

East Lyme Planning Commission

Regular Meeting

Tuesday, April 1, 2014

PRESENT: Brian Schuch, Rita Palazzo, Frank Balantic, Joan Bengtson, Ernie Covino, Francine Schwartz

ALSO PRESENT: Gary Goeschel, Planning Director, Anne Thurlow, Alternate, John Birmingham, Alternate

ABSENT: Ex-Officio, Rose Ann Hardy

Chairman Schuch called this Regular Meeting of the Planning Commission to order at 7:04PM.

Pledge of Allegiance

The Pledge was observed.

FILED IN EAST LYME
CONNECTICUT
APR 10 2014 AT 9:00 AM/PM
Kathleen M. Allen
EAST LYME TOWN CLERK

Additions to the Agenda

Mr. Schuch noted that there is one addition to the Agenda. The item if added would fall under Communications, item B. Solar Farms.

Mr. Schuch stated that a 2/3 Vote would be required to add this item to tonight's Agenda.

- ****Motion (1)**

Mr. Covino moved to add this item to the Agenda under Communications.

Mr. Balantic seconded the motion.

Vote: 5-0-1. Motion passed.

Ms. Bengtson abstained from the Vote because she resides near the Solar Farm.

II. Public Delegations

Public Delegations is the time when members of the public are invited to speak to the Commission about certain matters. Issues or concerns related to approved subdivisions under construction (Item VI) and in-house proposals or general topics of discussion (Item VII) are open to comment. Items, referrals, or applications subject to a decision by the Commission, a public hearing, or in litigation may not be discussed. The members of the Commission will not directly answer questions or make comment during delegations.

There were none.

III. Approval of Minutes

- A. Regular Meeting Minutes of March 18, 2014.

Mr. Schuch had two corrections,

- Page 4, second to last paragraph- Minutes read: *Mr. Goeschel read material regarding open space from the POCD.* Minutes should read: *Mr. Goeschel read material regarding open space from the Subdivision Regulations.*
- Page 5, second paragraph- Minutes read: *Mr. Korineck asked if Mr. Goeschel could read Section 7 from the POCD.* Minutes should read: *Mr. Korineck asked if Mr. Goeschel could read Section 7 from the Subdivision Regulations.*
- ****Motion (2)**

Ms. Palazzo moved to approve the Planning Commission Meeting Minutes of March 18, 2014 as amended.

Mr. Covino seconded the motion.

Vote: 6-0-0. Motion passed.

IV. Public Hearings

- A. Pazz Construction, LLC, applicant/owner; Application for a waiver request from Section 23.58 of the East Lyme Subdivision to reduce a buffer along the northern property line for a proposed eight lot subdivision of property located at 233 Upper Pattagansett Road, East Lyme, CT, property identified on the East Lyme Assessor's Map 39.0, Lot 6.

Mr. Schuch reminded the Commission that the last time the Commission met, a Public Hearing on this matter had been conducted and closed. He noted that the Commission still has 45 days of the 65 days allotted to deliberate, if needed. Mr. Goeschel stated that he spoke with the Town Attorney Ed O'Connell regarding the Town as beneficiary of the maintenance covenants for the subdivision. He submitted the Dedication of Joint Driveway Easement and Maintenance Agreement (Exhibit 1), for review. Mr. Goeschel noted that page 3 contains the language that Mr. O'Connell suggested; the town is in no way required to maintain the basins but that Town has the right to require that the homeowners do the work. The Town has the rights but not the obligation to enforce the covenants.

Mr. Goeschel also provided the Commission with a memorandum dated April 1, 2014 (Exhibit 2), which summarizes the progression of this Application, the findings and the Public Hearing. It details how the Application meets the East Lyme Subdivision Regulations and contains a proposed Motion which approves the subdivision. Mr. Goeschel noted that in addition to the \$8,000 sedimentation bond, a \$2,000 planting bond had been added. He observed that item #5 of the proposed motion (stormwater system operation, inspection and maintenance notes for the detention basins), was already completed and previously submitted for the record, as Exhibit W.

Mr. Goeschel stated that he felt the memo was a good starting point for discussion amongst the Commission and noted that he neglected to address the Subdivision Regulations in terms of the waiver request. He called attention to Section 4-12 and explained the criteria required for approval. The Commission has to weigh the proposed waiver against the POCD and any potential adverse effects upon the adjacent property or environment. Mr. Schuch asked Mr. Goeschel to draft a summary of all of this

with findings, since it was not included in the memo. Mr. Covino asked for clarification of potential adverse effects and Mr. Goeschel explained the concept in more detail.

Mr. Goeschel explained that in terms of the Zoning Regulations there are three criteria in terms of a waiver request. Mr. Schuch noticed that the Agenda states:

*Application for a waiver request from Section 23.5B of the East Lyme **Subdivision Regulations...***

The Agenda should read:

*Application for a waiver request from Section 23.5B of the East Lyme **Zoning Regulations...***

Mr. Goeschel examined the legal notice, regarding the Application, published in the New London Day Newspaper. The notice also used the words subdivision regulations rather than zoning regulations. Mr. Goeschel stated that he didn't feel it was a fatal flaw that it is clear that a waiver of the Zoning Regulations is being sought. Mr. Schuch noted that much of the confusion during the Public Hearing was comprised of research of the regulations for the public in attendance, and therefore wants to make sure that everyone is on the same page. Ms. Schwartz stated that it would be prudent to consult the Town attorney.

Mr. Balantic observed that the waiver encroaches on property adjacent that is a right of way, and felt it important to determine who owns that right of way and has access via that easement. Mr. Goeschel added that there is a single family residence at the top of the driveway of the adjacent property, along with a pedestrian easement that connects with a larger open space behind the Nottingham Hills Subdivision. He stated that he was unsure of whether the pedestrian easement was exclusive to the Nottingham Hills Subdivision. Mr. Balantic said that he needed this Intel before he could make a decision regarding the waiver. Mr. Balantic explained that there is a network of valuable trails that access this property and that it is in the Town's best interest to know if it has an interest in this right of way. Mr. Balantic also expressed concern about where snow from the driveway would be moved to.

Mr. Schuch asked Mr. Goeschel about the recent history of the parcel and Mr. Goeschel explained that prior to the Application a lot line revision had occurred, when a portion of this parcel had been purchased from New England National. The land purchased is the northeast rear of the property and consists of 3.5 acres. The recently added portion of the property is encumbered by a conservation easement in favor of the Town. He added that this portion is not needed to meet the open space requirement for the subdivision. The parcel mattered in terms of overall density; the property was originally 11.3 acres and the new portion adds an additional 3.5 acres.

Mr. Schuch asked if there is currently any access to get to the open space and also questioned who can access the right of way. Mr. Goeschel added that the pedestrian access that exists does not run across this parcel. Mr. Balantic clarified that the right of way has nothing to do with the subdivision other than the fact that the 40 foot buffer is going to be right against it. Mr. Balantic also questioned whether the right of way transverses the driveway. He said that if the Commission says no then we have to consider whether the Developer has other options, because he should be able to develop his land. Mr. Balantic

reviewed page 24 of the POCD with the Commission and stated that the goal is to leave open space where you can and that this Application does this. He added that he is unsure of whether the Application meets the spirit of the POCD, but that it certainly does meet the intent. He is also unsure if the Developer is trapped to this particular plan.

Ms. Palazzo questioned the location and accessibility of fire hydrants on the property and Mr. Goeschel explained that fire hydrants are the purview of the Fire Marshall. Mr. Goeschel reviewed Section 6 of the Subdivision Regulations which concerns site design standards and cluster development, with the Commission.

Ms. Bengtson left the Meeting at 8:08PM due to illness and the Commission took a five minute comfort break.

The Planning Commission reconvened at 8:15PM and Mr. Schuch sat Ms. Thurlow as a Regular Member for the remainder of the Meeting.

Mr. Schuch stated that looking at the Zoning Regulations, under buffers, and noted that where compatible land uses remove the need for such buffers the Planning Commission may waive or refuse the requirement if it can be shown that such a modification will further the Conservation By Design Development. If we go to the Conservation Design Development part of the Subdivision Regulations it's a land use that adopts the principle for allowing limited sustainable development while protecting the area's natural environment features; this includes preserving open space, landscape and vista, protecting farm land and natural habitat and maintaining the character of rural communities. Mr. Goeschel reviewed Section 6-6-1 of the Subdivision Regulations and the thirteen purposes to expand on the purpose of the Conservation by Design Subdivision. He also discussed Section 23.2 of the Zoning Regulations as it relates to Conservation by Design Development.

Mr. Schuch tabled this Application until the next Meeting so that the legal notice could be looked into and the findings of how the Application meets the Subdivision Regulations could be added to the memo. Mr. Goeschel added that he would also look into ownership of the right of way and access of the adjacent pedestrian easement.

V. Zoning Referrals

There were none.

VI 8-24 Referral

There were none.

VII Other Business

A. New Business

There was none.

B. Old Business

i. Plan of Conservation and Development (POCD)- Discussion

Mr. Goeschel stated that this discussion would be tabled while Mr. Morehouse is still working on the GIS Tool. Mr. Balantic suggested the possibility of utilizing the tool to illustrate the public access easements within the Town. Mr. Goeschel said that he would continue to revise Chapter 4 & 7 of the POCD. Ms. Palazzo reminded him of the Chapter 8 correction and he said that he would follow up with Mr. Formica regarding handicap access to the Town Hall.

VIII Reports

A. Chairman

Nothing to report.

B. Ex-Officio- Rose Ann Hardy

Ms. Hardy was not in attendance.

C. Zoning Representative

Mr. Balantic agreed to cover the April 3rd Zoning Meeting if Ms. Palazzo would cover the April 17th Zoning Meeting. They both agreed to the switch.

D. Regional Planning Representative- Brian Schuch

Mr. Schuch stated that he is the Secretary and that he will alert the Commission if any action is taken during the April meeting.

E. Sub-Committees

- a. Sustainable Development and Climate Adaptation Subcommittee (F. Schwartz and G. Goeschel)

Mr. Goeschel stated that a joint meeting with Dr. Adam Welchel of the Nature Conservancy may be occurring in May. It would address coastal degradation, salt marsh advancement and habitat migration. He also reminded the Commission that it would be helpful to add another Member to this subcommittee.

- b. Subdivision Regulations Bonding Review Subcommittee (B. Schuch, J. Bengtson and G. Goeschel)

Mr. Goeschel tabled this report until the next session.

F. Staff/Communications

- a. Route 11 Greenway Authority Commission Update

Nothing to report at this time.

b. Solar Farms

Mr. Goeschel stated that on Friday March 28th we experienced a 1 ½ inch rainfall followed by a 4 ½ inch rainfall on Monday March 31st. The Solar Farm on Upper Walnut Hill Road had an erosion mudslide and the mudslide slid into land owned by the East Lyme Land Trust. He met with Ryan McNamara of Center Plan, which is the construction company installing the solar panels. They agreed that the first step should be to restore the erosion controls and prepare for the next rain event. Mr. Goeschel noted that this is probably the largest erosion sedimentation failure that he has seen in his fifteen year career.

The problem occurred because the ground was frozen, a rain event occurred which thawed the first inch or so of soil, and the soil beneath that was still frozen. The second rain event pushed the water, clogged the drainage structures, they filled up with water and sediment, it overtopped and the pressure blew the whole thing out. The top 2 to 3 inches of material on the entire 40 plus acre site slid off the frozen ground into the basins, the brook and adjacent Land Trust property.

The Developer followed the plan and did what was required. The problem occurred due to poor timing of the rain events; Seeding was due to occur within two weeks and had vegetation been established, there would have not been a problem. The Solar Farm falls under the environmental jurisdiction of the CT Siting Council and a municipality does not have the ability to regulate it. The Town is part of the picture in terms of the adjacent land and conservation easement. Two crews are working on erosion controls and reshaping the basins. Mr. Goeschel added that he would be visiting the Gateway property to see if they had a similar problem, given that Gateway has recently cleared a vast amount of land.

Adjournment

- ****Motion (3)**

Ms. Palazzo moved to adjourn the Planning Commission Meeting at 8:49 PM.

Ms. Thurlow seconded the motion.

Vote: 6-0-0. Motion passed.

Respectfully submitted,

Brooke Stevens,
Recording Secretary