

# **ESSEX PLANNING COMMISSION**

**May 10, 2012**

**7:30 p.m.**

**Essex Town Hall - Auditorium**

## **Call to Order and Seating of Members:**

Seated for the Public Hearing were Chair Tom Danyliw, Vice Chair Linda Herman, Carla Feroni, Alan Kerr, and Robert Laundry for Ralph Monaco. Alternate Claire Tiernan and Planner John Guskowski were also present. Ralph Monaco was seated upon arrival at 7:35.

## **Public Hearing**

### **Continued: Subdivision Application: Foxboro Point (Map 16, Lot 12)**

Attorney Terry Lomme represented the applicant. Two sets of plans have been submitted, the one being presented is for final approval. It was his understanding that it was the preference of the commission that the easement be moved back to its original location. The pocket park has been included in that area. All documents were submitted to Attorney Royston, who is in the process of reviewing. The conservation easement and the view easement would belong to the town. There was discussion as to whether the Commission (the town) wants to enforce architectural guidelines.

Tom Danyliw opened discussion on the conservation easement and public access and offered that the Commission preferred the southern public access strip. Attorney Lomme responded that the plan being presented is based on input. The last time the Planning Commission met, there was general agreement on the conservation easement, public access strip, interest in site lines and the pocket park. This new proposal is reaction to what the Commission and neighbors have discussed. Alan Kerr preferred the view easement and public access on the south side. Carla Feroni likes the new view easement better, but noted that "public access" is getting people down to the water, and is opposed to the cutting of trees on the south side for that purpose. Attorney Lomme is trying to be sensitive to Mr. Cunningham. This plan is the best compromise.

John Guskowski reviewed the DEEP response on preferences for public access that priority or preference should be given to public access, and it could be some distance from the water. DEEP may or may not challenge the town if public access is not included. Marci Ballint thought the larger pocket park on the north portion of the property was better (with parking) or passive recreational access to the view. She hasn't seen this proposal or the strip down to the water. Tom Danyliw asked how much property values needed to be weighed. Attorney Lomme replied that the Coastal Management Act recognizes economic issues and effect.

Attorney John Bennett, representing the Cunninghams, addressed public access. They will oppose putting access on the abutting property line. The Planning

Commission does not have the authority, nor does the Coastal Management Act give authority, to demand public access or to put private property into the hands of the public. DEEP, nor this Commission, has the regulatory or statutory authority to “take”. The DEEP letter is advisory. Attorney Bennett cited several court cases related to this issue. Tom Danyliw requested that legal argument be forwarded with supporting case law that the Planning Commission doesn’t have authority to require public access for a subdivision. He agreed to pass his material along to Attorney Royston.

John Guskowski noted that the Planning Commission has the authority to follow Subdivision Regulations according to CT General Statute, which allows that open space in the form of public access can be required. Attorney Bennett submitted his exhibits into the record and a synopsis will be supplied in writing.

Attorney Lomme responded that he doesn’t disagree with this analysis on the right to require open space, but the statute that grants the authority for open space doesn’t mention public access.

Joe Wren, engineer for the project, reviewed open items. Sediment and erosion control were added to the plan, silt fence on every lot, and soil stockpile areas. The archeological consultant cannot begin until the plan is final. Historic preservation is not relevant. There is an approved public health code septic system. Different methods of storm water quality and quantity are addressed. Areas on the river will have to come back to the town for review before building. The street is higher than the homes so the driveways will have a hump to keep runoff in street. Individual lot development is not part of this application. The archeological survey will take about 3 weeks.

Tom Danyliw went back to discussion of the legal challenge to public access and its constitutionality. Also discussed was the Statute that allows the Planning Commission to accept a fee in lieu of open space, which is on the table and is an option. The issue of public access needs to be resolved with an opinion from counsel. Linda Herman requested that the town attorney be present at next meeting.

#### Public comment

Bill Reichenbach commented on “authority”. He shared concerns for security and privacy. He suggested adding a narrow path along water, fenced and signed, so as not to disturb flora and fauna. John Morris feels less is more and there should not be people walking down there since the best part of the property is from the water. It is not improved by providing public access. A resident of Foxboro doesn’t want a parking requirement imposed and is concerned about the pocket park. Bob Nussbaum from the Land Trust also lives on Riverview. As a neighbor he is aware of the view and maintaining it. Open space is for public benefit, preferably public access that respects privacy. The Land Trust requests that the Planning Commission use full authority to request 20% of open space, with a view of the cove and is suggesting the south side of the property. They are also asking for full set aside, or for consideration to be given to a fee in lieu of. Paul Greenberg, Mack Lane, and also from the Land Trust, discussed open space in other subdivisions. A compromise would allow open space, privacy and work for all parties. The Land Trust would be willing to participate in developing a plan that works for all parties. Strick Hyde

feels private should be private. DEEP goes to the high water mark and the rest is a town issue.

Kathleen Maher, Foxboro resident, asked for consideration to maximize the view.

Restrictive covenants would preserve and maximize the undeveloped land.

Attorney Lomme disagreed with Attorney Hudson that the windmill is a historic structure. Peter Wallace, Riverview St., asked that the windmill be put in a deed for preservation.

A longtime town resident questioned whether anyone has a right to tell another what they can do with private property. Folks who came to town got what they wanted, and have no right to do this to anyone else. Public access would bring in litter etc.

John Ackerman, Main St., feels public access is demanding that which we would not demand of ourselves.

Attorney Bennett noted the public access across the street at the Osage property.

The waterfront can't be used for access due to delicate environmental considerations as per DEEP.

John Guskowski commented for the record, that the engineering review by Trinkaus was comfortable with the revision.

Greg Ellis, current owner of the property, shared that the strip discussed at the last meeting was to provide public access. The current proposal provides visual enjoyment. The family supports the current proposal. Public access is an intrusion and they are working to be responsible and provide the view.

Terry Smith asked about the possibility of docks. There was discussion.

Docks would have to come before the Planning Commission and DEEP.

Jane Piro feels this development will cause chaos in the neighborhood. The developer would be sensitive to the neighborhood during the building process.

Commission members then commented.

Alan Kerr preferred public access on the southern end but lack of support is causing him to lose enthusiasm. Linda Herman feels this open space is important and this is a valuable public access opportunity. The southern strip is too narrow and too close. It needs a significant buffer from property lines.

Claire Tiernan is struggling with great concern about the environment if there is public access, as it would have an impact.

Carla Feroni noted that building 6 new houses would impact the environment. She does not want to impose hardship to neighbors. The strip along the Cunningham property was offensive. Her major concern is with lot lines that would enhance the subdivision, to improve open space and preserve the environmental integrity of the land.

Ralph Monaco suggested that it be referred to counsel. Other property owners and developers have been asked for a fee, and this changes course. Land Trust properties are valuable to the community. Attorney Lomme responded that the Land Trust was contacted in the infancy of this project. The developer is offering above and beyond the requirements.

Bob Laundry agreed with Claire Tiernan that, if the view is key, then the view easement is preferred.

Neil Nichols lost interest in the southern public access on the site walk, and noted the iconic nature of the windmill.

It was agreed to grant an extension until the June 14 meeting and will include an opinion from Attorney Royston.

**Motion to continue the Public Hearing was made by Carla Feroni and seconded by Linda Herman. Motion carried unanimously.**

Subdivision Application: Ingham Hill Road (Map 93, Lot 1)

The applicant requested a postponement of the Public Hearing until the June meeting.

## **REGULAR MEETING**

### **Call to Order and Seating of Members**

Seated for the regular meeting were Chair Tom Danyliw, Vice Chair Linda Herman, Carla Feroni, Alan Kerr, and Ralph Monaco. Alternates Claire Tiernan, Robert Laundry, Neil Nichols and Planner John Guskowski were present.

### **Approval of Minutes**

**Motion was made by Linda Herman and seconded by Carla Feroni to approve the minutes of the April 17, 2012 meeting.**

The following corrections were made: Bob Laundry was seated for the regular meeting and seconded the motion for item 6, Correspondence and Invoices. **Motion carried unanimously.** Ralph Monaco abstained.

**Motion to approve the minutes of the site walk made by Linda Herman and seconded by Carla Feroni. Motion carried unanimously. Ralph Monaco abstained.**

### **New Business**

#### **Zoning Referral: Proposed Amendment to Waterfront Business District**

Riverfront Properties is proposing an apartment within an existing structure, restoring a use that had been in place. It is a caretaker apartment. Ralph Monaco was concerned that there is no clear definition of "caretaker". John Guskowski feels it is unenforceable.

There was general opposition because it is not specific enough, and lack of definition and description.

### **Old Business**

#### **Foxboro Point Subdivision**

Cluster housing and past development projects were discussed in terms of open space. Counsel should be asked if the Commission is within its right to require public access and open space.

**Transportation Study Implementation**

Responses for membership have been received. A meeting will be by the end of the month. Stacia Libby will be the Traffic Authority representative.

**Report of Committees and Officers****Report from Inland Wetlands Commission**

Claire Tiernan was unable to attend.

**Report from CRERPA**

It is now officially a larger region and no longer CRERPA.

**Report from Economic Development Commission**

The meeting was cancelled.

**Chairman's Report****Planner's Report**

A request was received from Vumbaco for an extension to file the mylars.

**Motion by Carla Feroni and seconded by Ralph Monaco to grant an extension to file the mylars for the Vumbaco subdivision. Motion carried unanimously.**

John Guskowski reported a meeting with Selectman Joel Marzi on the Peterson subdivision looking at possibilities for granting an easement agreement. Transportation is working with CRERPA and Fitzgerald and Halliday on applications for state funding for the Gateway area, Denison Rd. and Mares Hill intersections. The town has been granted \$2,000 from the state to prepare a nomination for a Historic District in Ivortyton. The area at the end of exit 3 is getting cleaned up.

**Correspondence and Invoices**

Invoices from Attorney Royston and Engineering Consultant Steven Trinkaus.

**Motion by Linda Herman and seconded by Carla Feroni to approve payment of invoices. Motion carried unanimously.**

**Adjournment**

**Motion by Alan Kerr and seconded by Linda Herman to adjourn at 10:30 p.m. Motion carried unanimously.**

Respectfully submitted,

Sandra Meinsen  
Recording Secretary