

# **ESSEX PLANNING COMMISSION**

July 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, Vice Chair Linda Herman, Carla Feroni, Alan Kerr, alternate Claire Tiernan for Ralph Monaco, and alternate Bob Laundry. Also present were Planner John Guskowski and Attorney Richard Roberts.

### **2. Public Hearing**

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

Attorney Brian Smith from Robinson & Cole, LLP, representing River Sound Development, LLC presented. This is a 6-lot open space subdivision.

He submitted a summary of the June 14 Public Hearing comments, and the revised plans dated July 9 as result of comments by Steve Trinkaus, Consulting Engineer for the Town.

Attorney Chris Smith was present to represent a number of neighbors of the property.

Darcy Collins, Civil Engineer from Doane Collins Engineering Associates, LLC, gave an update on progress and revision of the plans from the latest public hearings. Infiltration trenches have been added to all of the lots, two wells were moved, and retaining walls have been added. Changes as result of the site walk on July 8 are that the stonewall will not be disturbed and ledge outcrops have been added to Lots 5 and 6. Bob Doane met with Augie Pampel, Tree Warden, and following his recommendation to save trees along the driveway for Lots 5 and 6, the driveway was moved. The engineering review resulted in changes to the swails. Comments were made regarding the slopes and accessibility for the construction equipment but this should not be a problem. Plans for stabilizing the slopes for each building lot should be done after individual site plans are developed.

Evaluation of runoff was explained. Development within this watershed will not have an adverse impact on the downgrading property owners.

Steve Trinkaus explained the issues with slopes, stability, and bio-retention. John Guskowski added that a 75 ft. easement along the road could be used for storm water retention.

Tom Danyliw pointed out that the individual lots have to be capable of supporting and sustaining a home. Steve Trinkaus felt that the lots work as presented but it depends on how the grading is handled. The requirements of the 2002 Erosion

Guidelines should be met. This would be addressed by Zoning at the time the houses are built. Detailed site plans address all these aspects.

Linda Herman questioned the sanitary system on Lot 4. Darcy Collins responded to that issue. Linda Herman also asked about the driveway for Lots 3 and 4, which crosses the spotted turtle pathway. Dr. Clemens addressed this.

Location of the 5-car parking area and whether there should be public access trails was discussed. River Sound is not advocating trails.

Lot 5 has an easement and the area for stockpiling construction materials has been moved.

Claire Tiernan cited passive solar energy in the Subdivision regulations. Darcy Collins responded that it would be addressed in the location of the homes during site plan development. Each lot has room to accommodate this.

John Guskowski referred to DEEP regarding the identified species. Dr. Michael Clemens discussed the plant and animal species identified by the National Diversity Database. Limited tree cutting will protect the red bat, and bald area lots will remain forested. 74+ % will remain undisturbed. Ribbon snakes like wet meadows and vernal pools. Putting silt fence around disturbance areas will protect them from coming into disturbed areas. Well-designed silt fence will keep animals out of the construction site. Box turtles are scarce in the area, and very low in number. All the recommendations from NDEEP will be followed and development will be precautionary.

Eric Davison, environmental planning services wetland scientist, addressed the identified plant species. He referred to a rigorous survey in 2010 where prickly pear, milkwort and false hop sedge were not found on this property.

Tom Gelormino, Civil Engineer and licensed blaster, reviewed the blast plan and ran down the list of requirements; Pre-blast surveys will be conducted to document preexisting conditions. This is a small blast project with limited extent and duration. This should involve four to five days of work.

Linda Herman asked about the driveway on Lot 3 and the proposed blasting. Darcy Collins and Dr. Clemens explained the rationale based on the number of cars and disturbance.

Attorney Michelle Maresca, with Robinson and Cole, gave an update on discussions with the Conservation Commission. At the June meeting they asked about public access to open space. Robinson & Cole would like to minimize it, but they are looking for feedback and guidance as to open space areas being clearly marked and also looking to the town as far as management of the open space area. The Conservation Commission submitted a letter to Inland Wetlands after the June 8 site walk and they would like to see access into the open space area. The alternative entry point would be through Lots 3 & 4 into the existing Old Woods Trail road. The Town or Essex Land Trust could be the recipient of the open space. In discussion with the Land Trust at the July 6 meeting, the Land Trust expressed concerns. Robert Levine met with Bob Nussbaum and Paul Greenberg and a respectful mutual dialogue is ongoing. The Essex Land Trust could receive 22+ acres of open space.

The Planning Commission is empowered to be very specific about open space, to whom it goes, etc. Open space will be conveyed in fee either to the town or Essex Land Trust.

Attorney Royston advised the Planning Commission to keep the Public Hearing open. The applicant was happy to grant an extension.

The next Planning Commission meeting will be on August 23.

**Public comment –**

Attorney Chris Smith representing several neighbors spoke. He discussed the “hypothetical lot concept” that was heard at the Inland Wetlands meeting which would include in the plans any modifications to make it buildable at this stage in the approval process. The applicant needs to show the feasibility relative to each lot, to substantiate the ability of the applicant to have a 6-lot cluster.

Storm water runoff is important to Ingham Hill residents, more importantly in regards to sheet flowing and icing.

The 300 ft. pre-blast survey is not acceptable. All adjoining property owners should be asked to include wells and septic.

It was clarified that there would be no access to the Old Saybrook property.

An intervention pleading will be filed via Bombaci. Those claims will be addressed in August.

Charles Rothenberger, CT Fund for the Environment, recommends that Commission ask the applicant for formal demonstration as to how the lots can be developed to take advantage of passive solar heating and cooling opportunities.

Public access offers great opportunities for passive recreation and public education. Use of the Old Wood Trail road is the best option for an interconnected trail system that would minimize further disturbance. He has concerns about placement of the fire protection cistern. Mature trees were addressed through conversation with the tree warden.

John Guskowski asked Essex Land Trust for comment. Bob Nussbaum, ELT President, commented. ELT does not presume to be the manager of the open space and sees this as an opportunity for the Land Trust to enhance what is protected. They are not in a position to purchase the property. They would like to see the whole parcel preserved as open space.

**Motion** by Carla Feroni and **seconded** by Linda Herman to continue the Public Hearing until the August 23<sup>rd</sup> meeting.

**Motion carried unanimously.**

## **REGULAR MEETING**

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

Seated for the Regular Meeting were Chair Tom Danyliw, Vice Chair Linda Herman, Carla Feroni, Alan Kerr, Neil Nichols for Ralph Monaco, alternates Claire Tiernan, and Bob Laundry. Also present were Planner John Guskowski and Attorney Royston.

## **2. Approval of Minutes:** June 14, 2012

**Motion** by Carla Feroni and **seconded** by Alan Kerr to approve the minutes as amended as follows:

Chair Tom Danyliw made opening comments as follows:

He discussed his opinion with the applicant's counsel and Planner John Guszowski over one week ago. Vice-Chair Linda Herman had sent an email in which she independently arrived at a similar 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) Fee in lieu may be viewed by some as a potential windfall for the town but is an alternate option 3) Public access to open space - some 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 Chair believes the legal argument is weak and a legal challenge to having public access may not prevail. The Chair is silent on this issue as it pertains to his opinion on how to proceed. 4) DEEP and CT Coastal Management Act- DEEP 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 requirements for approval, but having such requirements may be good business practice on the applicant's part. 6) The view easement -this brings attention to the most valuable components of this property to the town of Essex, 7) Political overlay - tension between ownership rights and public good has provided philosophical and emotional energy to the process.

The Planning Commission has clear duties under Statute 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. The Statute 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 principles 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 principles are similar to those of the open space question.

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

The Chair then entertained comment from the applicant.

Attorney Terry Lomme for the applicant addressed three issues, as this was the final Public Hearing on this application. 1) Public access to open space –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, not open space. Attorney Lomme concurred). 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 open space. Or if other easements are to be removed, then they will consider an additional fee. Addressing concerns by the applicant that the number of lots would be impacted by requirement for open space, the Chair stated that impact on lot yield should not be a consideration by the commission. He also pointed out that the Commission could accept a fee in lieu of open space. Open space can take several configurations, either conservation easement or view easement. Attorney Lomme stated that Town Counsel reviewed and indicated both of those are enforceable and he offered some language that the applicant would be happy to include. He also noted that Planner John Guskowski's memo was thorough on the open space issue and the fee in lieu and 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.

Correspondence and Invoices -

Change to: A letter was read into the record from Attorney Royston requesting a legal opinion on any possible conflicts of interest regarding Carla Feroni's position with DEEP and Foxboro Point.

**The motion carried unanimously** with Linda Herman abstaining.

The minutes of the site walks on July 1 and 8, 2012 were received into the record.

### **3. New Business**

#### **STEAP and Main Street Grants -**

John Guskowski reported on the potential STEAP grant to create a "civic campus" through several improvements including the play scape, which needs to be redone in entirety due to ADA and safety concerns, the parking lot, tennis courts, and additional lighting. The request will be approximately \$450,000.

Carla Feroni asked about "Area A", the shared street. John Guskowski explained that there are many ways to accomplish traffic calming, but they are going to look at ways to visually slow traffic. The grant is due at the end of the month.

Members of the Planning Commission expressed concern that the majority of the grant should be for the shared street and the priorities are wrong. The Planning Commission should be informed of grant opportunities sooner. The Commission made a recommendation that something be included to address traffic calming. Bob Laundry reported that EDC, at their recent meeting, heard from Selectman Needleman that there was little time to prepare this grant but that there is a phase 2. A Memorandum will be placed in the record to recommend that the shared street be given high priority in the grant. There was discussion on notification, and the history of EDC by Linda Herman.

The Commission feels very strongly and unanimously that the majority of the grant should be focused on the shared street and traffic calming. John Guskowski was not aware of this grant until just before the June 21<sup>st</sup> meeting of the Traffic Calming Committee.

The Planning Commission should be informed early on to these grant opportunities as State Statute requires Planning to review these and any capital expenditures.

Carla Feroni expressed concern that EDC has knowledge of these grants prior to Planning. Bob Laundry, representative to EDC, noted that EDC first discussed this at yesterday's meeting. Claire Tiernan noted this is an opportunity for better communication. John Guskowski will prepare a memo reflecting these comments. John Guskowski reviewed the memo on the Main St. Investment Fund, a new grant category for up to \$500,000 to be used for improvements to property owned by the municipality and for an existing plan. It is due in September. John Guskowski asked the Planning Commission to consider and advise as to what to pursue for this grant. Ivoryton has a plan in place that would fit this opportunity. Alan Kerr and Linda Herman will work with John Guskowski on the details of this grant.

### **Foxboro Point Subdivision**

John Guszowski reviewed the options as to how to proceed at this point.

The major sticking point is the 2-acre open space parcel that would eliminate a building lot. The applicant would be amenable to setting aside open space in the suggested area. The zone line encumbers lots 6 and 7. The applicant is interested in talking to Zoning about making the entire parcel Village Residential. This would allow for the 7 lots plus an open space parcel. Attorney Lomme will speak to Zoning on Monday, July 16 about making the entire parcel in the VR zone.

Tom Danyliw identified only 2 options and felt it should be denied as presented and the applicant should come back with an alternate plan that includes a strip of land identified in the original view easement that goes from the street to the water and is close to the 20% requirement.

Attorney Royston was consulted as to the process. It was clarified that Public Hearings are not required for subdivisions.

**Motion** by Neil Nichols and **seconded** by Linda Herman to table this decision until the next meeting. **The motion carried unanimously.**

### **Ingham Hill Road Subdivision**

This is still open and was not discussed.

## **4. Old Business**

### **Report from TOPPS (Traffic Calming) Subcommittee**

Claire Tiernan reported on the June 21<sup>st</sup> meeting. Janice Ely Meyer completed traffic counting. She encouraged street parking to slow truck traffic on Grove St. Dave Caroline will make the sidewalk at the end of Grove and North Main Streets a priority. The STEAP grant was discussed. The Commission then discussed street parking on Grove St. and other possibilities to slow traffic.

### **Report from Inland Wetlands Representative**

Claire Tiernan reported that they closed the Public Hearing on River Sound. They were cautioned to review the records very carefully. It will be a contentious decision with neighbors or with River Sound. John Guszowski added that Wetlands has asked Steve Trinkaus to review the plans. He was not at the meeting and the River Sound folks were critical of his comments.

### **Report from CRERPA Representative**

The hazardous waste contract was renewed. CRERPA is now the Lower Connecticut River Valley Council of Governments. Essex paid dues to this new entity. The new office will be at 145 Dennison Rd.

### **Report from Economic Development Commission Representative**

Bob Laundry reported. The STEAP grant was discussed as well as the state of retail and businesses. The EDC website is being updated.

**Chairman's Report**

There was none.

**Planner's Report**

The new fiscal year has begun.

**Correspondence and Invoices**

There were none.

**Adjournment**

**Motion** by Carla Feroni and **seconded** by Linda Herman to adjourn at 9:46`p.m.

**Motion carried unanimously.**

Respectfully submitted,

Sandra Meinsen

Recording Secretary