

# The North Haven Citizen

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## Legal precedent seems to favor CMB

By Matthew Engelhardt  
The North Haven Citizen

The court of public opinion in North Haven appears to have already ruled against the development of Indian Ridge. However, in an actual court, legal precedent seems to be on the side of CMB Capital Appreciation LLC and developer Chris Migliaro.

The Planning and Zoning Commission is likely to close its public hearing on the matter on Monday, Nov. 13. If the PZC declines the application, CMB would almost certainly appeal the decision, a right

See **Legal**, page 16

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The state representative celebrated with fellow Democrats at Grand APizza North on Washington Avenue. He was visibly moved by the support

# Legal

Continued from page 1

granted to the developer under Connecticut General Statute 8-30g, also known as the Affordable Housing Law. Approved in 1990, the law seeks to create more affordable housing opportunities for state residents, and Indian Ridge falls under the statute as a result of offering 105 affordable housing units to qualified applicants. According to Neil Marcus, the attorney representing CMB and Migliaro, the need for affordable housing in North Haven overrules many of the residents' concerns, and based on legal precedent, he may have a convincing case.

"There is a crying out need for public housing in North Haven," Marcus said.

According to the attorney, there have been 143 cases under 8-30g since 1990, where a planning and zoning commission denied an application, and the developer sought an appeal. In 70 percent of those cases, the developer won the appeal and was granted the right to develop.

Hypothetically, if Indian Ridge were rejected by the North Haven PZC, and the decision was appealed, the case would be assigned to a judge who specifically handles housing appeals. According to Marcus, the hearing would likely take place in a court outside of New Haven County.

The town of North Haven would have to prove beyond reasonable doubt that Indian Ridge would create serious problems for the community. According to Marcus, there are five situations where the PZC decision would be upheld — fire safety issues, inadequate sewage disposal, an inadequate traffic study submitted by the developer, inadequate water supply and open space considerations.

The North Haven Water Pollution Control Authority has already passed a negative recommendation to the PZC, based on what it deems to be inadequate pipes to handle peak flow from the site. While this may be applicable in a rejection of the application, other points argued by the public and town officials might be thrown out by a judge as reasons for a denial.

According to Marcus, under 8-30g, judges do not consider the following factors when reaching a decision: population density, preservation of character of a neighborhood, impact on the local school system, violations of existing zoning laws and plans of development, traffic congestion (as opposed to traffic safety) and aesthetics. Many of these arguments have been rallying points for the town and the neighbors, yet as far as Marcus and CMB are concerned, they will not factor into the decision.

Marcus's claim was backed up by attorney Timothy Hollister, of the Shipman and Goodwin LLP firm, in Hartford. Hollister was one of many lawyers who helped write the Affordable Housing Law, and he confirmed that Marcus was correct that density, character and aesthetics are not applicable arguments. Hollister said the town would need to confirm that the project would create a health and safety problem.

A recent decision in the case of the Toll Brothers Inc. versus the town of Bethel illustrates the precedent for the developer. The Bethel development bears several similarities to Indian Ridge. It's to be built on a road the town deems unsafe and along the town's border with a larger city (in this case, Danbury). Although the project is much smaller than Indian Ridge (134 units compared to 350), Marcus looks to this case as a successful ap-

peal of 8-30g.

Judge William Mottolese ruled in favor of the developer, essentially determining that Bethel's reasons for denying the application were insignificant compared to that town's need for affordable housing. He passed down the decision on Oct. 16, and went so far as to accuse the town of Bethel of disapproving of the application as the result of personal prejudices.

Marcus said that North Haven is a much different community, and he believes the residents are good people who do not share the same kind of prejudices referred to by Mottolese in his decision. However, the decision did speak volumes about the state's commitment to affordable housing, and Marcus encouraged the PZC to familiarize itself with the Bethel case before it makes its decision.

Jeffery Donofrio, North Haven's town attorney, has been keeping a keen eye on the progress of Indian Ridge as decisions are made and testimony continues. He declined to comment on defending against an appeal, citing that the record is still continuing and no decision has been reached by the PZC.

"Our position would be based upon the record that the Planning and Zoning Commission relies on when making the decision," Donofrio said referring to testimony collected at multiple public hearings and the records and recommendations from the Inland

Wetlands Commission and WPCA.

"It's very difficult to find two cases that are identical," Donofrio said. "Any decision made by the Planning and Zoning Commission is based on the record that has developed at these specific hearings."

Donofrio encouraged the PZC to be diligent in its decision, stating there are four prongs on which it needs to be made in relation to 8-30g. The decision must be supported by sufficient evidence with a full review of the record. It needs to be a decision based on the health and safety of the residents, needs to weigh public interest versus the need for affordable housing and needs to allow for the possibility of reasonable change being made to the development.

In regards to the legal precedent, Donofrio said that every 8-30g appeal is unique, and all have to do with the best interests of the particular municipalities involved. If Indian Ridge is approved, construction of the 350-unit, age 55-and-up community would be allowed to begin on the North Haven/East Haven border off of Half Mile Road. If Indian Ridge is rejected and an appeal is made, Donofrio will defend the decision of the PZC as having acted in the best interest of North Haven and having rejected the application based on reasonable objections.

Since the announcement of the project, developer Migliaro

See Legal, page 21

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# Legal

Continued from page 16

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and CMB have met with an outcry of criticism from town officials and residents alike.

First Selectman Kevin Kopetz has encouraged a negative recommendation on the grounds that Indian Ridge does not fit the North Haven Plan of Conservation and Development.

Selectwoman Janet McCarty says the town needs afford-

able housing but Half Mile Road is not the right place of a large development.

Neighbors have complained that the development is out of character with their neighborhood, would create many traffic issues and would have a negative effect on safety and their quality of life.

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