

**EAST LYME ZONING BOARD OF APPEALS
PUBLIC HEARING AND REGULAR MEETING
MONDAY, JANUARY 27th, 2014
MINUTES**

FILED IN EAST LYME
CONNECTICUT
Feb 3, 2014 AT 11:00 AM/PM
Jesly A. Blais
EAST LYME TOWN CLERK

A Public Hearing and Regular Meeting of the East Lyme Zoning Board of Appeals was held on Monday, January 27, 2014 at 6:00 PM at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, CT.

PRESENT: William Mountzoures, Chairman, Tom Boguszewski, Secretary, Charles Ambulos, Craig Mason, John Smith

ALSO PRESENT: Atty. Eugene Cushman, representing the applicant
Atty. Edward O'Connell, Town Counsel
Kevin Mace, Alternate

ABSENT: Joshua Chapps, Alternate, Esther Williams, Alternate

1. Call Public Hearing to Order

Chairman Mountzoures called the Public Hearing to order at: 6:00 PM.

2. Read Notice of Public Hearing

Mr. Mountzoures asked Mr. Boguszewski, Secretary, to read the Notice of the Public Hearing:

Mr. Boguszewski, Secretary read the following:

Case No. 5-2013: Application of Eugene C. Cushman, Attorney, for Fortunata Maluccio, Owner, for an appeal of the Zoning Official's action under Section 24.3B for property identified in the application as 6 Red Fox Road, East Lyme, Connecticut. Said parcel is further identified as East Lyme Assessor's Map 14.01, Lot 10.

The Public Hearing notice was sent to the New London Day for publication on 1/16/2014 and 1/23/2014.

Mr. Mountzoures introduced the Board members and polled each for any conflict of interest. Hearing no conflicts of interest from the members, he explained the rules of the meeting and asked that anyone speaking please stick to the subject matter of the application.

Mr. Mountzoures then called for the applicant or their representative to make their presentation.

Eugene Cushman, Attorney, place of business One Post Hill Place, New London, CT said that he is representing Mrs. Maluccio in this case. He said that they have provided each member with a binder of the exhibits. This Exhibit includes Items ranging from A-Z and were entered into the record as **Exhibit A**. (Listing Attached) He noted that he and Town Counsel have agreed that the timing has been waived on this application and that the lawsuit is on hold regarding the Zoning Official's issue on the issuing of a permit in hopes that this can be settled.

He explained that the Zoning Official (ZO) denied Mrs. Maluccio's zoning permit not because of the regulations but because of the original label approved by the Planning Commission in 1970 that says 'recreation area' and it is the Town's contention that it is interpreted to mean 'Open Space' and that it does not allow for development rights. That is the only reason for the denial. He said that there are dozens of cases stating that alone does not designate an easement but the ZO's contention is that it does. If the Town's position is correct they have taken all practical use of the land from Mrs. Maluccio without any due process. There is no question that the Town has not paid any compensation for the property and the Town cannot say that it means 'Open Space'. Due process means that there has to be some legal basis and this has been going on for a number of years now and no one has clearly cited the Statute, ordinance, etc that would allow this to be done. Mrs. Maluccio's position is that it has never been dedicated or classified by the

Town as 'Open Space' and there is no statutory definition. Further, the Town has never wanted this property and has never been involved in a process for it.

Attorney Cushman asked what happens when the Planning Commission approves a plan and went on to explain the process whereby a developer presents a plan with an application to the Planning Commission and once approved, that developer/person still owns the land and the approval means that it has met the regulation. He cited **Item A** from the binder noting that the property is 3.17 acres with frontage on Red Fox Road. He noted that the development took a long time to develop – 10 years as it needed approvals in both Towns. The development was known as Green Valley Lakes. The land does not get transferred until a deed passes hands. What happened here is that officials in the town have determined this label. He said that he knows that the Town rejected the land and suggested that there is perhaps 'institutional amnesia' on what really happened here. He said that there is Public Open Space which the Town owns or Land trust, etc.; there is Private Open Space which is a private deal between the developer and other people and Open Space for tax purposes which is designated or classified land for tax purposes only. The ZO cannot enforce a private restriction. An open space easement is a conservation easement not allowing development. However, recreation area or space is positive and assumes development. They are not the same thing. He said that **Item G** in the exhibit is the subdivision regulations in existence in 1969 and 1970 that were adopted in 1952. They comprise 24 pages and 'recreation' does not exist in them. Page 6, Section 3.5 does mention Open Space and defines it as 'for parks and playgrounds' – it is specific. No one can infer from that the land cannot be developed.

Mr. Boguszewski said that on Page 8 it talks about other than parks, playgrounds, etc.

Attorney Cushman said that the Town would not accept the application without that designated on the plan. The minutes of the meetings will later show that is how it was intended.

He said that **Item E** is a certified copy of the Town Plan of Conservation & Development (POCD) of 1970 and shows a box for Recreation and one for Open Space – so the Town knew the difference between the two and that they were not the same thing. He cited the successive POCD's noting that the land was not ever cited as Open Space.

Item D is the Assessor's first attempt to classify the land as Open Space under Statute Section 2.107e which states that the Assessor has to do this every year. This document is about 100 pages currently but at no time has any land for this development been classified as Open Space. **Item S** is the Assessor's letter on 6 Red Fox stating that it has not been assessed as Open Space. **Item T** is a series of street cards from the Assessor since 1970; in year 1971 it said recreation area and not Open Space; in year 1981 the card said recreation area land; and in 1991 the card said vacant residential land with the land being broken into two areas with 40,000 sq. ft being assessed as a building lot; and in 2006 it is owned by Four Mile River Construction which is then taken by the Town for a tax sale and Mrs. Maluccio purchases it at that time in the tax sale. As of 2011 it is no longer a building lot which he claims was an action that the Assessor made up her mind about.

Item F shows the history through the East Lyme Planning Commission Minutes with discussion on the possible deeding it to the Town for a recreational facility. This has nothing to do with Open Space and Planning forgot to require that some land be set aside however the developer gave it to them anyways. In **Item H** the Board of Selectmen takes up the issue. **Item I** – in the 6/20/1972 Board of Selectmen meeting – Planning submits a letter regarding the property. **Item J** – the 7/5/1972 Board of Selectmen Meeting shows that the Town is not interested in the land area at 6 Red Fox Road and turned it down at a public meeting. In **Item J1** – the Board of Selectmen accepts the road; **Item K** is a letter noting that the Town is not accepting the 3.17 acres. **Item L** is a declaration of the restrictions for Green Valley Lakes Corporation and the lots. In 1979 the developer was running into trouble paying the taxes and he offered the parcel to the Town who again refused it.

In 2006 the legislature passed a Statute that a Town could exchange taxes for development rights and the Town had this opportunity as the taxes were not being paid. They chose taking the property to cover the taxes so they foreclosed on it for taxes due by an advertisement in the newspaper which would have to disclose any material fact about the property.

Mr. Boguszewski noted that the ad did say that the lot may not be buildable.

Attorney Cushman said that the notice with that information was handed out only to the people present moments before the bidding started and was not published.

He continued that **Item O** notes the sewer lien and states that it is not buildable under current Zoning Regulations. **Item B** is the application of Mrs. Maluccio with the third page the plan as prepared by Mr.

Pfanner. This plan has a block on it indicating the zoning compliance chart which lists the objective information for a home. The plan meets all of the requirements for a single family home in an RU-40 zone. What the notice to bidders did not say is that they are not going to give you a permit to build. He said that the ZO has no discretion to deny the application and maintains that his two reasons are wrong as he has to cite specific zoning regulations only. **Item C** is the letter from the Planning Director to Mrs. Maluccio which he maintains is full of errors. The Town cannot police this and if other property owners adjacent to this property do not want it built upon they would have to bring their own lawsuit.

Item Q is the warranty deed to Mrs. Maluccio from the Tax Collector which starts with the whole 190 acres and pulls parts out to get it down to her parcel. It also states the size of a home that she can build on her property.

Mr. Mason asked about any wetlands as even if it was not stated in the deed – they could not develop in them.

Attorney Cushman said that was not the issue here and continued that **Item U** is an affidavit from one of the original developers of the subdivision regarding a section of land being labeled as 'recreation area' in anticipation of the Planning Commission requiring some land be set aside for the Town to use as a playground or park; however the Planning Commission did not act on this as they felt it was the responsibility of the Board of Selectmen.

Item V is an affidavit from Mr. Pfanner stating that he has also searched the land records and found that the plan meets all of the requirements of the RU-40 zone. **Item W** is an affidavit from Chester Fairlie who lived on Lot 3 known as 14 Green Valley Lakes Road for some 29 years and never saw anyone using the 6 Red Fox property for recreation or any type of walking paths or anything of that nature.

Attorney Cushman said that in summary it is their position that the ZO has made a decision outside of his jurisdiction and that even back in the 1970's the Town clearly knew the difference between Open Space and 'recreational area'. Neither the Town Assessor, nor Planner have the right to classify/designate it as recreational area and in spite of that – the designation would go away once the land was transferred. They also did not disclose this at the sale. He said that he is asking that they overturn the ZO decision and find that it is not Open Space and has never been Open Space when talking about the true nature of Open Space as non-developable. He said that he also reserves the right to rebuttal.

(Note: A five-minute break was taken here)

Mr. Mountzoures called for anyone from the public who wished to speak in favor of this application.

Mrs. Maluccio, 4 Bayview Road, Owner/applicant said that this piece of property was open for sale to everyone and that no one else at the tax sale bought it – she did. She said that she then obtained all of the necessary items for a permit to build and it has caused her to spend a lot of money and she feels that her rights are being abused and taken away from her and that she is also potentially being discriminated against.

Mr. Mountzoures called for anyone wishing to speak against this application -

William Mulholland, ZO, Town of East Lyme said that they have heard a lot of testimony about a lot of the issues tonight and that this is really only about if his decision was right or not. He said that he would try to be brief and not rehash a lot of the testimony that Attorney Cushman has presented. He said that he would submit a list of his Exhibits and the exhibits for the file. This was listed as **Exhibit B** containing items 1-17. Item 17 runs from A-GG – a certified copy of the Subdivision and Zoning Regulations and of the map. (List attached) He noted that there is a letter from the Planning Director to Mr. Pfanner citing that it is not a building lot; and a letter from the Building Office to Mrs. Maluccio stating that it is not a building lot and that she could get a refund of the building fees as Zoning would not approve the application. He read into the record Item 4 – a letter dated 7/31/13 from the Town Planner to Mrs. Maluccio on Recreation Open Space and that it is not an approved lot as it was not designated in the same manner as the other building lots were designated. (Copy of Letter Attached) He also noted that he utilizes others expertise for and as research in many issues such as this.

He noted that there were also letters back and forth from Attorney Cushman and Attorney O'Connell on the matter. There is also a certified copy of the final approved copy of the Green Valley Lakes subdivision as approved in 1972; a copy of the Zoning Regulations from 1954-2013 and a copy of the Subdivision regulations. He read into the record the letter dated 3/15/79 from Attorney Chester Fairlie to Robert Marion, Esq. stating that he was the attorney for the Four Mile River construction Company, Inc. who are the

successor to Kavanewsky & Kavanewsky Inc. that developed land in the area of Green Valley Lakes. He stated that there were approximately three acres of land that was dedicated as Open Space that lays on the westerly side of the original Section.I and that the Company wanted to deed this land over to the Town. (Copy of Letter Attached)

Mr. Mulholland said in summary that it is not an approved subdivision lot; not a lot of record but rather recreation area and on the map it is designated as recreation open space. The Planner does not recognize it as an approved building lot and he said that it is his opinion that they should have gone to Planning to clear up this issue and they should not be here as this lot is nothing other than recreational space. The lot does not bear a numerical indicator and was never intended to be a subdivision lot for building and he cannot issue a permit on a 'lot' that is not there. There may be other solutions but this clearly is not it.

Mr. Mountzoures asked if there were any questions.

Mr. Mason asked if there is any correlation between Title 12 and the Zoning Regulations.

Mr. Mulholland said that the Tax Collector operates solely on his/her own outside of the Zoning Regulations and that the Assessor's records are entirely for the Assessor's use. He said that he does not use them for Zoning lot coverage or designations as they do have errors.

Mr. Mason asked if they can distinguish between what is and is not a building lot.

Mr. Mulholland explained that East Lyme has chosen to recognize old lots of record prior to 1954 but asks for searches and records to prove it.

Mr. Mountzoures asked if others from the public wished to speak regarding this application.

Patrick Hughes, 5 Red Fox Road said that his property abuts this property and that they moved there in 2003 specifically because they liked the open space near them. It said recreation so it was his opinion upon research that it would remain that way in perpetuity. He said that he requests that they deny this as a building lot as on the subdivision plan it states recreation. He noted that he was also at the auction in 2006 and attests to the fact that it was recreation/open space. He said that he did bid on the property but felt that \$19,000 was too much for recreational use however he also felt that the person who did get it wanted it for a building lot but also had full knowledge that it was recreation area and not a building lot but bought it anyways. (Letter submitted and attached – entered as **Exhibit C**)

Richard Dwyer, 6 Frog Hollow Road said that he and his wife have lived there since 1973 and they bought there because the lot was designated as open space and they have enjoyed it being that way for over 40 years – just watching the wildlife there. He noted Governor Malloy's recent advocating for land conservation. He requested that they deny this request to build at 6 Red Fox Road. (Letter submitted and attached – entered as **Exhibit D**)

Sterling DeRuiter, 4 Frog Hollow Road said that he purchased his property in 1997 and at that time he inquired about the property directly behind him and was told that it was recreational area and it would not be built upon. He said that the land should remain as recreation area for all of the homes in the area to have access to and for all of the wildlife that roams it. He is opposed to any change allowing it to be built upon. (Letter submitted and attached – entered as **Exhibit E**)

Dann6y Pagano, 14 Green Valley Lakes Road said that when he bought his property he was told that the land behind them would remain open. His children have enjoyed it and there is a hill with a lot of wildlife there and he would not want to see it built upon.

David Larson, 12 Green Valley Lakes Road said that he is adjacent to 14 Green Valley Lakes and that he and his family have lived there since 1975. At the time of the closing they signed a covenant stating that parcel was recreation space and it has been since then. He said that he hopes that they will deny this appeal.

Patrick Hughes, 5 Red Fox Road said that it was brought up that the area was not used as recreational – however he refutes that as it is used as recreational as kids come through it from Old Lyme and they can hike back there.

Sam Elperin, 4 Red Fox Road said that if they approve this that there is ledge there and they will have to blast through it to do anything and you are talking about house there that were built in 1973 that may not withstand blasting. He asked that they consider everything.

Mr. Mountzoures called for any further comments -
Hearing none –

Mr. Mountzoures said that he felt that they should continue the hearing so that they can digest all of the information that was presented this evening and also obtain an opinion from the Town Attorney on this matter. He asked the consensus of the Board.

The Board members were in agreement that they should continue the Public hearing and also obtain an opinion from the Town Attorney.

Mr. Cushman asked for copies of the ZO exhibits.

Mr. Mulholland said that he would have them electronically sent to his office.

Mr. Mountzoures said that they could continue this to Monday, February 24, 2014 at 6 PM which would be within the time frame. The members were in agreement that they could be there for this time.

****MOTION (1)**

Mr. Boguszewski moved to adjourn this Public Hearing at 8:50 PM and continue it to Monday, February 24, 2014 at 6 PM.

Mr. Mason seconded the motion.

Vote: 5 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

EXHIBITS

*Atty
Cushman
submitted*

Re: 6 Red Fox Road, East Lyme, Connecticut

- A = Subdivision Map
- B = Application/Denial Zoning Permit
 - B-1 = Letter from Town of East Lyme-dated 8/29/13
 - B-2 = Letter from Town of East Lyme-dated 6/24/13
 - B-3 = Letter to Town of East Lyme-dated 9/18/13
 - B-4 = Letter to Town of East Lyme-dated 7/24/13
 - B-5 = Letter to Town of East Lyme-dated 8/27/13
 - B-6 = Letter to Edward B. O'Connell, Esq.-dated 8/27/13
 - B-7 = Letter to Town of East Lyme-dated 9/18/13
 - B-8 = Letter from Town of East Lyme-dated 7/31/12
- C = Letter from East Lyme Director of Planning-dated 7/31/12
- D = 1972 Classification - Open Space
- E = 1967 - Plan of Development
 - E-1 = 1978 Map
 - E-2 = 1987 Map
 - E-3 = 1999 Map
- F = Planning Commission Minutes - July 13, 1970
- G = Subdivision Regulations - Adopted Sept. 9, 1952 / 1964 Revision
- H = Selectmen's Minutes - June 6, 1973
 - H-1 = Shea letter of May 10, 1973
 - H-2 = Murphy letter of June 7, 1973
- I = Selectmen's Minutes - June 20, 1973
- J = Selectmen's Minutes - July 5, 1973
 - J-1 = Selectmen's Minutes - February 6, 1974
- K = Marrion letter to Shea - dated July 9, 1973
- L = Declaration of Restrictions - dated January 27, 1972
- M = Fairlie letter to Marrion - dated March 15, 1979
- N = Marrion letter to Fairlie - dated March 20, 1979
- O = Notice of Tax Sale - Volume 736, page 88, March 20, 2006
- P = Instructions to Bidders for tax sale May 26, 2006
- Q = Tax Collector's Deed, dated 7/21/06; recorded 11/27/06; Vol. 759; pg. 699
- R = Letter to Tax Assessor - dated October 4, 2013
- S = Reply Letter from Tax Assessor - dated October 17, 2013
- T = Assessor's Street Cards attached to October 17, 2013 letter (Exhibit "S")
- U = Affidavit of John J. McCook
- V = Affidavit of J. Robert Pfanner
- W = Affidavit of Chester Fairlie
- X = Connecticut General Statutes §12-107e & §12-504f

*All-Exhibit A
Exhibit list - submitted
by Atty Cushman Case 5-2013
1/27/14 2E87-*

Y = Sections of 2011 Subdivision Regulation

Z = Zoning Regulations - Dec 14, 2012

MC

8 = Misc Planning Com. minutes

9 = family letter to planning 4-3-79

10 = Misc

Planning - ASTON 10-22-76

" KEMYON 7-9-81

Conservation Trust - BROWN 1-20-82

Battles letter 7-16-90

Receipts - Tax sale 5-26-06

6 Red Fox Road
Documents Submitted by Zoning Official
1/27/2014

Item #	Date	Item Description
1	4/9/2012	Letter from Gary Goeschel, Town Planner to Robert D. Pfanner informing him that 6 Red Fox Road was not an approved building lot, but "Recreation Space".
2	7/24/2012	Building Permit Application
3	7/31/2012	Notice to Mrs. Maluccio, owner of property, from Building Office that permit cannot be issued because Zoning cannot issue a permit. Leter informs owner that she can get a permit refund.
4	7/31/2012	Letter to Owner, Mrs. Maluccio, from Town Planner regarding Recreation Open Space
5	8/14/2012	Letter from Eugene C. Cushman to Building Office informing Mr. Smith that he, Attorney Cushman, represents Mrs. Maluccio, the property owner, of 6 Red Fox Road, requesting an appeal hearing.
6	8/22/2012	Zoning Permit denied to build a dwelling, denial dated 8/22/2012
7	8/27/2012	Letter from Attorney Cushman to Town Attorney Edward B. O'Connell, Esq., regarding his client's position.
8	6/18/2013	Letter from Attorney Cushman to Zoning Official requesting a ruling by me on 6 Red Fox Road
9	6/24/2013	Letter from Zoning Official to Attorney Cushman referring him to the Town Planner for a ruling on the "status" of 6 Red Fox Road
10	7/24/2013	Letter to Zoning Official from Attorney Cushman regutting the town Planners April 9, 2012 letter on 6 Red Fox Road and requesting a formal zoning ruling by me
11	8/27/2013	Letter to zoning Official from Attorney Cushman requesting a ruling
12	8/29/2013	Letter from Zoning Official to Attorney Cushman directing him once again to the Town Planner
13	9/18/2013	Letter from Attorney Cushman to Zoning Official requesting a hearing with the Zoning Board of Appeals as an appeal of my decision not to issue a ruling
14	1/24/2014	Certified Copy of Approved Green Valley Lakes Final Sec 1 Subdivision Map Approved by the East Lyme Planning Commission July 22, 1970, signed by Lawrence R. Hinson, Secretary (3 Pages)
15	1/24/2014	Certified True Copy of the East Lyme Zoning Regulations adopted May 4, 1954 as amended through November 22, 2013
16	1/24/2014	Certified True Copy of the East Lyme Subdivions Regulations Adopted September 7, 1952, Revised through February 1, 2011, and Effective February 1, 2011
17	1/27/2014	Various historical documents regarding the subdivision and subject parcel including planning commission minutes, maps and correspondence pertaining to the subdivision approval

Au- Exhibit B

Exhibits list

*submitted by Zoning Official
ZBA Case 5-2013 1/27/14*

1 pg.

Town of



East Lyme

108 Pennsylvania Ave
Niantic, Connecticut 06357

Phone: (860) 691-4114

Fax: (860) 860-691-0351

P.O. Drawer 519

Department of Planning &
Inland Wetlands

Gary A. Gosschel II, Director of Planning /
Inland Wetlands Agent

July 31, 2012

Fortunata Maluccio
4 Bayview Road
Niantic, CT 06357

Re: 6 Red Fox Road, East Lyme, Connecticut 06333

Dear Ms. Maluccio,

The above referenced parcel was created as part of the Green Valley Lakes Sec 3 subdivision, which plan was filed with the Town Clerk July 24, 1970. The subdivision map approved by the Planning Commission and filed on the land records indicates the 3.17 acre parcel was not designated as a building lot. Rather, it was designated as a "Recreation Area."

On May 26, 2006, you purchased the property known as 6 Red Fox Road in a tax sale. The "Instructions for Bidders" clearly indicated the properties in the tax sale were being sold "subject to restrictions, covenants and appurtenances as of record...." None of the properties sold were guaranteed buildable under current zoning regulations. Further, the instructions specifically, clearly and un-ambiguously stated "the property located at 6 Red Fox Road is designated as Recreation Area and classified as Open Space by the Town."

The East Lyme Subdivision Regulations in effect at the time the subdivision was approved, state "The commission may require such open space for parks and playgrounds as it may deem proper, accessible to all lots from public ways." As such, it appears the 3.17 acre parcel designated as "Recreation Area" on the approved subdivision map would be classified as Open Space by the Town. For the foregoing reason, the above referenced parcel is not an approved residential building lot for a single family dwelling.

If you have any further questions please do not hesitate to contact me.

Sincerely,

Gary A. Gosschel II
Director of Planning/
Inland Wetlands Agent

Cc: Paul M. Formica, First Selectman
William Mulholland, Zoning Official
Joe Smith, Building Official
Donna Price-Beckech, Assessor
Ed O'Connell, Esq., Town Counsel

FAIRLIE & PALM

Attorneys at Law

326 STATE STREET

NEW LONDON, CONNECTICUT 06320

CHESTER W. FAIRLIE

FREDERICK W. PALM, JR.

PHONE (203) 442-8857

March 15, 1979

Robert Marrion, Esq.
McGARRY, PRINCE, McGARRY & MARRION
111 Huntington Street
New London, CT 06320

Dear Bob:

I am attorney for the Four Mile River Construction Company, Inc. which is the successor to Kavanewsky and Kavanewsky, Inc., which developed land in the area of Green Valley Lakes. In the original development which was approved in 1971, concerning Section I, there are approximately three acres of land which were dedicated as Open Space. These three acres lie on the westerly side of the original Section I. The Company would like to deed this land over to the Town, and I would appreciate it if you would contact me to discuss the procedures which are generally followed in such cases.

Thank you for your attention.

Very truly,



Chester Fairlie

CF/mb

Read into Record by ZO Case 5-2013
1/27/14

1 PS.

27 January 2014

To: East Lyme Zoning Board of Appeals

From: Patrick Hughes, 5 Red Fox Rd, East Lyme, Ct

Subject: Appeal of Denial of Building Permit on 6 Red Fox Rd

I am writing to request the East Lyme Zoning board of appeals deny the request for a building permit on 6 Red Fox Rd.

I live on 5 Red Fox Rd and have lived there since September of 2003. I moved into the Green Valley Sub-division with the knowledge that 6 Red Fox was Open Space/ Recreation. The East Lyme Zoning Regulations were specific to that Open Space would stay open space in perpetuity.

East Lyme Zoning regulations, Section 23 Conservation Design Development specifies on paragraph E, pg. 156. "The plan will specify that the open space land shall not be further subdivided and is permanently reserved for open space purposes." The denial of the building lot should be based on this regulation. It is also referenced on pg. 159 section 23.6F, "that open space land is permanently reserved for open space purposes."

6 Red Fox Rd came up for auction on May 26 with the explicit instruction that made it clear that the lot was considered open space and it was subject to restrictions, covenants and zoning regulations. I was at this auction and can attest to the fact that the town attorney made it absolutely clear that the town was auctioning off this parcel as open space/recreational space, not as a building lot.

The property owner that purchased 6 Red Fox Rd knew that the lot was open space/ recreation land. The attempt to try to make this a building lot can be described as inappropriate and also very invasive to the current property owners of the Green Valley Subdivision, many of whom are original residents of this subdivision. The land has been open space for decades.

These are the facts.

1. The property owner had full knowledge of the status of the land being purchased and bought it any way.

2. 6 Red Fox Rd was labeled Open space/ Recreation use on the subdivision plan.

I am requesting that the East Lyme Zoning Board of Appeals uphold Green Valley Lakes Sub-Division plan and deny the building permit based on this.

Signed: 

Exhibit C submitted. ZBA
Case 5-2013 1/27/14

My name is Richard Dwyer. My wife Carolyn and I have lived at 6 Frog Hollow Road since 1973. At that time two model homes were available, one at 3 Red Fox Road and ours at 6 Frog Hollow Road. We opted to buy our house because of the designated Open Space behind the house. Its been a wonderful, relaxing 40 years living with and watching all the wildlife.

Interestingly enough, just a couple of days after we received notice of this meeting, in the New London Day newspaper 1/8/2014, there is an article "State grant to help preserve East Lyme parcel". It is important enough to preserve land in East Lyme that Gov. Malloy, State Rep. Ed Jutila, Sen. Andrea Stillman and State Rep. Betsy Ritter are working together to preserve the property. Gov. Malloy states "land conservation is an important investment in our future". He also wrote that "Preservation projects are key to maintaining our high quality of life, protecting the immense natural beauty of our state and making CT a great place to live, work and raise a family. I know the property we are here discussing today is in no way a comparison to the Oswegatchie Hills property but to us who abut this property it is that important.

We have always known this property to be declared as "Open Space" and there was never any doubt even in the eyes of our public officials otherwise. I have a copy of a letter from the Planning Dept. to Mr. Pfanner that states the property in question "is not an approved residential building lot". Should I have a concern after reading this? No, because our public officials protect our rights as property owners. I respectfully request the ELZBA deny the appeal to build a private residence at No. 6 Red Fox Road as it would have an adverse effect on the wildlife, beauty, and privacy our lives as we know it to be today.

Should the request to build be granted, I would ask one question. What does the future hold in store for all other properties declared as an Open Space or Recreation Area in East Lyme.

Thank you for your time and consideration.

Richard & Carolyn Dwyer
6 Frog Hollow Road
East Lyme, CT 06333

23 January 2014

To Whom it May Concern,

My name is Sterling DeRuiter and I own the property at 4 Frog Hollow Rd., East Lyme, Ct. My concern is that the acreage directly behind my house become re-zoned as building lots. As my wife is out of town and I have small children to attend to, I will be unable to attend the zoning hearing and hope this letter will say what I would have said if I could have attended.

When I purchased this property in 1997, I specifically inquired about the land behind the house and was informed at that time that it was zoned as a recreation area and therefore could not be built upon. This information weighed upon my decision to purchase the house in which I now reside. My understanding is that the re-zoning of this parcel is now up for consideration by the current owner. The proposed zoning change would negatively impact the current value of my home and in the event I ever opted to sell the property this would also impact the desirability of the property to a future prospective owner. I am opposed to this change in zoning.

The land should remain zoned a recreation area for all the homes abutting it to access. The property in question also is home to a multitude of wildlife. This would include deer, turkey, hawks and bats.

If this were the only available land in East Lyme for the future building of residential homes I might have a different view. But throughout the local area there are plenty of new building sites being developed. This small parcel of land does not need to add to that residential development.

Sincerely, Sterling DeRuiter

Exhibit E submitted ZBA Case 5-2013 1/27/14