

East Lyme Planning Commission

Regular Meeting

Tuesday, May 6, 2014

FILED IN EAST LYME  
CONNECTICUT  
May 12, 2014 AT 8:30 AM/PM  
Kawentzko, CL  
EAST LYME TOWN CLERK

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

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

ABSENT: Ex-Officio, Rose Ann Hardy, John Birmingham, Alternate, Michael Hess, Alternate

Chairman Schuch called this Regular Meeting of the Planning Commission to order at 7:05 PM.

**Executive Session**

- **\*\*Motion (1)**

Mr. Covino moved to enter into Executive Discussion to discuss pending litigation.

Ms. Palazzo seconded the motion.

Vote: 6-0-0. Motion passed.

The Commission invited Mr. Goeschel, Attorney Block and Attorney Sweeney to join them during Executive Session.

The Planning Commission reconvened the Regular Meeting at 8:03 PM.

**Pledge of Allegiance**

The Pledge was observed.

**Additions to the Agenda**

- **\*\*Motion (2)**

Ms. Palazzo moved to amend the Agenda to include New England National Item c, under Communications.

Ms. Bengtson seconded the motion.

Vote: 6-0-0. Motion passed.

## 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.

A.

## III. Approval of Minutes

Regular Meeting Minutes of April 15th, 2014.

There were no corrections.

- **\*\*Motion (3)**

**Ms. Palazzo moved to approve the Planning Commission Meeting Minutes of April 15th, 2014.**

**Mr. Balantic seconded the motion.**

**Vote: 6-0-0. Motion passed.**

## IV. Subdivisions and Resubdivisions

### A. Darrow's Ridge Phase III Expiration

Mr. Goeschel submitted his Memorandum dated May 6, 2014, to the Planning Commission (Exhibit 1) as well as a Resolution drafted by Attorney Sweeney. He noted that Phase I of the Darrow's Ridge Subdivision was expired last year. Mr. Balantic asked if any request for an extension had been received from the developer. Mr. Goeschel responded that no request had been made despite the reminder notices that had been sent. Mr. Covino asked if it is up to the Commission to expire the Subdivision. Mr. Goeschel explained that the Commission has a statutory duty to expire the Subdivision and to call the bond to complete the Public Improvements. Ms. Palazzo asked how much the bond is and Mr. Goeschel stated that the Phase III bond is \$37,000.

- **\*\*Motion (4)**

**Mr. Balantic moved to expire the Darrow's Ridge Subdivision Phase III, stating:**

**WHEREAS, Section 8-26c(e) of the Connecticut General Statutes requires that all work in connection with a subdivision approved prior to July 1, 2011, and which had not expired prior to May 9, 2011, be complete within a period of nine (9) years from the date of approval; and**

**WHEREAS, pursuant to Section 8-26c(b) the Connecticut General Statutes, a municipal planning commission shall take action to expire any subdivision approval where the work in connection with the approval is not completed within the applicable time period; and**

**WHEREAS, the Darrow's Ridge Phase III Subdivision (the "Subdivision") was approved by the Town of East Lyme Planning Commission (the "Commission") on April 19, 2005 and did not expire prior to May 9, 2011; and**

**WHEREAS, the work associated with the Subdivision, consisting of various public improvements, was not complete as of April 19, 2014; and**

**WHEREAS, no request for an extension of the time period to complete the work has been received by the Commission; and**

**WHEREAS, the failure to complete the work associated with the Subdivision has created a variety of public safety concerns.**

**NOW THEREFORE, BE IT RESOLVED, pursuant to Section 8-26c of the Connecticut General Statutes, that the Subdivision is hereby declared expired due to a failure to complete the required public improvement work within the applicable nine (9) year period.**

**BE IT FURTHER RESOLVED, that notice of such expiration shall be filed on the Land Records of the Town of East Lyme and evidence of this expiration shall be marked on the recorded subdivision plan.**

**BE IT FURTHER RESOLVED, that the cash bond for the Subdivision shall be called to the extent necessary to complete the work required to serve the sold lots.**

**Ms. Bengtson seconded the motion.**

**Vote: 6-0-0. Motion passed.**

Mr. Balantic asked about the letter included in the Member Packet asking if the developer has requested anything and Mr. Goeschel stated that there has been no request from the developer. Attorney Sweeney stated that the Subdivision expires automatically and that it is the duty of the Commission to record the resolution on the land records.

- B. Pazz Construction, LLC, applicant/owner; Application for a waiver request from Section 23.58 of the East Lyme Subdivision Regulations 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 Public Hearing conducted by the Planning Commission closed on March 18<sup>th</sup> 2014. He noted that the Commission still has until May 22<sup>nd</sup> 2014 to render a decision. Mr. Schuch summarized some of the deliberation discussion that occurred during the last Meeting. Mr. Goeschel stated that at the last Meeting we left off discussing whether the view is perceived as scenic or not, that this seems to be the main issue. Mr. Schuch stated that when he looks at Mr. Goeschel's memorandum (from the previous Meeting), the priority is how the Commission sees the buffers. Mr. Schuch added that his attention is on the issue of scenic views or non-scenic views and asked how the Commission is treating this. He noted that if we suppose that the view is not scenic, than trees should be on the Plan. Mr. Goeschel said that he has drafted a condition to include the trees. Mr.

Schuch stated that this is an overlooked flaw in the Application that the trees should be on the Plan, that it is not the job of the Commission to draft a condition which completes the Application. He also noted that he is uncomfortable that this issue was not addressed during the Public Hearing, adding that the Public may have a problem with that omission. He also added that if this Applicant does not complete their own Application, why would any future Applicant feel the need to complete theirs. Mr. Schuch stated that this endeavor is difficult because the Commission is tasked with interpreting Zoning Regulations and possibly waiving one.

Mr. Balantic noted that he is comfortable with the buffer and that they need to decide whether the land is scenic or not. He added that he does not think that it is scenic and that it needs to be screened. Mr. Goeschel said that we received a letter from Zoning stating that the Application complied, and that the design was a collaborative effort between the Applicant and Town Staff. Ms. Palazzo questioned whether the vegetative buffer would adequately screen the homes. Mr. Covino questioned if the placement of the driveway meets the Conservation by Design standard. Mr. Goeschel explained that it does because there are compatible land uses. He added that he would question the idea of natural beauty of the land in terms of this parcel. The Commission discussed the proposed buffer and the waiver at length.

Mr. Balantic stated that they need to consider density, but that he thinks it's waivable. Mr. Schuch stated that he is uncomfortable with the fact that Mr. Mulholland did not sign his compliance letter; that perhaps the Commission should ask him to examine this matter again. Mr. Covino stated that he agrees with Mr. Balantic but that it wouldn't hurt to have further confirmation and clarification from Mr. Mulholland. The Commission reviewed the bullet point objectives (A-F) of Item 23 of the Zoning Regulations, noting that it contained the best description of Conservation by Design Development. The Commission concluded that in terms of this Application, B-F seem consistent.

Mr. Schuch questioned how the Application could meet A (enhancement or maintenance of the character of the land), when a driveway runs right through the buffer. Mr. Goeschel added that one would have to take that to the extreme and consider every single driveway. Mr. Goeschel stated that the Applicant has the right to develop his land. Mr. Schuch stated that the Commission is constrained by the language of the Regulations. Mr. Covino stated that if no one wants the buffer, remove it. Mr. Schuch noted that putting a condition on the Approval results in taking on the work of Zoning, when they could simply contact Zoning for advisement. He stated that since the Commission still has time to deliberate, they would table this discussion until the next Meeting. Ms. Palazzo said that it would be helpful to have Mr. Mulholland's response prior to the next Meeting, so the Members could review it before deliberation.

## **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**

Mr. Schuch stated that due to the late hour the Reports and UCONN project discussion until the next Meeting. Mr. Goeschel provided the Commission with pictures of the Gateway land clearing and the erosion occurrence at the Solar Farms. Mr. Goeschel noted that in terms of the added Communications item, Phase III of the Darrow's Ridge Subdivision is expiring.

Adjournment

- **\*\*Motion (5)**

**Mr. Covino moved to adjourn the Planning Commission Meeting at 9:42 PM.**

**Ms. Palazzo seconded the motion.**

**Vote: 6-0-0. Motion passed.**

Respectfully submitted,

Brooke Stevens,  
Recording Secretary

# Town of

P.O. Drawer 519

**Department of Planning &  
Inland Wetlands Agency**

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



# East Lyme

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Niantic, Connecticut 06357

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## MEMORANDUM

**TO:** East Lyme Planning Commission

**FROM:** Gary A. Goeschel II, Director of Planning/ Inland Wetlands Agent 

**DATE:** May 6, 2014

**RE:** Darrow's Ridge Subdivision Phase III

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Phase III of the Darrow's Ridge subdivision was approved on April 19, 2005. As of April 19, 2014, the time to complete the Phase III Public Improvements of the Darrow's Ridge Subdivision elapsed.

Recent changes to state law provided that for subdivisions approved prior to July 1, 2001, and which did not expire before May 9, 2011, all work associated with the Subdivision must be completed within a period of nine (9) years of the date of original approval, unless extended by the Planning Commission for a period not to exceed fourteen (14) years beyond the original date of approval. This extension runs from the date of initial approval, superseding the Town's actions, causing the expiration of Phase III to be April 19, 2014.

The work associated with the subdivision, consisting of various public improvements, was not complete as of April 19, 2014. As of today, May 6, 2014, of the 15 items identified on the Darrow's Ridge Punch List from Bill Scheer dated 1/26/2010, with the exception of the street lights; all the items associated with both Phase I and Phase III remain incomplete.

The incomplete work includes the following:

- Replace any damaged curb and install final bituminous overlay;
- Widen the northern remainder of Mostowy Road;
- Clean catch basin sumps;
- Evaluate and replace any dead street trees;
- Provide as-built drawings and correcting deficiencies found on them;
- Remove well and electric service located in open space;
- Provide an apron for the garage on the east side of Mostowy Road as the curb has been removed;

Under CGS 8-26 (c), the Commission has an obligation to expire the subdivision and call the bond to complete the improvement to the extent necessary to serve the lots that have been conveyed by the subdivider.

All lots within the subdivision have been conveyed. Currently 23 homes are served by Darrow's Ridge Road. As such, the incomplete road creates a variety of public safety concerns. Further, there have been several changes in the East Lyme Subdivision Regulations since the Phase III of the subdivision was approved on April 19, 2005.

**PROCESS TO ADDRESS THE  
FAILURE TO COMPLETE SUBDIVISION IMPROVEMENTS**

1. Pursuant to CGS Sec.8-26c., any subdivision approval made prior to July 1, 2011, that had not expired prior to May 9, 2011, shall expire not less than nine (9) years after the date of approval. However, the commission may grant one or more extensions of time to complete all or part of the work, provided no subdivision approval, including all extensions, shall be valid for more than fourteen (14) years from the date the subdivision was approved. These extensions of time may be granted upon the request of the subdivider and in the discretion of the Commission. The Commission may deny an extension request for any reason relating to a change in the regulations or conditions subsequent to the original approval.
2. The term "work" refers to only the public improvements associated with the subdivision such as the roads, drainage, utilities, etc... not private improvements. A surety bond is typically posted with the Town to ensure that the public improvements can be completed upon subdivision expiration when lots have been sold.
3. When the public improvements are not completed within the above timeframe and no extension has been granted, the Commission must make a determination that the work is not complete and then must take action to file a notice of expiration of the subdivision approval on the land record and note the expiration on the recorded subdivision plan. The subdivision is technically not expired until such notice is recorded and noted on the plan.
4. Notice of the official action of the Commission must be published in the news paper similar to other Commission decisions.
5. Once the notice of expiration is recorded and noted on the subdivision plans, any unsold building lots may not be conveyed by the subdivider. Town must then use the available bond funds to the extent necessary to complete the public improvements that serve the lots which have been sold. The Town has no obligation to complete work that serves unsold lots nor to complete work where the bond is insufficient to cover the costs.
6. Upon completion of the work by the Town, to the extent that the work involved the completion of roadways, the Board of Selectmen may accept the roadways provided they meet the public road specifications. The Planning Commission would request a report from the Town Engineer indicating whether the road ways meet said specifications. Upon receipt of the said report, the Planning Commission would then forward either a favorable or unfavorable recommendation to the Board of Selectmen to accept the roadways.
7. It is worth noting that obtaining fee title from the subdivider to the road bed of an accepted a Town road is not required by state law, nor required to establish the public's right to pass and repass. However, the subdivider would most likely convey title to reduce any potential tax liability.

Mark E. Block  
Eric M. Janney  
Richard J. Pascal

Matthew J. Curtiss  
Amanda L. Sisley



*Respond to:*  
138 Main Street  
Norwich, CT 06360

May 2, 2013

Mr. Gary Goeschel  
Director of Planning/Inland Wetlands Agent  
Town of East Lyme  
PO Box 519  
Niantic, Connecticut 06357

Re: Expiration of Darrow's Ridge Subdivision Approval

Dear Gary:

Please allow this letter to serve as a response to your May 1, 2013 inquiry regarding the effect of PA 11-5 on the subdivision approval for Darrow's Ridge Phase I and III.

Section 8-26c of the Connecticut General Statutes governs the expiration of subdivision approvals. Prior to May 9, 2011, all subdivision approvals expired 6 years after initial site plan approval with the possibility of one or more extensions to allow the developer up to eleven years to complete all of the work in connection with the subdivision.

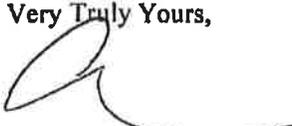
In May of 2011, the statute legislature passed Public Act No. 11-5 which, among other things, amended section (e) of Connecticut General Statute 8-26c. This amendment provided an automatic extension of any subdivision with a site plan approved prior to July 1, 2011 and that had not expired as of May 9, 2011 (the date the act was passed). Specifically the act provided that any such subdivision **would not expire less than nine years after the date of the site plan approval**, with the right to obtain extensions to allow the developer up to fourteen years from approval to complete all of the work in connection with the subdivision.

Darrow's Ridge Phase I was initially approved on October 19, 2004 and Phase III was initially approved in April 2005. On December 7, 2010, the Planning Commission granted an extension of time, extending the expiration date for both Darrow's Ridge Phase I and Phase III to October 2011.

As the Darrow's Ridge Subdivision Phases I and III were approved prior to 2011 and had not expired when the state passed Public Act No. 11-5, they were automatically extended. This extension runs from the date of initial approval, thereby superceding the acts of the Town which caused both phases to expire together in October 2011. As a result of Public Act No. 11-5 the developer has until October 19, 2013 to complete Phase I and until April 2014 to complete Phase III.

Please do not hesitate to contact me should you have any questions or concerns.

Very Truly Yours,



Amanda L. Sisley