



ESSEX PLANNING COMMISSION

October 11, 2012

7:30 p.m.

Essex Town Hall- Auditorium

REGULAR MEETING

1. Call to Order and Seating of Members

Chairman Tom Danyliw called the meeting of the Essex Planning Commission to order at 7:30 p.m.

Seated for the meeting were Chairman Tom Danyliw, Vice-Chairman Linda Herman, Ralph Monaco, and Alan Kerr. Seated for Member Carla Feroni was Alternate Bob Laundry. Also in attendance were Alternate Claire Tiernan, Alternate Neil Nichols, Planner John Guskowski, and Commission Counsel Richard Roberts.

2. Approval of Minutes

Motion by Ralph Monaco to approve the Minutes of September 13, 2012 Regular Meeting, **seconded** by Linda Herman. **Motion carried unanimously.**

Motion by Ralph Monaco to approve the Minutes of October 1, 2012 Special Meeting, **seconded** by Bob Laundry. **Motion carried unanimously.**

3. New Business

There was no new business before the Commission.

4. Old Business

4a. Subdivision Application, River Sound Development, LLC, Ingham Hill Road

Chairman Tom Danyliw noted that Members Linda Herman and Ralph Monaco had been absent for portions of the public hearing on this application and questioned whether they had familiarized themselves with the public record and were comfortable acting on this application. Both Members responded that they had familiarized themselves with the record and were comfortable proceeding. Chairman Danyliw turned over discussion to Planner John Guskowski to review several key points of discussion and findings the Commission should cover during its deliberations. He read from a list prepared by himself and Attorney Roberts. [Questions/issues as read by Guskowski will be numbered and underlined. Discussion on each item followed]

1. Under required by Section 7.3.4 of the Regulations, the applicant has submitted to the Commission a preliminary layout of a standard subdivision under Sections 3.1 and 3.1.2 of the Regulations.
2. Does the commission find that the preliminary layout has demonstrated that the basic requirements may be satisfied for a six lot standard subdivision within the subject property?

Guszkowski restated the requirements of applicants who wish to submit an Open Space Preservation Subdivision demand the submission of a preliminary, conventional layout to determine reasonable lot yield, and stated his opinion that the applicant had met this burden. After discussion among the members, Chairman Danyliw determined that the consensus of the Commission was that the applicant had demonstrated the ability to satisfy the requirements for a six lot standard subdivisions.

3. Does the commission conclude that, with respect to the subject property, an Open Space Preservation Subdivision is preferable to a standard subdivision and that the applicant has provided sufficient justification for such an Open Space Preservation Subdivision under the criteria described in Section 7.3.1 of the Regulations?

Chairman Danyliw determined that the consensus of the Commission was that the Open Space Preservation Subdivision at this location was preferable to a conventional layout and that such a subdivision layout was consistent with the Commission's precedent and general preferences.

4. After reviewing and giving due consideration to the report of the IWWC as required by CGS §8-26(e), does the commission still believe that six lots are permissible?

Guszkowski reviewed the difference in authority and jurisdiction of the Planning Commission vs. the Wetlands Commission and the Planning Commission's responsibility to consider issues of public health and safety, including septic systems, well radius, setbacks, stormwater, etc. Linda Herman stated that she believed the opinion and judgment of the Wetlands Commission should be given significant weight and value. Alan Kerr sought to clarify whether the Planning Commission was bound by Wetlands decisions, and Attorney Roberts stated that Planning is obligated only to give due consideration to the Wetlands decision, but is not legally bound by it. Chairman Danyliw reviewed the Notice of Decision from the Wetlands Commission. Claire Tiernan stated that, as Planning Commission liaison to Wetlands, she heard extended testimony on both sides of the issue, and the Wetlands Commission had concerns about the proximity of the Lot #2 building area to sensitive habitat.

Guszkowski restated comments from his staff memo of October 5, 2012 that while the build-ability of Lot 2 was difficult and there was an extremely small envelope for flexibility, the Lot seemed compliant with Subdivision and Zoning Regulation requirements. Ralph Monaco indicated that he would tend to give deference to the Wetlands Commission. Chairman Danyliw asked whether the Commission was inclined to eliminate Lot 2. Claire Tiernan stated that the Wetlands Commission was attempting to safeguard precious natural resources on and adjacent to Lot 2, and was very concerned with habitat protection. Bob Laundy asked whether Planning could both give deference to the Wetlands decision and approve Lot 2. Attorney Roberts stated that both arguments were valid. The Planning Commission could interpret the Wetlands decision relative to the Wetland Regulations and then tie it back to something in the Planning Regulations, but the decision should be based on Commission's own regulations. Chairman Danyliw stated that the question was then moot and that Planning must look strictly at its own regulations. Alan Kerr asked whether there was language addressing environmental protection

DRAFT MINUTES

in the Subdivision Regulations. Attorney Roberts noted Section 4.4.5 regarding erosion and sedimentation, but it was not specific to wetland or habitat protection. Linda Herman noted that the Plan of Conservation & Development (Page 37) discussed open space and habitat connectivity, and Attorney Roberts stated that the PoCD was advisory rather than regulatory. Guskowski stated that the Intervenors made specific allegations about environmental impacts. Attorney Roberts also cited Section 5.1.2 regarding erosion and sedimentation with specific disturbance to water resources. Ralph Monaco recommended that the Commission be cautious about staying within its own jurisdiction, but should pay close attention to the experts and specialists on other Commissions that have concerns about resource protection. Chairman Danyliw suggested that he would be in favor of upholding the elimination of Lot #2, not simply listening or considering the Wetlands report. Attorney Roberts cited Sections 4.5.6 and 5.1.2 of the Subdivision Regulations as providing a possible source for justification of this decision. Neil Nichols pointed out that Section 3.6 of the Regulations detailed the relationship between Planning and Wetlands Commissions.

Alan Kerr suggested that the Planning Commission would be eliminating Lot #2 largely on the basis on the Wetlands decision, not on Planning regulations. Chairman Danyliw stated that the Planning Commission was using Wetlands as a key authority, but would be drawing its own conclusions. Ralph Monaco expressed reluctance in going against a reasonable decision by Wetlands.

5. Does the commission find, after reviewing and considering the information submitted by the applicant with respect to the use of passive solar techniques as required by CGS §8-25(b) and Section 7.3.11 of the Regulations, that the proposed techniques are reasonable and sufficient?

Alan Kerr asked for clarification of passive solar as opposed to “active,” which meant solar panels. Guskowski clarified that this was just a finding that consideration had been given to the orientation of house sites to maximize solar gain. Neil Nichols reminded the Commission of the Energy Sustainability recommendations and supplement that had been made to the Plan of Conservation & Development. It was generally agreed that the Commission should incorporate the recommendations and philosophy of this supplement into the Subdivision Regulations in the future. Chairman Danyliw stated that this was a low bar to clear, regulatorily, and Ralph Monaco agreed that there is little burden to demonstrate anything of substance, and that adequate consideration had been given. Chairman Danyliw determined that the consensus of the Commission was in agreement with this view.

6. Assuming that the environmental intervention petition under CGS § 22a-19 from Judith Bombaci, Kenneth Bombaci, Suellen McCuin and Scott McCuin; and the environmental intervention petition under CGS § 22a-19 from the Connecticut Fund for the Environment, Inc. are validly verified and submitted, does the commission find that the above-referenced intervention petitions contain allegations which pertain to potential environmental impacts, some of which may be within the jurisdiction of the Commission?

Attorney Roberts reviewed the relatively simple analysis of the Commission’s environmental jurisdiction and laid out the question of whether the Commission believed that elements of its jurisdiction overlapped with allegations in the intervention petition. After discussion among the members, Chairman Danyliw determined that the consensus of the Commission was that there was adequate jurisdiction to confirm that the environmental intervention petitions did relate to matters that were within the purview and jurisdiction of the Commission.

7. If so, does the commission find that the applicant's proposed development activities are not reasonably likely to cause unreasonable pollution, impairment or destruction of the public trust in the air, water or other natural resources of the State of Connecticut?

Guszkowski reviewed that the crux of this question was whether the proposal is likely to result in pollution or environmental degradation, and that the key phrase was also in the "reasonability" of the possibility and of the pollution itself. Ralph Monaco discussed the difference between temporary and permanent pollution and the need for construction controls. Chairman Danyliw raised the Conservation Commission's objection to this proposal and requested clarification on that Commission's role and authority. Attorney Roberts pointed out that the Conservation Commission was not a regulatory body and had addressed most of their concerns to Wetlands, not Planning. He encouraged the Planning Commission to draw their own conclusions on this issue. Bob Laundy pointed out that he thought that review engineer Steve Trinkaus' comments and recommendations went a long way toward answering the issues of potential pollution. Guszkowski stated that Trinkaus' focus on low-impact development and stormwater management seemed to weigh heavily on the Commission's decision to choose him for this review task.

Attorney Roberts and Guszkowski restated the question as to whether the intervenors' testimony satisfied the Commission that the application would or was reasonably likely to create unreasonable pollution, which included wetlands impacts, stormwater impacts, street tree or other habitat damage, septic system-based pollution, etc. Linda Herman stated that Ingham Hill Road's status as a Scenic Road should be a consideration. A general discussion on the nature of the Scenic Road ordinance and legislation did not reach a definitive conclusion, other than it was likely outside the Intervention petition purview. Linda Herman stated that the subject area did have important habitat and species that she believed would see some degradation. Alan Kerr stated that he believed the applicant did a good job in demonstrating sensitivity to the environment and critical habitats. Guszkowski pointed out that developments generally do inevitably affect the environment, but the key consideration was whether this effect would "unreasonably" pollute, impair, or destroy. Chairman Danyliw stated that many species of flora and fauna are adaptable to changes in the environment and development incursions. He further stated that given the design considerations of this applicant, this development would likely affect the environment less harmfully than surrounding development on that same street. He then asked the Commission if there was a consensus opinion on this matter.

Bob Laundy stated that if the recommendations of Steve Trinkaus were incorporated into the approval modifications, then pollution would not be likely. Chairman Danyliw clarified that if the Trinkaus recommendations were incorporated, this finding would be possible. Claire Tiernan stated that she believed the applicant's environmental presentation was stronger relative to the Planning Commission's review than it was for Wetlands. The recommendations of Steve Trinkaus will be effective, in her opinion. Ralph Monaco stated that he was comfortable with the Trinkaus' recommendations, but still had concerns about Lot #2. Linda Herman agreed with Ralph that the engineering recommendations should help with stormwater control. She believed that steps for construction and post-construction pollution control were critical to minimize impacts, and both the language of approval conditions and post-approval enforcement were very important. She questioned the enforcement mechanisms for this control. Guszkowski stated that driveway bond and erosion and sedimentation control bonds were the mechanism for this enforcement. Linda Herman questioned runoff issues across Ingham Hill Road, and Guszkowski discussed the recent roadway improvements, including the

DRAFT MINUTES

re-establishment of a road crown and the presence of drainage ditches. Alan Kerr stated that he believed the recommendations by Steve Trinkaus were sufficient, but that questions of biodiversity were outside these recommendations. He believed that potential impacts did not raise to the level of "unreasonable." Neil Nichols stated that stormwater management was a key element, and bioretention recommendations by Trinkaus would address this. He believed that the potential of moving the shared driveway for Lots 5 and 6 would help preserve the important street trees, and thought this was a very positive change. Linda Herman suggested that the Commission incorporate moving the driveway into any modified approval. After discussion among the members, it was the consensus that the intervenors had not demonstrated that the applicant's proposed activities were reasonably likely to cause or result in unreasonable pollution, impairment or destruction of the natural resources of the State

8. Has the commission reviewed and considered the proposed open space dedications and conservation easements shown on the applicants' plans and has determined these to be adequate to satisfy the Commission's concerns regarding the natural habitat and resources located on the subject property?

Linda Herman stated that the access point to the open space was problematic and at a bad spot from a traffic perspective. She thought that having the Land Trust access the open space from the old woods road would be better. Chairman Danyliw questioned whether the Commission could require the public access across a private driveway. Guskowski suggested that, given the potential to eliminate completely the parking area for open space access, that issue be set aside. Chairman Danyliw determined that the consensus of the Commission was in agreement that the proposed open space dedications met the Commission's requirements.

9. Further, does the commission find them sufficient to prevent or limit vehicular access to and burdensome development of lands located outside of the boundaries of the Town of Essex?

Alan Kerr raised the issue of the legal status of Ingham Hill Road as a connector to Old Saybrook and Westbrook, and Chairman Danyliw stated that, while this was a separate matter, he planned to encourage the Commission to recommend discontinuation of the undeveloped portion of Ingham Hill Road to the Board of Selectmen. Ralph Monaco suggested that deed restrictions be placed on all lots to prevent the use of those lots for ingress and egress to adjoining towns. There was general discussion on this issue and the mechanism for those restrictions. Chairman Danyliw determined that the consensus of the Commission was in agreement that the proposed open space restrictions met the Commission's requirements.

10. Further, does the commission find that the conveyance of such open space property in fee simple to the Essex Land Trust or, if the Essex Land Trust declines to accept such conveyance, the Town of Essex, is in the best interests of the Town and the public?

Guskowski stated that the applicant had offered to convey the open space parcel to either the Essex Land Trust or the Town of Essex, whichever the Commission preferred. Ralph Monaco suggested that the Commission's decision follow Section 6.12.2 of the Subdivision Regulations and that it be made clear that the open space is to remain in conservation in perpetuity, and that should the Essex Land Trust be dissolved as a corporation, that the Town reserve the right to assign the land to another organization. Chairman Danyliw determined that it was the consensus of the Commission that the proposed open space restrictions met the Commission's requirements.

11. After reviewing and considering the reports of the intervenors' engineer regarding sight lines as well as the Commission's engineer's response to that report, does the commission conclude that the requirements of Section 6.9.3 pertaining to sight lines have been satisfied?

Guszkowski noted that Steve Trinkaus submitted a review of the intervenors' engineering questions about sight-line adequacy. Ralph Monaco stated that he was comfortable with Steve Trinkaus' comments and recommendations relative to the adequacy of the driveway sight lines. Linda Herman wondered whether sight lines would continue to be adequate if Ingham Hill Road ceased to be a dead-end road and became a connector or through road. Chairman Danyliw suggested that the consideration be made given the road as currently configured. Linda Herman confirmed that while the sight lines were perhaps less than average, they were greater than the minimum required. Chairman Danyliw determined that it was the consensus of the Commission that the proposed driveway sight lines met the Commission's requirements.

12. Has the commission determined that, subject to such conditions and modifications as the commission may wish to impose, the application satisfies the requirements of the Connecticut General Statutes and the Regulations, including without limitation, the provisions of Section 7.3 thereof?

Bob Laundy suggested that, with modifications suggested by Steve Trinkaus and the relocation of the shared driveway for Lots 5 and 6, the application could satisfy the Commission's requirements. Linda Herman stated that while this proposal was an Open Space Preservation Subdivision, it didn't exactly look like the "cluster" concept that was originally envisioned by that regulation. She did acknowledge the regulation allowed for design flexibility, which the applicant took advantage of. Guszkowski summarized the potential modifications and conditions discussed by the Commission, including: Steve Trinkaus' comments of August 11; moving the common driveway, noting that the frontage buffer easement should indicate the importance of maintaining the scenic roadway; providing restrictions on crossing from lots to adjacent towns; ensuring that the conveyance to the Essex Land Trust reflected the intent to protect the open space in perpetuity; the potential elimination of the public parking area; and the additional requirement that individual lot development plans include blasting plans and stormwater management plans for the Commission's review and approval. Claire Tiernan agreed that the public parking area should be eliminated to reflect that the open space should have very limited public access and usage. Linda Herman wondered where the entrance to the open space would be if the public parking area were eliminated. Alan Kerr wondered whether the Commission needed to identify the public access point or if it would be more appropriate to let the Land Trust handle this. It was determined that there was also a potential access point along the southern edge of the subdivision, closer to the cul-de-sac. Chairman Danyliw asked if the Commission was ready to make a motion in regards to the application.

Motion by Bob Laundy to approve, with modifications, the subdivision application by River Sound Development, LLC, **seconded** by Alan Kerr. Chairman Danyliw requested that Guszkowski read the proposed modifications, which were:

1. All conditions of approval by the Planning Commission must be added to the record subdivision map submitted for endorsement in accordance with the Regulations;
2. All outstanding technical review fees and legal fees shall be paid prior to endorsement of the subdivision map for filing;

3. Any restriction, covenant or easement required as a result of this approval shall be referred to in the deed for any subsequent sale or transfer of any lot created by the subdivision approval;
4. Any proposed restrictions, covenants, easements and conveyances required as a result of this approval shall conform to the requirements of Section 6 of the Regulations and shall be satisfactory to the Commission and its counsel;
5. The applicant shall satisfy the applicable requirements of Sections 3.9.2 and 7.3.10 of the Regulations;
6. The proposed shared driveway between Lots 5 and 6 shall be relocated to the west in such a manner as to avoid clearing, grading or other disturbance that may unreasonably endanger the large maple trees along Ingham Hill Road;
7. The public parking lot adjacent to Lot 6 intended to be used in conjunction with the open space parcel(s) shall be eliminated;
8. The applicant shall incorporate the recommendations contained in the August 11, 2012 letter from Steven Trinkaus to the Commission into its stormwater management plans;
9. The proposed open space parcels shall be conveyed in fee simple to the Essex Land Trust or, if the Essex Land Trust declines to accept such conveyance, to the Town of Essex;
10. Prior to issuance of any zoning permits for construction on the lots created by this approval, the developer shall provide individual stormwater management plans and, if applicable, blasting plans satisfactory to the Commission and/or Town Staff;
11. No excavation or grading shall commence for any construction or lot development or driveway until an appropriate tracking pad and sedimentation and soil and erosion control measures are properly installed and inspected by land use staff. Anti-tracking pads shall be properly maintained during construction;
12. Site clearing shall be limited to the area shown on the approved site development plan. Any alteration of the clearing limits shall require review and approval by the Planning Commission;
13. A soil erosion and sedimentation control bond shall be filed for the construction of the driveways and development of the sites, as determined by the Land Use Office. The applicant shall provide a bond estimate, prepared by a State of Connecticut licensed engineer, for review;

After discussion among the Commissioners and staff, the following additional modifications were added:

14. Lot #2 is not to be considered a building lot until such time as the Planning Commission deems it so;

15. The easement language for the perimeter buffer shall reflect the desire of the Town to retain the scenic nature of Ingham Hill Road and to limit activity and disturbance in the Road area;

16. All deeds shall reflect that property shall not be used for ingress and egress to other properties except as provided by the development plan; and

17. Deed conveying open space parcel to the Essex Land Trust shall conform to Section 6.12.2(b) of the Subdivision Regulations and shall be in perpetuity. This deed shall reflect the Commission's opinion that the environmental sensitivity of the open space warrants a reduced level of public access and shall allow no non-pedestrian activity.

Motion carried unanimously.

4b. Affordable Housing/Accessory Apartment Zoning Regulations – Update

Noting the lateness of the hour, Chairman Danyliw suggested that all non-action items remaining on the agenda could be postponed until the November Planning Commission meeting. There was general agreement to this from the Commissioners.

4c. Vumbaco Subdivision, Toby Hill Road – Final Plan Endorsement

Guszkowski noted that the Vumbaco subdivision (three building lots, with open space conveyance to Essex Land Trust) had been approved in January and that all filing extensions had been granted. He had reviewed the mylars and found them sufficient for endorsement. Attorney Royston had just completed review of the proposed legal documents and had several concerns that should be addressed prior to final endorsement. Attorney Royston (via email) recommended that the Commission authorize Chairman Danyliw to endorse the final mylars upon final clearance from Commission Counsel.

Motion by Ralph Monaco to authorize Chairman Danyliw to endorse the final mylars for filing upon final assent from Attorney Royston, **seconded** by Linda Herman. **Motion carried unanimously.**

4d. Ivoryton Historic & Main Street Grants – Update

The report on these items will be postponed until November Planning Meeting

5. Report of Committees and Officers

- a. TOPPS (Traffic Calming) Subcommittee** – John Guszkowski noted that First Selectman Needleman has been exploring the potential of removing the telephone pole and traffic island at the mouth of Grove Street at West Avenue, and the TOPPS Subcommittee has concerns that this runs counter to efforts to slow and calm traffic on Grove Street.
- b. Inland Wetlands** – Report will be postponed until November Planning Meeting
- c. RiverCOG** – Report will be postponed until November Planning Meeting
- d. Economic Development** – Report will be postponed until November Planning Meeting

- e. **Chairman's Report** – Report will be postponed until November Planning Meeting
 - f. **Planner's Report** – Report will be postponed until November Planning Meeting
6. **Correspondence and Invoices:** Chairman Danyliw stated that the only item was the timesheet of recording secretary Sandra Meinsen. There was general discussion of the length of meetings and how to review and approve time spent on minutes development. Chairman Danyliw signed off on the timesheet.

7. **Adjournment**

Motion to adjourn at 9:59 p.m. by Ralph Monaco, **seconded** by Linda Herman. **Motion passed unanimously**

Respectfully submitted,

John Guskowski, AICP
Consulting Planner