

ESSEX PLANNING COMMISSION

June 14, 2012

7:30 p.m.

Essex Town Hall – Auditorium

PUBLIC HEARING

1. Call to Order and Seating of Members

Seated for the Public Hearing were: Chair Tom Danyliw, Carla Feroni, Alan Kerr, Ralph Monaco, alternate Bob Laundry for Vice Chair Linda Herman. Also in attendance were alternates Claire Tiernan and Neil Nichols, and Planner John Guskowski.

2. Public Hearings

a. Continuation of the Public Hearing: Subdivision Application: Foxboro Point (Map 16, Lot 12)

Chair Tom Danyliw exercised his privilege to make opening comments as follows: The applicant's counsel and Planner John Guskowski were informed of his opinion. Vice-Chair Linda Herman independently arrived at the same conclusion. Public Hearings have been inclusive, open, fair and extensive. There have been a number of confounding and complicating issues: 1) The windmill should be off the table. 2) In lieu may be viewed as a potential windfall for the town but is an alternate option 3) Public access to open space - those have argued that the Planning Commission does not have authority to require public access to open space. CT General Statute 8-25 is silent on this, but the legal argument is weak and a legal challenge to having public access would not prevail. The Chair is silent on this. 4) DEEP and CT Coastal Management Act - Authority is not clear and Town Counsel agrees with Attorney Bennett, but legal arguments are not clear enough to suggest that DEEP opinions be discounted, so the Chair will be silent on this matter. 5) Architectural design requirements - the applicant's sensitivity is appreciated but cannot be part of the Planning Commission's legal requirement, as this is good business practice. 6) The view easement - this brings attention to the most valuable components of this property to the town of Essex, 7) Political overload - tension between ownership rights and public good has provided philosophical and emotional energy to the process. The Planning Commission has clear duties under Statue 8 Section 25, which include "such regulations shall also provide that the Commission may require the provision of open space, parks and playgrounds when, and in places, deemed proper by the Planning Commission." This does not apply in certain circumstances including proposals that include affordable housing. In lieu, as discussed, can be approved by the Planning Commission. Regulation is silent as to the need to provide any justification. Any fee must be negotiated by prescribed processes in the statute and used only for acquisition of the land.

The Planning Commission must set aside the clutter and noise of the confounding issues and should address the following:

1) Should this subdivision have open space? Look to guiding principals to answer this. What resources should be protected? What import is open space in this subdivision as it pertains to the town of Essex? What is the Commission's responsibility to represent the interests of the town?

2) Is the Planning Commission amenable to a fee in lieu proposal? Guiding principals are similar to those of the open space question.

The Chair's opinion is as follows: Based on the unique features of the property, the corridor of open space equal to 20% of the developable land should be established in the vicinity of the initially proposed view easement and extend from Foxboro Rd. to the tidal wetlands of North Cove. The view easement does not preserve a key element of this property, the sloping field from the road to the water and does not carry the same assurances of compliance as with open space. Any structure could be placed in the easement restriction and potentially detract from the view. The Chair believes statute and precedent support this opinion, and best preserves a significant resource to the town of Essex.

As the new proposal is presented and entertained, he asked the commissioners to discuss that proposal, deliberate on the opinion set forth and the Vice Chair's email, and deliberate the Planner's communication and thoughts. No additional public comment would be heard unless the proposal is substantially different from those previously presented.

Attorney Terry Lomme for the applicant addressed three issues, as this was the final Public Hearing on this application. 1) Public access –There has been extensive input but Town Counsel agrees that it is at best murky and has weak foundation. Tom Danyliw interjected that this is the contention that the Commission has authority to demand public access. This current proposal is to take out the pocket park and have no public access and, in exchange, have a fee in lieu.

2) Archeologist review – The ACS phase 1 report was submitted and is extensive and thorough, with no significant archeologist finding.

3) Open space issue - The applicant has attempted to cover all the interests presented with the view easement and a conservation easement, but also offered architectural guidelines in construction to have as minimal an impact on the neighborhood as possible, and have the houses consistent with the neighborhood. They believe this is best that can be done. If any part is eliminated, then peoples' interests become further apart. They will consider a fee in lieu as an option to public access. Or if other easements are to be removed, then they will consider an additional fee. Impact on lot yield should not be a consideration, and was not Tom Danyliw's objective. Tom Danyliw pointed out that the applicant is not allowed to offer fee in lieu but the Commission could accept a fee in lieu of open space. Open space can take several configurations, either conservation easement or view easement. Town Counsel reviewed and indicated both of those are enforceable and he offered some language that the applicant would be happy to include. Planner John Guskowski's memo was thorough on the open space issue and the fee in lieu. He noted that John Guskowski included a chart of 14 properties where five have no

open space and three have open space by easement therefore setting a precedent of open space by easement. He also noted that there is no requirement by the state of Connecticut to have open space or the size and it is purely discretionary on the part of the Commission.

Tom Danyliw then asked for input from the Commissioners. He felt that is the responsibility of the Commission to look at the project in total and what is statutorily allowed and the impact on the lot yield as secondary or not a consideration.

Alan Kerr felt this subdivision demands open space because of its beauty and significance to the town but was not sure it would have to be 2 acres if, in conjunction with a conservation easement, it would not have to be so big. There was a question about Lot 6 as it straddles two zones. It would not be possible to have all of Lot 6 on the VR zone. A fee in lieu would not be appropriate but the location was desirable.

Carla Feroni feels the need to protect open space such as meadow, wildlife and habitat. Open space should be requirement for this parcel and it should be 20%. The view easement is narrow, and open space should allow a broader view. She questioned the value of the conservation easement, because in time it will erode and would rather see open space that is more meaningful to the public in the midsection of the property. She does not support a fee in lieu.

Ralph Monaco would like dedicated open space because it has consistently been required. He applied the more objective standard of open space being appropriate and available, and then it should be required. Open space has been consistently required even in small subdivisions in the last few years as consistent with Plan of Conservation and Development.

Claire Tiernan expressed concern for natural habitat and areas close to the waterfront, and feels less is better for conservation of land near the waterfront. A narrow viewing passage and maintaining the conservation easement is preferred.

Bob Laundry agrees with this regarding the area along the water

Neil Nichols referring to Section 8.1, should have open space that can be enjoyed by the public and allow public viewing.

Tom Danyliw noted a fairly strong opinion from the Commission supporting an open space parcel from Foxboro Rd. down to the wetlands.

Attorney Lomme reiterated that they have attempted to protect the view from the river as well as all interested parties. The Chair recognized that this is a highly charged and sensitive issue.

Discussion ensued as to how to proceed and the options. Attorney Lomme reiterated that there have been several proposals and the Commission had not been clear on its preference until this final hearing. There was a question for future proposals as to the proximity to the water for building. Alan Kerr favored the open space corridor and the conservation easement. Carla Feroni spoke to the issue of building close to the water. The conservation easement was discussed on the basis of environmental issues. It was never assumed that it would be the conservation easement plus 20%.

John Guskowski informed the Commission that they had the option to modify and approve.

Robin Ellis, owner of the property, asked who would be responsible for the open space and the visual corridor. Open space could be maintained by the town, land trust, or a homeowners association. Tom Danyliw responded that it is not clear as to who has enforcement. Clarification of the definition of open space vs. view easement was then discussed. Ralph Monaco sees the use of easement only if there is no open space alternative. The concern is density and deeded open space has consistently been required.

Paul Greenberg, speaking for the Land Trust, wanted the elimination of the view and conservation easements and Lot 6 to be open space.

Attorney John Bennett presented a letter regarding public access.

Strickland Hyde and John Ackerman had public comment.

Motion by Carla Feroni and **seconded** by Alan Kerr to close the Public Hearing.
Motion carried unanimously.

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

Seated were Chair Tom Danyliw, Carla Feroni, Alan Kerr, Ralph Monaco, and Neil Nichols for Vice Chair Linda Herman. Alternates Claire Tiernan and Bob Laundy were present.

Presenting for the applicant was Brian Smith of Robinson and Cole. This is a 36.6-acre, 6 lot, open space preservation subdivision. There is discussion with the Essex Land Trust. This is a parcel with sensitive environmental features. It is on an existing public road.

With open space dedication and conservation easements on several lots, 75% of the property will be protected. There will be a fire protection cistern. Storm water run-off has been addressed. The developer will work with the town and the Commission regarding who should be deeded land.

Bob Doane, engineer, presented on behalf, of the developer. Pursuant to Section 7.3, the property can support 6 conventional lots. There will be 22.87 acres of open space, 18.64 acres upland area or 51%, wetland is 4.22 acres or 11.5% or a total of 62.5% deeded open space. 75' open space strip is wrapped around property. Open space around the outside perimeter will be conveyed in fee. All conservation easements, deeded open space and wetlands total 74.6% of the 36 acres. The Fire Marshall is requesting a 30,000-gallon tank, which will be placed in the Ingham Hill right of way. There will be 3 common drives to minimize the area of development. Each building lot has been demonstrated to be buildable.

Michael Klein, biologist and soil scientist, has been involved in this property for almost 10 years and has studied its wetlands and biodiversity features. The four distinct wetlands and vernal pools were reviewed. Recommendations were made to the owners for protection of the biological resources.

Use and access of open space is under discussion with the Inland Wetlands and Conservation Commissions.

Dr. Michael Klemens, conservation biologist, discussed that this meets the conservation subdivision definition with limited development in a key habitat ring. Ralph Monaco asked if there were any consideration for driveway not crossing the connector of the pond and vernal pool or "turtle corridor". This was addressed regarding the amount of traffic and how turtles travel.

Claire Tiernan asked how wildlife would be impacted by construction. A silt fence will keep out wildlife.

Also discussed was the potential for parking and proximity to the neighbors.

John Guskowski advised that the Public Hearing not be closed until Wetlands is heard from and whether the Land Trust is interested in being part of the open space. Paul Greenberg of the Essex Land Trust was present.

Steve Trinkaus discussed storm water management. He recommended the common section for emergency reasons should be wider (16 ft.). He addressed that houses would be built on embankments, wells are shown above the homes, and homeowners and buyers need to know what they are getting into with the rugged lots and the related issues. Ringing with silt fence creates problems and more desirable barriers should be found.

Claire Tiernan suggested a site walk. Inland Wetlands asked for elaboration of grading details so a typical plan using Lot 2 will be developed to address the issues.

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

REGULAR MEETING

1. Call to Order and Seating of Members:

Seated were Chair Tom Danyliw, Carla Feroni, Alan Kerr, Ralph Monaco, and Claire Tiernan for Vice Chair Linda Herman. Alternates Neil Nichols and Bob Laundry were present.

2. Approval of Minutes: May 10, 2012

Motion by Ralph Monaco and **seconded** by Claire Tiernan to approve the minutes of the May 10, 2012 meeting. Carla Feroni wanted it clarified on page 3 that the neighbors referred to were the Cunningham's. **Motion carried unanimously.**

3. New Business

There was none.

4. Old Business

- a. Foxboro Point Subdivision
Closed
- b. Ingham Hill Road Subdivision
Continued.

5. Reports of Committees and Officers

a. Report from TOPPS (Traffic Calming) Subcommittee

Claire Tiernan reported that they met and discussed the background and purpose. Grove St. will be the focus and assignments were given.

b. Report from Inland Wetlands Representative

Claire Tiernan reported that the Public Hearing on River Sound was lengthy with 2 hours of public comment. Inland Wetlands has left it open and has concerns.

c. Report from CRERPA Representative

Alan Kerr was unable to attend the meeting.

d. Report from Economic Development Commission Representative

Bob Laundry reported that the discussion was the condition of retail business in the villages.

e. Chairman's Report

f. Planner's Report

Population projections were provided. The school age population will drop from about 1,000 in 2015 down to about 800 in 2025.

- i. Safe Routes to School
Still proceeding, looking for funding for other intersect improvements
- ii. Planning Services, FY 2012-13
The budget has been approved including planning services.

Motion by Ralph Monaco and **seconded** by Claire Tiernan to approve a new contract with CME for John Guskowski's services. **Motion carried unanimously.**

6. Correspondence and Invoices

A letter was placed into the record from Attorney Royston regarding a conflict of interest as Carla Feroni's position with DEEP and Foxboro Point. He confirmed that there is virtually no conflict of interest.

Invoices were reviewed for Planner services and Attorney Royston for Foxboro Point.

Motion by Ralph Monaco and **seconded** by Claire Tiernan to approve payment of invoices. **Motion carried unanimously.**

7. Adjournment

Motion to adjourn by Carla Feroni and **seconded** by Ralph Monaco at 10:45 p.m.

Motion carried unanimously.

Respectfully submitted,

Sandra Meinsen

Recording Secretary