

TOWN OF ESSEX
Conservation Commission

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Executive Board

*Kathleen Tucker, Chairman
Jeffrey Lovelace, Vice Chairman
Frank Hall, Secretary*

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*Richard Helmecki
Adrienne Forrest
Robert Ward
Mark J. Reeves*

Alternate Member

Jim O'Brien

Unapproved

**Minutes Special Meeting
Tuesday, September 26, 2017 at 7:30 P.M.**

The Essex Conservation Commission conducted a special meeting on September 26, 2017 in Room B of the Essex Town Hall.

Attending Members

Kay Tucker
Jeffrey Lovelace
Richard Helmecki
Jim O'Brien, Alternate

Absent Members

Adrienne Forrest
Mark Reeves
Robert Ward
Frank Hall

Staff: Stella Beaudoin, Recording Secretary

Audience: There were no audience members.

1. Call to Order

K. Tucker called the meeting to order at 7:40 p.m.

Seated for the meeting were K. Tucker, J Lovelace, R Helmecki, and J O'Brien, seated for A Forrest.

2. Public Comment

3. Review and Discuss:

A. Foxboro Point Subdivision

K Tucker stated that the property subject to the Foxboro Point subdivision was sold by the Croft family heirs to SKR Developers out of NY and the 11.09 acre subdivision with six building lots was approved in 2008. The six lots did not include the Windmill property which was sold separately. This property is owned by Windmill Assoc. LTD. K Tucker noted that the Conservation Easements do not extend to the Windmill property.

The frontage on the property that is subject to the subdivision, which was sufficient to meet zoning regulations, fronts on Riverview Street and/or Foxboro Road and runs down to North Cove. The total acreage of easement for the lots that access the water is comprised of 2.48 acres which provides direct access to the CT River for each lot. The topography is rolling with a bluff between a 20-50 foot drop-off into the easement and then into the CT River. There were three easements granted to the Town by the developer with the acceptance received by the Planning Commission and First Selectman as agent of the Town.

K Tucker stated that at the time the Foxboro Point Subdivision was being considered, there were a number of requirements imposed on the conditional approval, one of which was a request from the Town Planner for the Conservation Commission and the Essex Land Trust to make recommendations.

B. Conservation Easements Pertaining to Subdivision

K Tucker commented on the Public Access easements: There is a pocket park which is made up of .14 acres that is a public access easement. The public access easement is between SKR Partners and is for the purpose of viewing the CT River. There is no motor vehicle parking access to the easement.

K Tucker commented on the View Easement: There is a view easement which is made up of 1.6 acres and situated in the northeast corner of the property. As per a condition of the subdivision, Lots 6 and 7 are required to maintain the easement.

K Tucker reported that since the development of the lots, trees have been moved and mowing was allowed, and per John Guskowski, Town Planner, the Conservation Easement language allows field mowing for maintenance. The total area of subdivision is 11.09 acres and the applicant was to give 20% to open space. K Tucker questioned J Guskowski as to why 20% of the land was not required as open space and he noted that more than 20% of the land is permanently protected by a conservation easement, to include the pocket park and the view easement which totals approximately 30% of the total 11.09 acres. A separate open space parcel was not removed from the subdivision although this was an option available to the Planning Commission within the subdivision regulations. The conditional deadlines for this subdivision were not met by the Town, and the developer, by legal right, requested that the proposal be approved as submitted.

C. Land Use Application #17-10 and Statewide Inland Wetlands & Watercourse Activity Reporting Form

Application #17-10, property located at 9 Foxboro Road, is currently before the Inland Wetlands and Watercourse Commission. The Inland Wetlands Commission referred Application #17-10 to the Planning Commission. The Planning Commission is charged with overseeing and enforcing the Conservation Easements attached to the Foxboro Point Subdivision. On October 10, 2017, at their scheduled meeting the Planning Commission is due to discuss and possibly approve Application #17-10, which requests modification of the Conservation Easements. As per the application outline, the proposed drainage and rain garden will be situated within the Conservation Easement.

The Commission discussed moving forward with a recommendation to the IWWC regarding this proposal. It was noted that the proposed rain garden does not meet the conditions outlined in Item #6 of the

Conservation Easement which states: "There shall be no ditching, draining, filling, excavating, dredging, mining, or drilling, removal of loam, topsoil, sand, gravel, rock, minerals, or other materials in the topography of the conservation easement in any manner."

Per the Planning Commission's September, 2017 Unapproved Minutes, this proposal suggests the installation of a footing drain and a rain garden recessed two feet and planted with natural vegetation within the Conservation Easement, and to also develop a 5' foot path. The foot path would be allowed without modification to the easement. As related to the Conservation Easement and the View Easement relative to the rain garden, as long as no shrubs were suggested there would be no breach of the View Easement. The Planning Commission referred this matter to the Town attorney to make determination as to whether this proposal is in the spirit of the Conservation Easement.

The rain garden is in a partial area of the Conservation Easement as proposed to the IWWC in Application #17-10. There is also a request to create a six-foot wide grass path through the Conservation Easement, to provide common access to the proposed DEEP approved common dock.

Discussion

The Commission noted that the requirement of Declaration of Perpetual Conservation Restriction Easement #7: "There shall no ditching, draining...excavating...in any manner.", is not being met, and Commissioners expressed their concern about setting a precedent to amend other Conservation Easements. Members noted the Unapproved Minutes of the Planning Commission, September 14, 2017, in which R. Doane, representing Application #17-10, stated that this proposal could be modified so as not to encroach within the conservation easement, and the Conservation Commission would support the suggestion that a non-easement solution be pursued.

MOTION made by J O'Brien to 1) Note the inconsistency between the IWWC application #17-10, property located at 9 Foxboro Road, Essex, which states that the six-foot grassed access path, and the map which is dated May 16, 2016, prepared by Doane-Collins Engineering reflects a five-foot wide path; 2) Because the proposed work would be in conflict with the requirements of the Conservation Easement attached to the Foxboro Subdivision, the Commission recommends that a non easement solution be pursued; 3) Per prohibition #6 of the Conservation Easement associated with this subdivision, the footing drains, the rain garden and drainage system as proposed are in conflict with the intent of the Conservation Easement; **SECONDED** by R Helmecki ; **Voting in Favor:** K. Tucker, J Lovelace, R Helmecki, J O'Brien; **Opposed:** None; **Abstaining:** None; **Approved:** 4/0/0.

MOTION made by J Lovelace to write a letter so stating the Conservation Commission's recommendations related to Inland Wetland and Watercourse Application #17-10, property located at 9 Foxboro Road, to the Planning Commission with a copy to the Essex Wetland Enforcement Agent, to the Town Planner, to the Inland Wetlands and Watercourse Commission and to the Essex Land Trust; **SECONDED** by R Helmecki ; **Voting in Favor:** K. Tucker, J Lovelace, R Helmecki, J O'Brien; **Opposed:** None; **Abstaining:** None; **Approved:** 4/0/0.

D. Other Matters Relating to Subdivision

There was no further discussion.

4. Adjournment

MOTION made by R Helmecki to adjourn the meeting at 9:25 pm until the next regularly scheduled meeting which will be conducted on October 12, 2017 at 7:30pm, Essex Town Hall, Conference Room B, 29 West Avenue, Essex, CT; **SECONDED** by J O'Brien; **Voting in Favor:** K. Tucker, J Lovelace, R Helmecki, J O'Brien; **Opposed:** None; **Abstaining:** None; **Approved:** 4/0/0.

Stella C. Beaudoin
Recording Secretary