

## **ESSEX PLANNING COMMISSION**

August 23, 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, Alan Kerr, Carla Feroni, alternate Claire Tiernan for Ralph Monaco, and alternate Bob Laundry. Also present were Planner John Guskowski and Attorney David Royston.

#### **2. Public Hearing (continued)**

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

Attorney Brian Smith from Robinson & Cole presented. He reported that the Inland Wetlands Commission approved the application subject to a number of conditions, one of which was to not build on Lot 2. They are still seeking a 6-lot subdivision. They met with the Planning Commission's consulting engineer, Steve Trinkhaus. Bob Doane, Professional Engineer and Licensed Land Surveyor for River Sound LLC. commented on the revised plans, dated August 7, that have addressed all of the Planning Commission's concerns reflected in his August 11 letter. They remain confident with 6 lots. In summary, he feels comfortable with each of the six proposed lots to support a single-family residence, an on-site sewage disposal system and a storm water management system. The changes were discussed. A Stormwater Management report was submitted. One important change was the driveway placements; the three common drives were positioned to avoid street trees. The position of the Lot 6 drive was discussed with the town's tree warden. Attorney Smith discussed the Notice of Decision from IWWC. While IWWC said don't build on lot 2, the Planning Commission has independent jurisdiction. They granted permission for 5 lots with conditions. River Sound is asking for 6 lots. Alan Kerr asked about the access to open space and where it is located. The trailhead parking area is still part of the plan with 5 spaces.

John Guskowski asked about their discussion with Land Trust and Attorney Brian Smith indicated that they prefer to dedicate the open space to the Essex Land Trust. Bob Doane clarified that of the 36.6 acres, there will be 27.31 acres of open space, 22.87 acres would be deeded, 2.91 acres would be conservation easement, 1.53 acres is conservation easement for the spotted turtle conductivity corridor for a total of 75% of the entire site would be deeded open space or conservation easement.

Linda Herman asked about access to open space in discussion with the Land Trust, and existing Wood Road. Bob Doane indicated that they prefer not to have a trail system going through the property and the existing trail system (Wood road) in close proximity to a vernal pool is a concern to use it as access to open space.

Although it is convenient, they are not trying to promote vehicular access to the property. Linda Herman feels the proposed location seems a somewhat dangerous, noting the site line and the curve, and she wondered if there is there another location that it could be moved to. Bob Doane noted that the necessary site line has been established.

Attorney Brian Smith discussed the IWWC approval of 5 of 6 lots, not Lot 2 for building purposes, because of concern for wood frogs. River Sound experts will demonstrate that Lot 2, with reasonable accommodations and modifications, will address their concerns about flora and fauna.

He feels the terms have been fully met for Planning purposes and meet subdivision regulations. Discussions with Land Trust can't be held until lot approval is received. The Land Trust will have first option to purchase any lots as soon as the subdivision is approved.

Attorney Chris Smith Land Use Attorney from Shipman and Goodwin, Hartford, and a resident of Haddam, representing several families of Ingham Hill Road in strong opposition, presented. The extreme topography of the property, all of the wetlands on the site including multiple vernal pools, is a concern. It has a significant abundance of natural resources including wildlife and landmark trees. Conservation easements are strewn across the property.

He had previously filed an intervention pleading and a supplemental pleading was submitted at this meeting. It was reviewed in depth.

Residents object to the 2-step process for an open space preservation subdivision. The applicant hasn't shown that the lots are feasible. There is insufficient information to make an informed decision. The residents are concerned about sufficient soil testing as it applies to septic, and stormwater runoff. The driveways will funnel water onto Ingham Hill. That runoff will rely on rain gardens but do soils suit a rain garden? This also applies to the septic systems. Environmental impact is a concern. He has filed a 22.A.19 intervention pleading, a certified petition, that this will reasonably or likely impair or pollute air, water and other natural resources, including wildlife and trees. The neighbors think it's a good idea to provide the Wood Rd. access. He also contended that they don't need 6-lot approval to sell or negotiate with the Land Trust. Linda Herman asked about his comment that the neighbors want Wood Road use for pedestrian access to open space.

T. J. Barresi, Licensed Civil Engineer and Licensed Surveyor from Edwin Lally Assoc. discussed why the applicant's proposal is deficient and unsupportable. He reviewed septic and leeching. The applicant doesn't observe the public health code requirements, as there is not enough data to show that the land can support septic systems. Changes to septic design may require changes to grading and clearing, which would necessitate going back to Wetlands. The proposed driveways would be exposed to erosion during construction. Sediment and erosion control plans should not be the burden of individual lot owners after purchase. He reviewed appropriate regulations for drainage, site lines, shared driveways. He questioned driveway approval by the Fire Marshall and whether fire trucks could get up these driveways.

Electric, telephone and cable lines and trench requirements failed or neglected to meet numerous state and local regulations.

George Logan, Certified Professional Wetlands Scientist, presented next. He emphasized that it is not the extent and amount of open space, but whether it preserves all the natural resources that are significant on the site. Lots 2 and 3 should be eliminated to allow for unfettered activity and ecological integrity. Development has not been designed to fit the terrain or the natural resources. He noted steep slopes in driveways that will result in runoff. Lot 4 house would be on a rocky knoll. Intermittent watercourse creates an unfeasible situation on lot 5.

Sigrun Gadwa, Certified Professional Wetlands Scientist, noted the tremendous number of birds, aesthetic and recreational resources which are vulnerable to fertilizer runoff. Insecticides will have negative effect on the food chain, and salamanders, turtles, bats dependency on insects for food. The recreational value of the knolls, eco-mapping habitats on DEEP list, dens for snakes, and high likelihood of impairment of natural resources were discussed.

A review of the timeline for this application was clarified.

Mr. James Ingram, BCMA, RCA, Board Certified Master Arborist, spoke on the historical significance of the trees. There is no understory so removal will exacerbate off flow water and erosion. The monetary value of each tree was determined. Stately trees throughout site will be compromised with construction. Attorney Chris Smith reiterated that the applicant hasn't supplied sufficient information to make an informed decision. He is asking on behalf of his clients, that the application be denied as incomplete. Linda Herman asked what a reasonable distance is for the driveway and activity to be from the trees. Jim Ingram recommended 10-12 ft.

Chris Cryder from the Alliance for Sound area Planning (ASaP) presented on the history of the 1,000-acre forest, "The Preserve".

The applicant agreed to an extension until September 13, 2012.

**Motion** by Claire Tiernan and **seconded** by Carla Feroni to continue the Ingham Hill Public Hearing until September 13<sup>th</sup>. **Motion carried unanimously.**

## **REGULAR MEETING**

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

Chair Tom Danyliw called the regular meeting to order at 9:50 p.m. Seated for the Regular Meeting were Chair Tom Danyliw, Vice Chair Linda Herman, Carla Feroni, Alan Kerr, alternate Bob Laundry for Ralph Monaco, and alternate Claire Tiernan.

### **2. Approval of Minutes: July 12, 2012**

**Motion** by Carla Feroni to approve the minutes, and **seconded** by Linda Herman. The following correction was made on page 7 under Foxboro Point Subdivision: Sentence 4 should read: The applicant requested that we not act upon the application in the anticipation that the applicant was going to go before the Zoning Commission to specifically request moving the boundary line of the village zone on the parcel.

Linda Herman stated that she would like to see the discussion that took place, regarding rescheduling the meeting and the approval by all parties involved, and that that was acceptable. There was discussion as to when the next date available for a meeting would be, and after checking schedules by all parties involved, it was agreed that August 23 was acceptable.

After a brief discussion, Attorney Royston recommended tabling approval of the minutes.

**Motion** to table the approval of minutes until the September meeting made by Linda Herman. **Seconded** by Bob Laundy. **Motion carried unanimously.**

### **3. New Business**

a. Filing Extension Request – Vumbaco Subdivision  
This will be the final 90 days, which will take it into November.

**Motion** by Carla Feroni and **seconded** by Linda Herman to approve an extension request for the Vumbaco Subdivision - Toby Hill Rd. **Motion carried unanimously.**

**Motion** to amend to agenda to go to item 4.a. Foxboro Subdivision by Linda Herman and **seconded** by Carla Feroni. **Motion carried unanimously.**

#### 4.a. Foxboro Point Subdivision

Letters from Attorney Lomme and Attorney Royston were read into the record.

**Motion** by Carla Feroni to go into Executive Session to discuss the issue brought up by counsel. **Seconded** by Linda Herman at 10:05 p.m.  
**Motion carried unanimously.**

The regular meeting resumed at 11:35 p.m.

#### 4.a Foxboro Point Subdivision

**Motion** by Carla Feroni and **seconded** by Bob Laundy to approve the following:

Whereas the Planning Commission agrees that the subdivision proposal meets the Subdivision Regulations relative to density and the suitability of the proposed lots to meet public health and safety standards;

But the Planning Commission believes that the applicant's proposal currently does not adequately satisfy the requirements of Section 5.8 of the Subdivision Regulations regarding provision of open spaces that provide adequate land in fee for open spaces, provide for limited opportunity of the public to access passive recreational purposes; therefore

I move that the Planning Commission approve the subdivision the following modifications:

- Lot 6 be reduced in size to 60,000 square feet by excluding therefrom a parcel of land having 75' of frontage on Foxboro Road extending 200' feet along the westerly line of lot seven, then reducing the size of this excluded parcel of land from a uniform width of 75' to a uniform strip of 25' in width extending another 260' more or less to the edge of North Cove.
- The fee parcel created by this exclusion from Lot 6 shall be offered first to the Essex Land Trust, then to the Town of Essex should the Land Trust decline acceptance, then finally to a Homeowners Association to be created to manage this open space per the terms of the Subdivision Regulations.
- The Open Space conveyance shall be made subject to the following provisions
  - o There will be no buildings, structures, or other improvements on the property other than a bench or benches to allow visitors to view North Cove.
- The deed of conveyance of this open space will not restrict public access to the property but may restrict such access to daylight hours;
- The recipient of the parcel may impose such other restrictions of use as deemed appropriate.

All other conservation and view easements and maps as proposed along with the June 13 subdivision plan as modified shall remain in effect.

Maps and documents in support of implementation of this plan shall be subject to verification and approval by the Commission's legal counsel prior to endorsement of the final plans.

Tom Danyliw commented that this basically achieves what all parties agreed to and it serves a lot of needs based on months of testimony.

Bob Laundry and Alan Kerr also commented in favor of the approval with modifications.

Attorney David Royston noted that Lot 6 is located in the VR and RU zones as of today, and this reduces that lot to 60,000 sq. ft., from 80,000 sq. ft. Some of the minimum area of the lot will be in the RU zone. It was previously proposed as an 80,000 sq. ft. because it was thought it needed to be 80,000 sq. ft. under the zoning

regulation because it is located in a split zone. His opinion, concurred by the ZEO, is that such is not the case, Lot 6 has to be 60,000 sq. ft. and a portion can be in the RU Zone. There are restrictions in respect to setback requirements, but they can be met for the proposed house and septic system upon review of the map. The reduction has the effect of allowing Lot 6 to be a valid legal 60,000 sq. ft. lot. The proposed house location is conceptual, but there is adequate room to meet a house that size in compliance with the zoning regulations. In terms of the motion, he clarified that the motion as made is to not accept fee in lieu, the modified open space is acceptable to the Commission in terms of deeding the requirements. The motion as made does not include the \$100,000 offer for the fee in lieu of open space.

**Motion** by Linda Herman to amend the original motion to include:

The applicant's offer of \$100,000 for fee-in-lieu of open space is not considered adequate to meet the Commission's needs for satisfying Section 5.8 of the Subdivision Regulations for this application and is removed as part of the modifications for this approval.

**Seconded** by Alan Kerr. **Motion carried unanimously.**

## **Old Business**

### 3.b. Referral to Zoning Commission – Modification to Zoning Map, Foxboro Point

Attorney Royston clarified that if there is no comment then it is deemed approved. If the Planning Commission disapproves then it requires a majority vote of the Zoning Commission. Application is so as not to split a lot with a zone line down the middle. There was discussion on the purpose of moving the lot line. Attorney Lomme explained for the applicant that the rationale is to take lot 6 out of split zone. Tom Danyliw and Linda Herman questioned the reasoning for moving the zone line after the decision was made on the Subdivision. Tom Danyliw asked for a compelling reason other than neatness. Decreasing density and consistency with the Plan of Conservation was discussed.

**Motion** by Carla Feroni that the Planning Commission responds to the referral by the Zoning Commission regarding the proposed relocation of a district line at 1 Foxboro Rd. We recommend that the request be denied because it is inconsistent with the Plan of Conservation and Development to reduce density. **Seconded** by Alan Kerr. **Motion carried unanimously.**

## **4. Old Business**

b. Ingham Hill Road Subdivision

c. Accessory Apartment – Proposed Zone change

d. STEAP, Main Street, and Ivoryton Grant Updates

John Guskowski reported that he will be meeting with Meeting with the Ivoryton partnership, Jackie Hubbard's group. The RFQ for the Ivoryton Village nomination for the National Register is out and applications should be in early next month.

**6. Correspondence and Invoices –**

Tom Danyliw reviewed the invoices.

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

**7. Adjournment**

**Motion** by Linda Herman and **seconded** by Carla Feroni to adjourn at 12:35 p.m.  
**Motion carried unanimously.**

Respectfully submitted,

Sandra Meinsen  
Recording Secretary