At a minimum all applicants shall include the following information in writing on maps or drawings" and requires in section 7.7(A)(3) "The owner's name, address and telephone number and written consent if the applicant is not the owner of the land upon which the subject activity is proposed." A letter of permission for all property upon which a project is proposed must be provided with the application.

## **B) Incomplete and Insufficient Information**

In view of the project's magnitude and nature, the Commission finds that the application, inclusive of all supporting documentation, does not contain complete or sufficient information to render an approval for one or more of the reasons, including but not limited to, those listed below. It is the opinion of the Commission that, as a result of these deficiencies, the applicant did not fully explore options, alternatives and design requirements essential to ensuring that wetlands and watercourses are protected to the maximum extent possible while allowing for reasonable development of the property.

The Commission concurs with the Milone & MacBroom, consulting engineers and wetland specialists, findings in their report dated July 19, 2007 where they state "We believe that there are both wetland impact and engineering issues that have not been satisfactorily addressed to date." The Commission acknowledges that the applicant has significantly revised the proposed development in response to the Commission's concerns and is rendering its decision based upon the project plans submitted June 8, 2007 (exhibits 123 and 124) (exhibit 123) and latest reports associated with this submission. More specifically the following list identifies some of the issues that must be addressed to determine the potential impact to wetlands and watercourse systems.

- 1) Not all the activities regulated by the Commission have been identified by the applicant, and the site plans are inconsistent. As one example, the Soil Erosion Sediment Control Phasing Plan (Sheets 6 and 8 of 54) shows a proposed employee parking lot, equipment, material storage and fueling area that are within 100 feet of the intermittent watercourse that was not included in the upland review area computations. In addition, stormwater Basin #1 is proposed partially within a wetland area, but no maintenance access to the forebay is presented. Provision of such access will necessitate a direct wetland impact that is not represented in the application materials.
- 2) Construction of stormwater basins #2 and #3 will require rock excavation and blasting that will alter the ground water flow regime and surface water runoff patterns of the area. The applicant's experts provided testimony that these hydrologic modifications will not alter these wetlands. It is the opinion of the Commission's experts that impacts will occur and that sufficient technical detail has not been provided to support the applicant's opinion or convince the Commission to disregard the opinion of its own experts. Moving the basins farther away from the wetlands would reduce the potential for adverse wetland impacts.
- 3) A 20 to 30-foot high retaining wall is proposed at the southwestern boundary of the project. The construction of this wall will alter ground water and surface water flow patterns, which would inevitably and adversely impact the downgradient wetlands. In addition, the applicant proposes to change this wetland's watershed by redirecting surface flows that currently feed this wetland to stormwater basin #1. This will reduce the contributing watershed area to the wetland and lessen its hydroperiod. Such changes



typically generate negative long term impacts. The applicant's experts did not provide sufficient technical detail to prove that such impacts will not occur. Alternative arrangements include splitting this basin into two systems (i.e. one at the base of the wall and one within the existing upland open field) or relocating the wall to the east and constructing a basin in an area that is outside of the Commission's upland review area.

- 4) The ratio of proposed wetland impacts to proposed wetland mitigation is very low (roughly 1:1), leaving no margin for suboptimum success rates. The Commission's experts provided testimony questioning the long-term viability of the wetland mitigation site A1 (enhancement). At mitigation area A1, planting of the upland field with wetland vegetation without changing the grades is of concern because the existing ground water table has been measured at depths greater than 30 inches below grade, which is well below the typical wetland vegetation rooting zone (e.g., 0 to 24 inches). The applicant's experts did not provide the hydrologic data necessary to document that this wetland creation will be successful, or convince the Commission to disregard the opinion of its own experts.
- 5) The Commission finds that the proposed mitigation for the wetlands is conceptual in nature and is insufficient mitigation for the significant impacts associated with the proposed development. The applicant's plans and design team considerations were not finalized at the close of the public hearing. Several ideas and concepts were mentioned, but are not depicted on the plan set.
- 6) An invasive species control plan was requested, particularly for basin #7 and mitigation site B1 and B2. This plan was not provided by the applicant.
- 7) Design of the wetland crossing calls for construction of a 34-foot high gabion wall at the crossing location. Structural design details for this crossing have not been provided. It is not clear how the gabion baskets will be pinned to the existing grade and how this structure will be stabilized to prevent slippage or movement during the freeze/thaw cycle. The expected service life and long term maintenance requirements of this structure were not documented, and the Commission has experience with this type of structure suggesting it has a service life of substantially less than required to protect wetlands and watercourses in this context.
- 8) The applicant provided a generalized detention basin monitoring plan. The Commission and its experts requested additional information that was not provided by the applicant. Specifically, the plan does not address the following: (a) control of invasive species within the stormwater basins; (b) methods for preventing clogging of the through pipes to the level spreader systems; (c) methods of ensuring that basin #1 effectively distributes water to support both the proposed wet meadow plus the existing off-site basins to the north; and (d) the long-term maintenance of the proposed ground water recharge galleries.
- 9) The applicant's environmental consultants have not provided a detailed analysis of the

potential adverse wetland impacts associated with the conversion of the existing quarry sediment pond and wetland into a detention pond (Detention Pond #7). Analyses regarding the potential impacts to hydroperiod, duration of inundation, both short and long term water surface levels, and the existing wetland vegetation have not been provided.

- 10) The applicant has proposed the use of conservation easements along several of the wetlands and watercourses on site. However, no formal language has been submitted by the applicant regarding the specific uses allowed and restricted within the proposed conservation easements. The specific language of such easements is vital for the protection and preservation of the significant wetlands and watercourses on this site.
- 11) Design of the stormwater management system incorporated both water quality measures and methods for controlling peak flow from the site. Modifications were made to this system throughout the hearing process. However, the design remained deficient for the following reasons:
  - a. Stormwater infiltration galleries are proposed within 15 feet of the proposed building slabs and the proposed retaining walls. The separation distance to buildings as recommended by the 2004 Connecticut Stormwater Quality Manual is 100 feet. Loading of stormwater behind the retaining walls could result in structural impacts to the wall. The applicant did not provide technical information to support the significantly smaller separation distances proposed nor was the opinion of a licensed structural engineer provided as to the acceptability of this arrangement.
  - b. Design of the detention basin berms was not complete. Additional detail and design consideration regarding the impervious core berms is needed to ensure the basin will remain stable under the loading that will inevitably result when the basin is full of stormwater.
  - c. The project plans contain errors with respect to elevations and grading that impact the proposed drainage system. For example, Sheets 2 and 3 of 25 (exhibit 123) depict a proposed detention gallery system with a top elevation of 698.0, while the surrounding ground elevation ranges from 695 to 696 indicating the basins would protrude above the ground.
  - d. The applicant's experts did not document the constructability of the cross-country drainage pipe runs discharging from basin #6 and from the proposed access road to basin #7. No construction access was depicted on the plans to facilitate this work and the existing slopes appear too steep for construction equipment to work without additional regrading.
  - e. A 38 percent volumetric increase in stormwater runoff is proposed within the Bullymuck Watershed #1 (from 6.59 acre-feet to 9.12 acre-feet). The

Commission's experts testified that Bullymuck Brook is a critical resource because it is an active channel that is subject to bed and bank erosion under current conditions and the proposed volumetric increase will exacerbate this current condition. The applicant failed to address this issue and to discuss potential downstream impacts that may occur as a result of the proposed increases.

- f. Project plans call for the outlet structure from Basin 7 to be reconstructed, providing a 36-inch discharge pipe. An existing 18-inch pipe downstream of this discharge is not proposed to be modified, nor is the outlet structure from the existing downstream basins. No hydraulic analysis was provided to document that the 18-inch pipe and the outlet structures are adequately sized.
- 12) Sediment and Erosion Control Plans, a Sediment and Erosion Control Narrative and Project Phasing Plans were presented to the Commission. The plans were schematic in nature and incomplete for the following reasons:
- a. No provisions were included for protecting catchbasins from silting during construction or for proper dust control over what is expected to be a 10-year construction cycle.
  - b. Slope stabilization and grading was also incomplete as evidenced by the lack of reverse slope benching on the plans. Detailed construction sequencing was requested for the proposed slope areas and the Commission found the applicant's response did not adequately address potential impacts to wetlands that may occur.
  - c. The plans lack detailed provisions for the movement of stormwater during the construction period. Specifically, temporary channels and swales are lacking.
  - d. Computations supporting the design of temporary sediment traps, temporary sediment basins, and temporary lined channels were not provided.
  - e. The plans and narrative do not define completion of any phase. A clear definition is needed to control when subsequent phases commence.
- 13) The Commission finds that the proposal will increase impervious surface and reduce infiltration and transpiration of stormwater by tree removal and re-grading of the property. This intercepting and collecting of stormwater that currently disperses as sheet flow will now be collected and concentrated to defined outlet points. The Commission finds that the design of the project intensifies the stormwater runoff. The proximity of the development to wetlands and the concentration of the stormwater from development are detrimental factors with regard to the potential impacts to wetland and watercourse systems. The Commission's consulting engineers indicate that the proposal will alter drainage and have submitted specific information about reducing stormwater flows, velocity dissipation, and

retention of storm flows. The applicant has other options that may further improve water quality, reduce thermal impacts, and reduce chemical pollution to the receiving waters. These options have not been fully addressed to the satisfaction of the Commission.

### **C) Prudent and Feasible Alternatives**

The Commission finds that the applicant has not fully addressed prudent and feasible alternatives that could reduce adverse impacts to wetlands and watercourses. The Commission finds that the applicant is required to address, in detail, prudent and feasible alternatives that could reduce both direct and secondary adverse impacts to wetlands and watercourses. The following list includes some, but not necessarily all of the prudent and feasible alternatives that may be available to the applicant.

- a. The applicant could review the locations of detention basin 2 and 3 to see if other locations and/or design alternatives would reduce potential impacts to wetlands and watercourses.
- b. The applicant could review other design options for detention basin 1. An option could be to splitting the basin into two systems or relocation of the basin to an area that has fewer impacts to wetlands and watercourses.
- c. The applicant could review an alternative for the direct impacts associated with detention basin 7. The applicant could create a separate detention basin near Route 7 on property owned by the owner and not utilize the existing wetlands as a sedimentation basin, water quality basin and runoff storage area for the applicant's proposed road.
- d. The applicant could address the possibility of diverting increased runoff from other watersheds to a basin on the applicant's property that is more level, has better drained soils and has a topographic location that is better able to handle runoff concerns. The Commission finds that the proposed 38% increase in volumetric runoff within the upper reaches of the Bullymuck River watershed is unwarranted and unacceptable impact to wetlands, watercourses and neighboring properties.
- e. The applicant could consider relocation of the proposed employee parking lot, equipment storage, material storage and fueling area on the phasing plan (exhibit 123) to areas not within 100 feet of the intermittent watercourse.
- f. The applicant can relocate or redesign, and increase the size of the proposed mitigation areas.
- g. The applicant can utilize structural components at the Wetlands Crossing area that do not utilize gabion baskets, but have a longer-term service life.
- h. The applicant could modify the stormwater management systems in a manner that is more

protective of water quality and adequately handles peak flows and volumetric flows, such as increasing distances between stormwater infiltration units and wetlands, watercourses or slabs and walls.

- i. Efforts can be made to reconfigure the development plan to reduce impervious surface to minimize runoff.
- j. The applicant could alter the stormwater discharge points to minimize impacts on wetlands and watercourses that will be impacted by the proposed project.

Although a great deal of information was submitted during the course of the public hearing process, the applicant failed to satisfy the burden of proof that the project would not cause unnecessary harm to wetlands and watercourses. There is potential for adverse impacts to the wetland and watercourse systems both on and off of this environmentally sensitive property from the implementation of this project. The Commission finds that based on their knowledge of wetland systems, reports from professional staff and the Commission's consulting engineers, information submitted by the applicant, and input from concerned parties, the applicant has not fully addressed or introduced design criteria or alternatives that satisfy the wetlands regulatory requirements, and as such the proposed Dunham Farm Active Adult Community application A07- 003 is denied.

**NEW MILFORD ZONING COMMISSION  
SPECIAL MEETING  
MINUTES  
AUGUST 7, 2007**

Present: Eleanor Florio, Chairwoman  
Janice Vance, Vice Chairwoman  
William Taylor, Secretary  
Stephen Paduano, Member  
Sharon Ward, Member  
James Walker, Alternate  
Kathy Castagnetta, Zoning Enforcement Officer  
Town Attorney D. Randall DiBella

Absent: Donald Marsh, Alternate  
Walter Rogg, Alternate

**1. CALL TO ORDER**

Mrs. Florio brought the meeting to order at 7:00 p.m. in the Loretta Brickley Conference Room of Town Hall.

**2. RESOLUTION OF DENIAL**

- A. Bernard A. Pellegrino, Attorney for Owners, special permit and site plan applications with regard to Dunham Farm Active Adult Community, MPRDD#1 final site plan, under Chapter 180 to allow a use which will generate more than 500 trips per day, on property located at 195 Candlewood Mountain Road, Map 26, lot 67.1; Rocky River Road/Kent Road, Map 34, Lots 15, 15.1, and 16; Candlewood Mountain Road, Map 26, Lot 67.**
- B. Bernard A. Pellegrino, Attorney for Owners, special permit and site plan applications with regard to Dunham Farm, MPRDD#1 final site plan, under chapter 140 for earth removal in conjunction with construction of a 508 unit active adult community and appurtenant facilities, including roadways and septic systems, on property located at 195 Candlewood Mountain Road, Map 26, lots 67.1; Rocky River Road/Kent Road, Map 34, lots 15, 15.1, and 16; Candlewood Mountain Road, Map 26, Lot 67.**
- C. Bernard A. Pellegrino, Attorney for Owners, site plan application with regard to Dunham Farm Active Adult Community, MPRDD#1 final site plan under chapters 117 and 175 on property located at 195 Candlewood Mountain Road, Map 26, lot 67.1; Rocky River Road/Kent Road, Map 34, Lots 15, 15.1, and 16; Candlewood Mountain Road, Map 26, Lot 67.**

Mrs. Castagnetta noted for the record the following correspondence: report from Milone and MacBroom dated July 25, 2007 with final review and diagrams; letter and resolution of denial from the Inland Wetlands Commission and Wetlands Enforcement Officer James Ferlow dated August 3, 2007; and Department of Public Works Director Mike Zarba dated July 6, 2007. These and other pertinent data are on file in the Zoning office for review.

Mr. Walker stated that he read the resolution and felt it to be explicit with not a lot of room for doubt.

Mrs. Vance, Ms. Ward, Mr. Paduano, and Mrs. Florio have visited the site. Mr. Paduano noted that the members were kept abreast of the application with monthly progress reports.

*Mr. Paduano moved to adopt the resolution of denial as read this evening and included in the motions.*

**RESOLUTION: (as read into the record by Mr. Taylor and Mrs. Vance)**

**Application for Final Site Plan Approval of MPRDD#1  
Special Permit #2007-01 Application for Special Permit for a use which will generate more than 500 trips per day  
Special Permit #2007-02 Application for Special Permit under Chapter 140 for earth removal**

**Applicant: Bernard A. Pellegrino, Attorney for Owners  
Property Owners: Dunham Farm, LLC; Candlelight Farm, LLC; Carl M. Dunham Jr.  
Property Addresses: Candlewood Mountain Road, Rocky River Road/Kent Road, Candlewood Mountain Road  
Assessor's Map and Lot Numbers: Map 26, Lot 67.1; Map 34, Lots 15, 15.1 and 16; Map 26, Lot 67.**

**Background of MPRDD#1**

In 2004 the applicant submitted a proposed regulation amendment and zone change application to create a Major Planned Residential Development District on a 163 acre parcel, which is now identified as Map 26, Lot 67.1. On 1-27-05 the Commission adopted the regulation amendment which was drafted by the applicant, as well as a zone change to MPRDD#1 which included approval of a General Development Plan. The initial General Development Plan (GDP) allowed for 508 residential dwelling units on the parcel along with ancillary uses. The primary access to the development was to be via a reconstructed Rocky River Road from Kent Road/Route 7.

Two current Commission members, Florio and Paduano, visited the site during a duly warned special meeting held on October 8, 2004 during the 2004 public hearing process. In accordance with Subsection 117-040(16) of the Zoning Regulations the Commission received and reviewed copies of progress reports and minutes from meetings of the applicant with consultants and staff over the time period of May 10, 2005 through January 19, 2007.

### **Application History**

On January 23, 2007 the New Milford Zoning Commission (the “Commission”) received three applications with regard to development of Dunham Farm Active Adult Community, Major Planned Residential Development District #1 (MPRDD#1). The applications included: 1) an application for a special permit and site plan approval under Chapter 180 to allow a use which will generate more than 500 trips per day; 2) an application for a special permit and site plan approval under Chapter 140 for earth removal in conjunction with construction of a 508 unit active adult community and appurtenant facilities, including roadways and septic systems; and 3) a site plan application for final site plan approval under Chapters 117 and 175.

An extension was granted by the applicant and the public hearing opened on May 1, 2007. At this meeting a staff report was read outlining the proposed project as well as the history of the Major Planned Residential Development District #1 (MPRDD#1). The applicant then presented a brief overview of the project. An intervener’s petition was submitted on behalf of the Planned Development Alliance under Connecticut General Statutes §22a-19(a). A brief presentation was given by the legal counsel for the intervener. Consultants hired by the Commission gave a brief overview of their concerns with the application and submitted a written report. Several members of the public spoke with regard to their concerns with the proposed development. Legal counsel for the Commission discussed the Commission’s concerns with regard to timeframes and the standing of an intervener. The applicant granted another extension and the hearing was recessed and continued to May 30, 2007.

At the May 30, 2007 continued public hearing it was noted that revised plans and additional information had been received from the applicant in response to staff and consultant reports. Several written communications from members of the public were also received. It was noted the total residential unit count had been reduced from 508 to 445. Several experts presented on behalf of the applicant. The intervener’s attorney as well as experts hired by the intervener presented testimony in opposition to the applications. Consultants hired by the Commission stated their concerns with the revised plans and submitted additional written comments. The attorney for the Commission discussed legal concerns. Several members of the public spoke for and against the application. The hearing was recessed to the June 12, 2007 regular meeting.



At the June 12, 2007 continued public hearing it was noted that new information had been submitted by the applicant in response to the Commission's consultants' comments and that written communications from the public had been received into the record. Several representatives and experts attended and presented on behalf of the applicant. Representatives and experts presented on behalf of the intervener. Consultants for the Commission discussed their concerns. Several members of the public spoke with regard to the application. The applicant and intervener were afforded the right to cross examine. The applicant presented rebuttal, both delivered final arguments, and the hearing was closed.

A majority of Commission members visited the property and the neighborhood, individually, at various times before the conclusion of the public hearing.

On June 19, 2007 the Commission held a duly warned special meeting with technical and legal consultants to discuss the application. Subsequent discussions occurred at the June 26, 2007 and July 10, 2007 regular meetings.

At the close of the public hearing a total of 344 exhibits had been submitted to the record. It was noted that a large number of the exhibits submitted by the applicant were duplicates and were, in some cases, submitted multiple times with each set of revised plans, and duplicated with subsequent submissions.

**After duly considering the evidence submitted as part of the public hearing record and subsequent reports from consultants and staff and comments from legal counsel, the applications submitted by Bernard A. Pellegrino, Attorney for Owners, with regard to Dunham Farm Active Adult Community, MPRDD#1 for a final site plan approval under Chapters 117 and 175; Application for a Special Permit for a use which will generate more than 500 trips per day under Chapter 180; and Application for a Special Permit for earth removal under Chapter 140 are denied for the following reasons:**

1. The applicant has failed to satisfy the conditions of Subsection 117-040(17), Submission of Final Site Plan, which requires either timely approval from the Department of Environmental Protection for the on-site sewerage disposal system or timely issuance of a permit from the New Milford Water Pollution Control Authority to connect to the municipal sewer system.
2. The applicant has failed to satisfy the requirements of Subsection 175-020(3) and (9) which require the plan to show the final location of sewage disposal facilities. Further, the applicant has failed to satisfy the requirements of Subsection 175-030(5) in that the availability and adequacy of sewerage disposal has not been proven. The plan also fails to comply with Subsection 117-020(11).
3. The applicant has failed to design the proposed reconstructed Rocky River Road in accordance with the provisions of Subsection 117-040(14) Road Access

which requires the reconstruction of Rocky River Road to conform to the construction methods and requirements outlined in Chapter 18, Article II of the Code of the Town of New Milford. The Director of Public Works as well as Planning and Engineering consultants hired by the Commission have determined the reconstructed Rocky River Road must be classified as a collector road due to the projected traffic volume as well as the purpose it will serve. As per the Director of Public Works, Planning and Engineering consultants, and the Code of the Town of New Milford Subsection 18-23 et. seq., Table 1, a collector road cannot exceed an 8% gradient. The proposed reconstructed and partially relocated road exceeds this gradient and is as steep as 9.75%.

4. The applicant has indicated that the proposed reconstructed Rocky River Road is to be a public roadway, however, no right-of-way has been designated on the plans submitted, and a significant portion of the proposed roadway is to be constructed outside of the existing right of way.

5. The Commission finds that the horizontal and vertical geometry of some internal roadways create unsafe conditions in violation of Subsection 175-030. Examples of this include Roads K and R being proposed with 10% or greater down slopes into 90 degree or sharper bends.

6. The applicant has failed to prove compliance with Subsection 117-040(5) and Subsection 180-040(5) in that proposed driveways do not consistently meet the required minimum length of 20 feet and that the applicant has not demonstrated how the 890 parking space requirement has been met. Given the narrow widths of the proposed alleyways, a parking deficiency may result in obstructed access throughout the site, including access required for emergency vehicles. This creates a condition that would materially adversely impact the health, safety and welfare of the residents under the provisions of Subsection 175-030(3) and (4).

7. The applicant has not demonstrated how the public parking needs of the accessory uses such as the retail and retail services buildings and the community buildings and community areas for recreation will be met as per Subsections 175-030(3) and 180-040(5).

8. The Commission finds that the proposed number of multifamily dwelling units of 51.7% of the total number of residential dwelling units does not comply with the provisions of Subsection 117-030(3) in that the maximum number of multi-family dwellings cannot exceed 40% of the total number of residential units.

9. The applicant has failed to comply with the provisions of Subsection 117-040(21) which requires an operations plan which specifically addresses the management of construction traffic associated with the development with the goal of limiting traffic on Candlewood Mountain Road. The applicant has not documented how traffic on Candlewood Mountain Road will be minimized throughout the construction cycle. Candlewood Mountain Road is a local road that was not designed to carry a large traffic load. The safety of the intersection

of Candlewood Mountain Road and Route 37 is also questionable. Construction access on Candlewood Mountain Road must be limited to protect worker and public safety.

10. The applicant has failed to adequately address how the requirements of Subsection 140-050(2) L will be met which require that truck access to the excavation operation be arranged so as to minimize danger to traffic and nuisance to surrounding properties. As stated above, the applicant has failed to address the management of construction traffic associated with the development and its impact on Candlewood Mountain Road.

11. The Commission finds that the applicant has proposed encroachments onto the neighboring property at the north end of MPRDD#1 and elimination of a vegetated buffer, which is inconsistent with the General Development Plan, and in violation of Subsection 117-020.

12. The applicant has failed to provide sufficient details with regard to the proposed site grading to prove feasibility, even though these details have been requested throughout the application process. In many locations, grading as depicted on the project plans would force runoff toward the buildings, which would result in flooding problems that create concern for the health, safety and welfare of the residents.

13. The applicant has failed to provide sufficient details and documentation with regard to retaining wall design to prove feasibility, structural stability and safety, even though these details have been requested throughout the application process. The appropriateness of the proposed Versa-Lok system for this application was not proven. In many locations construction of the proposed wall and the required geosynthetic would conflict with the required site utilities. For example, the wall supporting Road G at the western side of the property is up to 35 feet in height. Project plans depict storm drainage and sanitary sewer lines under Road G (other utilities such as water, cable, telephone, and gas may be installed in this road as well; however, these are not presented on the project plans.) It is not clear that the wall can be properly constructed with the necessary geosynthetic given the utility locations presented. Failure of this wall would create a significant safety risk, as it supports not only the roadway, but also the fill upon which nearby buildings will be constructed.

14. The applicant has failed to provide sufficient design and construction details with regard to proposed roads to prove feasibility and safety, even though these details have been requested throughout the application process. In particular, the sightline at some alleyways and internal intersections appears limited due to the proximity of buildings to the intersections. The applicant did not provide supporting data to verify the available sight distances as requested. Deficient sight lines generate concerns for public safety and so their adequacy must be documented.

15. The applicant has failed to provide sufficient information in the Sediment and Soil Erosion Control Plan so as to comply with the provisions of Chapter 125. Specifically, the plans do not provide adequate measures to effectively control construction phase runoff such as temporary sediment basins and swales. Computations supporting the design of the limited sediment and erosion controls depicted on the plans were not provided.

16. The applicant has failed to provide sufficient landscaping details with regard to the common areas and street tree locations as required by Subsection 175-020(7).

17. A separate site layout plan indicating dimensions, curve radii, driveway, alley, parking area dimensions, etc. has not been provided, as requested, to prove compliance with Subsection 175-030(10) regarding adequacy of design of the interior vehicular circulation system to provide safe and convenient access to all structures, uses, parking spaces and loading spaces.

18. Furthermore, in view of the fact that the applicant does not have an approved final site plan for all of the reasons set forth in this Resolution, the Application for Special Permit for a use which will generate more than 500 trips per day must be denied under the provisions of Chapter 180.

19. Furthermore, in view of the fact that the applicant does not have an approved final site plan for all of the reasons set forth in this Resolution, the Application for Special Permit for earth removal must be denied under the provisions of Chapter 140.

*The motion carried unanimously.*

Mr. Paduano thanked Attorney DiBella and Vince McDermott for their objectivity and hard work.

**3. ADJOURNMENT**

*Mr. Paduano moved to adjourn the meeting at 7:25 p.m. The motion was seconded by Mrs. Vance and carried unanimously.*

Respectfully submitted,

Judilynn Ferlow  
Recording Secretary

/jlf