

DOCKET NO.: HHD-CV-19-6120090-S	:	SUPERIOR COURT
	:	
SUMMIT SAUGATUCK, LLC	:	JUDICIAL DISTRICT OF
	:	HARTFORD/LAND USE
	:	DOCKET
V.	:	
	:	AT HARTFORD
WESTPORT PLANNING AND ZONING	:	
COMMISSION	:	MAY __, 2021

**MOTION FOR JUDGMENT IN ACCORDANCE WITH STIPULATION
PURSUANT TO C.G.S. § 8-8(N) AND PB 14-7B**

The Plaintiff, **SUMMIT SAUGATUCK, LLC** (“Summit”) and the Defendant, the **TOWN OF WESTPORT PLANNING AND ZONING COMMISSION** (“Commission”), move that the Court approve and enter judgment pursuant to the following agreed upon terms and conditions of this Stipulation (“Stipulation”) as settlement of the above-referenced matter.

WHEREAS, Summit is the owner, or holder of a contract or option to purchase, parcels totaling 8.8 acres located on Hiawatha Lane or Hiawatha Lane Extension in southwest Westport, Connecticut (hereinafter, the “Properties”); and

WHEREAS, in December 2017, Summit began seeking various permits from the Town of Westport for a 187-unit multi-family development at the Properties (the “Development”); and

WHEREAS, on November 18, 2018, Summit filed an application with the Commission pursuant to C.G.S. § 8-30g for a zoning regulation amendment, rezoning and coastal site plan approval, agreeing to set aside 57 of 187 rental units for moderate income households for 40 years; and

WHEREAS, on February 28, March 7, March 21, April 11, and April 25, 2019, the Commission held public hearings on the application; and

WHEREAS, on June 20, 2019, the Commission denied the application; and

WHEREAS, on June 28, 2019, the Commission published notice of its denial in the Westport News; and

WHEREAS, on July 11, 2019, as permitted by General Statutes § 8-30g(h), Summit "resubmitted" its zoning application; and

WHEREAS, on September 19, 2019, the Commission held a public hearing, closed the hearing, and denied the resubmitted application; and

WHEREAS, Summit appealed said denial to the Superior Court in the present matter, Docket Number HHD-CV19-6120090-S, with a Return Date of November 12, 2019; and

WHEREAS, the parties now wish to resolve the above-referenced administrative appeal by defining terms upon which the Development may be developed by Summit.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein and other good and valuable consideration, the parties agree as follows, subject to approval by the Court pursuant to Section 8-8(n) of the General Statutes:

1. With reference to site plans dated April 4, 2019 submitted by Summit to the Commission, as modified to September 12, 2019, the Development shall be permitted as follows:
 - a. Summit shall eliminate Building E and consolidate Buildings C and D, so that three buildings shall be constructed in total.
 - b. The land where Building E is depicted on the site plans will be reserved for future development permitted only "as of right" by the Town's Zoning Regulations. "As of right" refers to development and use of the Properties as authorized by administrative approval pursuant to the Westport Zoning Regulations effective as of the date the Court approves this Stipulation pursuant to C.G.S. § 8-8(n). It is acknowledged that the current Westport

Zoning Regulations allow for single-family homes on subdivided lots of at least 6,000 square feet in Residence B zoning districts. Summit shall not file for any future approvals for the development of the Properties pursuant to C.G.S. § 8-30g or any similar mandatory multi-family housing statute that may be enacted in the future.

2. 157 units shall be permitted, 30% of which shall be set aside for housing pursuant to C.G.S. § 8-30g for 40 years.

3. The unit mix and bedroom count among the 157 units shall be as depicted in the Site Plan dated May 7, 2021 prepared by Divney Tung Schwalbe, LLP and attached hereto as Exhibit A.

4. The garage and parking layouts shall be as follows: 1.5 parking spaces per one-bedroom unit, 2.0 spaces for two-bedroom units and three-bedroom units, with the limit of parking areas to follow the plan approved by the Wetlands/Conservation Commission.

5. The Western half of Building C, closest to the Norwalk boundary, shall be four stories, as depicted on renderings dated May 10, 2021 prepared by The Monroe Partnership LLP, attached as Exhibit B.

6. Fire Safety:

- a. All structures shall have a full NFPA 13 fire sprinkler coverage (NO 13R).
- b. All corridors shall have a 2-hour fire rating.
- c. All dwelling doors into the corridor shall have a 1 hour rating and an automatic closing device compliant with NFPA 80 standards.
- d. All vertical openings (stairwells, elevator shafts, trash chutes) shall have a 2 hour rating.

- e. All spaces shall be protected by a 24/7 monitored fire alarm.
- f. Water main into the complex shall be 6” in size. Water supply shall be constructed in accordance with plans prepared by Redniss & Mead as approved by Aquarion in September 2020, attached as Exhibit C, pages 1-4.
- g. The use of wood or metal studs for construction of walls, floors and roofs shall be permitted.

7. As a result of the Fire Safety conditions required pursuant to Paragraph 6 above, secondary access to the Development shall not be required.

8. There shall be no requirement that Summit provide a shuttle service to the train station.

9. The Commission will request in writing that the Board of Selectmen, as the Town’s traffic authority, will agree to use “best efforts” to work with Summit on pedestrian improvements as finally proposed by Summit in August – September 2019, which efforts shall include consideration by the Board of Selectmen and the Town of shared costs of improvements between the Town and Summit, because the improvements will also benefit the surrounding neighborhood. Said pedestrian improvements are depicted in the Pedestrian Improvement Plan dated April 17, 2019, as revised and supplemented to September 12, 2019, and attached hereto as Exhibit D.

10. Continued public access to the Conservation Easement area in Norwalk, on the property of the Avalon East Norwalk multi-family residential development shall be permitted through the Properties and a sign indicating “public access walkway” shall be posted between the

Development and Hiawatha Land in a location where neighbors can be reasonably informed of said access.

11. Summit shall re-pave Hiawatha Lane from Lot 39 westward to the Norwalk boundary, and as part of repair of the culvert and installation of the sewer and water lines, shall repair Hiawatha Lane from the intersection with Davenport Avenue to the start of the repaving at Lot 39 described above.

12. Summit shall repair and restore the Hiawatha culvert referenced in the Town of Westport Conservation Commission approval dated October 2018.

13. Summit will use best efforts to provide screening between the project and adjacent neighbors, including evergreen trees, on the east side of Hiawatha Lane as depicted on plans dated May 10, 2021 prepared by Divney Tung Schwalbe, LLP, attached hereto as Exhibit E. Such installation may require permission of such property owners. Summit will be obligated to maintain tree plantings utilized as screening for two years from the issuance of a Zoning Certificate of Compliance by the Town.

14. The terms of this Stipulation are expressly contingent on the following. If any of the following are not fulfilled within forty-five (45) days of the Court's approval of this Stipulation pursuant to C.G.S. § 8-8(n), subject to one (1) thirty day (30) extension agreed upon in writing by the parties, then the obligations of the parties to this settlement agreement are null and void:

- a. The granting of a withdrawal pursuant to Section 63-9 of the Connecticut Practice Book, Rules of Appellate Procedure of the pending appeal to the Connecticut Supreme Court, *Summit Saugatuck, LLC v. Town of Westport Water Pollution Control Authority*, Docket No. SC 20431 appealing the

decisions of the Superior Court in the consolidated Docket Nos. HHD-CV16-6071538S and HHD-CV16-6071538S.

- b. Motion to withdraw, with prejudice, and approval by the court pursuant C.G.S. 8-8(n), of the pending appeal to the Superior Court, *Summit Saugatuck, LLC v. Town of Westport Water Pollution Control Authority*, Docket No. FST-CV20-6047869-S.
- c. Withdrawal, with prejudice, by all Plaintiffs (Summit Saugatuck, LLC and Garden Homes Management Corporation) in the pending declaratory judgment action (*Summit Saugatuck, LLC, et al. v. Department of Housing, et al.*, Docket No. HHD-CV20-6127403-S) contesting the moratorium issued pursuant to C.G.S. § 8-30g by the Connecticut Department of Housing (“DOH”) to the Town in 2019 (“Moratorium”). It is understood that the entire case, including all claims and issues raised therein, shall be withdrawn in full, with no claims or issues remaining outstanding for disposition by the Court. In so doing, both Summit Saugatuck, LLC and Garden Homes Management Corporation shall waive any and all claims or causes of action to contest the Moratorium in the future.
- d. Written confirmation from the DOH that the Moratorium remains in effect and valid.
- e. Approval of a positive report pursuant to C.G.S. § 8-24 by the Commission related to the extension of Town sewer service to Hiawatha Lane.
- f. Final, unappealable approval by the Town’s Water Pollution Control Authority of the sewer extension servicing the Development with an average

daily flow rate of 37,905 gallons, including the right to connect to the existing Town sewer system. Summit agrees to remit any required I&I abatement fees, Pump Station 2 upgrade assessments and sewer benefit assessments to the Town.

g. Administrative approval, which shall not be unreasonably withheld, by the Town of the following, attached hereto as Exhibits:

i. Exhibit A: updated Site Plan dated May 10, 2021 prepared by Divney Tung Schwalbe, LLP

ii. Exhibit B: Renderings dated May 10, 2021 prepared by The Monroe Partnership LLP

iii. Exhibit C: Water Main Extension Plan dated January 29, 2020 and Sewer Main Extension Plan dated May 7, 2018 prepared by Redniss and Mead

iv. Exhibit D: Pedestrian Improvement Plan dated April 17, 2019, as revised and supplemented to September 12, 2019 prepared by Divney Tung Schwalbe, LLP

v. Exhibit E: Plantings Plan dated May 10, 2021 prepared by Divney Tung Schwalbe, LLP

h. Administrative approval, which shall not be unreasonably withheld, by the Town of a revision of the SVD zoning regulation dated April 4, 2019, to reflect this stipulation, and a revision of the rezoning map of November 2018, to reflect this stipulation. Said rezoning map is attached hereto as Exhibit F.

- i. Approval of this Stipulated Judgment by the Superior Court pursuant to C.G.S. § 8-8(n).

15. Provided that Summit has complied with this Stipulation and all state and local building codes, the Westport Building Official shall issue upon application the appropriate building permit(s).

16. If any provision or provisions of this Stipulation are not met, the Superior Court shall retain jurisdiction to cause such provision to be satisfied and/or enforced.

17. **Non-Admission of Liability.** The entry by the parties into this Stipulation shall not be construed as an admission of liability of any party hereto.

18. **No Representation.** Each party hereto acknowledges that no other party or any agent or attorney of any other party, or any other person, firm, corporation, or any other entity has made any promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter of this Stipulation to induce the execution of this instrument, and each signatory hereby acknowledges that he, she or it has not executed this instrument in reliance on any promise, representation or warranty not contained in this Stipulation.

19. **Counterparts.** This Stipulation may be executed in separate counterparts, each of which shall be deemed to be a fully executed original as to all parties that have executed any one or more of those separate counterparts. The execution of this Stipulation and the transmission thereof by facsimile or electronic (e-mail) shall be binding on the party signing and transmitting same by facsimile or electronic (e-mail) fully and to the same extent as if a counterpart of this Stipulation bearing such party's original signature had been delivered.

Notwithstanding the foregoing, the parties shall exchange original counterparts of the Stipulation promptly following execution hereof.

20. **Binding Effect.** This Stipulation shall be binding upon and inure to the benefit of the parties hereto, and each and all of their heirs, personal representatives, successors and assigns.

21. **Governing Law.** This Stipulation shall in all respects be interpreted, enforced and governed by and under the laws of the State of Connecticut, and the state Courts of Connecticut shall have exclusive jurisdiction.

22. **Construction.** This Stipulation shall be construed without regard to the party or parties responsible for its preparation and shall be deemed as having been prepared jointly by the parties hereto. Any ambiguity or uncertainty existing herein shall not be interpreted or construed against any party hereto. This Stipulation shall be construed as a whole according to its plain meaning.

23. **No Waiver.** No delay or failure by any party to exercise any right under this Stipulation, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

24. **Entire Agreement.** This Stipulation, together with Exhibits and attachments hereto constitutes the entire agreement of the parties and supersedes all prior or contemporaneous agreements, discussions or representations, oral or written, with respect to the subject matter hereof, and each of the parties hereto states that he/she/it has read each of the paragraphs hereof and that he/she/it understands the same and understands the legal obligations created thereby.

25. **Notices.** Any notices given or required to be given under this Stipulation shall be in writing and delivered either personally or via certified mail, or via commercial overnight courier and by electronic (e-mail) mail as follows:

- (a) Any notice given to the Plaintiffs shall be sent simultaneously to the following addresses:

Timothy Hollister, Esq.
Hinckley Allen
20 Church Street
Hartford, CT 06103-1221
thollister@hinckleyallen.com

- (b) Any notice to the Town or its agencies shall be sent to the following address:

Ira Bloom, Esq.
Berchem Moses, PC
1221 Post Road East
Westport, CT 06880
ibloom@berchemmoses.com

- (c) Planning and Zoning Department
Westport Town Hall
110 Myrtle Ave.
Westport, CT 06880

Notices delivered personally or by overnight mail, shall be deemed given when received, as well as electronic (e-mail) messages. Notices delivered by mail shall be deemed given three business days after mailing. Parties may change their address for notices in a notice given pursuant to this paragraph.

26. **Necessary Documents.** The parties agree to enter into and execute such further documents or instruments as may be necessary and appropriate to effectuate this Stipulation, including but not limited to conveyance forms or other documents incident to the closing.

27. **Power and Authority to Execute.** Each party hereto represents and warrants that it has the full power and authority to execute, deliver and perform this Stipulation, that each individual signing on behalf of a party has been duly authorized by that party to execute this Stipulation on its behalf, and that no claims being released under the terms of this Stipulation have been assigned, sold, or otherwise transferred to any other entity.

28. **Advice of Counsel.** Each of the parties has had the benefit of the advice of counsel of its own choice in the negotiating, drafting and execution of this Stipulation, and the language in all parts of this Stipulation is a product of the efforts of all parties and their respective counsel.

29. **Headings.** The paragraph headings in this Stipulation are for convenience only and shall not be used to construe or interpret the meaning of any provision herein.

30. **No Oral Modifications.** This Stipulation constitutes the entire understanding of all of the parties hereto with respect to the subject matter hereof. This Stipulation cannot be modified, amended, supplemented, or otherwise changed except by a writing signed by the party to be charged. The parties expressly intend and agree that there shall be no exceptions to this “no oral modification” clause, including, but not limited to, any present or future claims of partial performance, or equitable estoppel.

31. **No Duress.** The parties acknowledge that they have entered into this Stipulation freely and voluntarily, with the advice of counsel, and without duress.

IN WITNESS WHEREOF, the parties hereto have set their hand and seal to this 12 page
Stipulation this _____ day of May 2021.

SUMMIT SAUGATUCK, LLC

BY: _____

Its Member/Manager
Duly Authorized

**TOWN OF WESTPORT, PLANNING &
ZONING COMMISSION**

BY: _____

Its
Duly Authorized

LIST OF EXHIBITS

- A. Site Plan dated May 7, 2021 prepared by Divney Tung Schwalbe, LLP
- B. Renderings dated May 10, 2021 prepared by The Monroe Partnership LLP
- C. Water Main Extension Plan dated January 29, 2020 and Sewer Main Extension Plan dated May 7, 2018 prepared by Redniss and Mead
- D. Pedestrian Improvement Plan dated April 17, 2019, as revised and supplemented to September 12, 2019 prepared by Divney Tung Schwalbe, LLP
- E. Plantings Plan dated May 10, 2021 prepared by Divney Tung Schwalbe, LLP
- F. Proposed Zone Change Map