

Planning Commission Public Hearing Meeting Minutes

Tuesday March 1st, 2016

Present: Brian Schuch, Chairman
Joan Bengtson
Peter Lynch
Rita Palazzo
Brenda Henderson
Kirk Scott, Alternate *(Sat as Regular Member)

Also Present: Gary Goeschel, Planning Director
Anthony Arias, Alternate
Michael Hess, Alternate

FILED IN EAST LYME
CONNECTICUT
Mar 3, 2016 AT 3:45 AM/PM
Calvin Halpin
EAST LYME TOWN CLERK

Absent: Ernie Covino
Holly Cheeseman, Ex-Officio

Mr. Schuch called this Special Meeting of the Planning Commission to order at 7:02 p.m. and sat Mr. Scott as a Regular Member.

I. Pledge of Allegiance

The Pledge was observed.

I. Public Hearing

A. Application of the East Lyme Planning Commission to amend the East Lyme Subdivision Regulations Section 9- Assurances for Completion and Maintenance of Improvements.

Attorney O'Connell came forward to review the history of this topic for the record. Legislative changes led to the formation of a sub-committee and with his assistance, the sub-committee has made revisions to Section 9. One of the changes include the regulations regarding the acceptance of surety bonds, letters of credit, passbook or statement savings accounts as well as cash for public improvements (Section 9-1-1.)

Changes were also made for the maintenance bonds such that the Town may retain a percentage of the funds for one year to be utilized for any unexpected maintenace issues that occur after the date that the public improvements are determined to be complete by the Commission or the Town. The funds were previously held up to two years from the date of acceptance. The revisions made to our regulations

reflect these changes. It is important to note that previously the Planning Commission of any given town could determine what type of bond a subdivision should use, legislation has since changed; as long as a developer posts one of the particular bonds specified in the statute and is in the proper monetary amount and form, the Planning Commission has to agree with it.

Attorney O'Connell pointed out the quoted language of the statute; *"the Commission may accept surety bonds but it shall accept cash bonds, passbook or statement savings accounts and other financial guarantees...not limited to letters of credit"*

Mr. O'Connell's partner, Attorney Catherine Marrion, came forward and reviewed the 2011 and 2012 amendments to 8-25 with the Commission. Attorney Marrion explained that the transfer of lots prior to a financial guaranty is strictly prohibited. The guaranty is limited to public improvements and she clarified that it's not applicable to private property. (New proposed Section 9, attached.)

Mr. O'Connell explained that this is a good time to incorporate the statutory revisions because no subdivisions are currently before the Commission.

Mr. Scott asked if the changes sufficiently protect the Town. Mr. O'Connell explained that the bonds are intended to protect public improvements- streets, street lights, curbs, drainage and so forth. The Town Engineer is an integral part of this process because he calculates the amount necessary to protect the Town.

The Commission discussed the difficulty in determining who will maintain rain gardens.

Mr. Lynch asked if we could impose on subdivisions gravel driveways since it is better for the Aquifer. Mr. Goeschel replied that we could discuss this with the Town Engineer in another forum.

Mr. Scott asked what could be done if the financial institution is shady. Attorney O'Connell noted that Section 9 says *"in a form acceptable to the Commission."*

Mr. Goeschel presented the exhibits and read them into the record: Exhibit A- Planning Commission Application for Subdivision Amendment, Exhibit B- Section 9 Text Amendment, Exhibit C- Legal Notice for tonight's public hearing published February 18th and 26th in the New London Day, Exhibit D- letter to Lesley Blais, Town Clerk asking that the text amendment be available for public perusal, Exhibit E- Memorandum from Gary Goeschel dated March 1st, 2016.

There were no public comments.

- ****Motion (1)**

Ms. Palazzo moved to close the Public Hearing.

Ms. Bengtson seconded the motion.

Vote: 6-0-0. Motion passed.

Respectfully Submitted,



Brooke D. Stevens, recording Secretary

Exhibit A

APPLICATION NO. _____



PLANNING COMMISSION APPLICATION
FOR SUBDIVISION / RE-SUBDIVISION, SUBDIVISION
MODIFICATION, POCD AND SUBDIVISION REGULATION
AMENDMENT

APPLICATION TYPE: Subdivision _____ Re-Subdivision _____ Subdivision Modification _____
POCD Amendment _____ Subdivision Amendment X - Subdivision Regulation Amendment

NAME OF SUBDIVISION: Amendment of Section 9-Assurances for the Completion and Maintenance of Improvements

PROPOSED ROAD NAME(S): N/A LENGTH N/A lf.
(attach list if more than one)

PROPERTY LOCATION: (attach 8 1/2 x 11 location map) N/A

APPLICANT: East Lyme Planning Commission

Address: PO Box 419 Phone: (860) 691-4114 Fax: (860) 691-0351
108 Pennsylvania Ave., Niantic, CT e-mail: ggoeschel@eltownhall.com

OWNER: N/A

Address: Phone: Fax:
e-mail:

PRIMARY CONTACT /AGENT: Gary A. Goeschel II, Director of Planning

Address: PO Box 419 Phone: (860) 691-4114 Fax: (860) 691-0351
108 Pennsylvania Ave., Niantic, CT e-mail: ggoeschel@eltownhall.com

ASSESSOR'S MAP(S) & LOT(S) N/A TOTAL ACRES N/A

ZONING DISTRICT(S) N/A CONV./O.S. (circle one) CAM N/A # LOTS N/A

FLOOD ZONE N/A AQUIFER N/A W/IN 500' TOWN BOUNDARY N/A FARM LAND N/A

WATER SUPPLY N/A SEWAGE DISPOSAL N/A

(attach letter from Water & Sewer Dept. if public and Ledge Light Health District if on-site)

CONSERVATION COMMISSION APPLICATION: N/A PERMIT#: N/A

WAIVER(S) REQUESTED: (attach letter) N/A

ZONING VARIANCES: (attach copy from land records) N/A

PLANS PREPARED BY (Engineer/Surveyor): N/A

Address: Phone: Fax:
e-mail:

ATTORNEY: Edward O'Connell, Esq. of Waller, Smith and Palmer P.C.
Address: 52 Eugene O'Neill Drive **Phone:** (860) 442-0367 **Fax:** (860) 447-9915
 New London, CT 06320 **e-mail:** eboconnell@WallerSmithPalmer.com

PREVIOUS SUBDIVISION(S) IF RE-SUBDIVISION OR LOT LINE REVISION:

 Map _____ Dwr. _____

 Map _____ Dwr. _____

 Map _____ Dwr. _____

CHECKLIST ATTACHED _____

CONSENTS AND PERMISSIONS:

The undersigned owner, or legally authorized agent, hereby consents to necessary and proper inspections of the property that is the subject of this application by agents of the Commission at reasonable times both before and after approval is granted by the Commission.

The undersigned declares all information submitted with this application is accurate to the best of his/her knowledge and belief. If such information subsequently proves to be false, deceptive, incomplete or inaccurate, the approval may be modified, suspended, or revoked by the Commission.

Town of East Lyme Planning Commission

Owner's Printed Name _____

Owner's Signature _____

Date _____

Town of East Lyme Planning Commission

Applicant's Printed Name _____

Brian Schuch/gg
Applicant's Signature _____

2/10/16
Date _____

FOR INTERNAL USE ONLY:

- SUBMITTED:**
- APPLICATION FEE:**
- PROCESSING FEE:**
- DATE OF RECEIPT:**
- SET P.H. BY:**
- PUBLISH LEGAL NOTICE:**
- HEARING HELD:**
- DECISION BY:**
- CONDITIONAL APPROVAL:**
- LEGAL NOTICE**
- FINAL APPROVAL:**
- LEGAL NOTICE:**
- LETTER OF DECISION:**

- BOND SUBMITTED:**
- OPEN SPACE CONVEYED:**
- MYLARS FILED:**
- ROAD ACCEPTED:**
- DEEDS & EASEMENTS FILED:**

Exhibit B

SECTION 9 - ASSURANCES FOR COMPLETION AND MAINTENANCE OF IMPROVEMENTS

9-1-1 FINANCIAL GUARANTEES FOR COMPLETION OF PUBLIC IMPROVEMENTS

– In lieu of requiring the completion of all improvements for the final approval of a subdivision plan, the Commission may accept surety bonds and shall accept cash bonds, passbook or statement savings accounts and other financial guarantees other than surety bonds, including, but not limited to, letters of credit, provided such financial guarantee is in a form acceptable to the Commission and the financial institution or other entity issuing any letter of credit.

The financial guarantee provided to the town shall be in the amount equal to the actual construction cost of the improvements as determined by the Commission upon the recommendation of the Town Engineer plus a 20% contingency amount. In estimating the amount of the financial guarantee, the subdivision owner's engineer shall include the costs of the following items:

- a) The construction and installation of all required public improvements including storm drainage systems, roads and pavements, sidewalks, curbs, utility lines, trees, grading, surface restoration, setting of monuments, as-built drawings.
- b) The inspection and testing of construction activities and materials by a qualified independent third party. The cost estimate shall describe the quantity and cost of each inspection and testing item.

At the discretion of the person posting such financial guarantee, such financial guarantee may be posted at any time before all approved improvements and utilities are completed, except that the Commission may require a financial guarantee for erosion and sediment control measures prior to the commencement of any improvements set forth in Section 9-2. No lot shall be transferred to a buyer before any required financial guarantee is posted or before the approved improvements and utilities are completed to the reasonable satisfaction of the commission or its agent. For any subdivision that is approved for development in phases, the financial guarantee provisions of this section shall apply as if each phase was approved as a separate subdivision.

9-1-2 If the person posting a financial guarantee under this section requests a release of all or a portion of such financial guarantee, the Commission shall, not later than sixty-five (65) days after receiving such request, (A) release or authorize the release of any such financial guarantee or portion thereof, provided the Commission is reasonably satisfied that the improvements for which such financial guarantee or portion thereof was posted have been completed, or (B) provide the person posting such financial guarantee with a written explanation as to the additional improvements that must be completed before such financial guarantee or portion thereof may be released.

9-2 EROSION AND SEDIMENTATION CONTROL AND SITE RESTORATION FINANCIAL GUARANTEE

– To secure erosion and sedimentation and site restoration as described in Sections 4-4-6, 5-3-1(C), 5-7, and 8-3-6, the Commission may accept surety bonds and shall accept cash bonds, passbook or statement savings accounts and other financial guarantees other than surety bonds, including, but not limited to, letters of credit, as set forth in Section 9-1, in amounts and with such other security and conditions as are satisfactory to the Commission for such purposes. Notwithstanding Section 9-1, the Commission may require a financial guarantee for erosion and sediment control and site restoration prior to the commencement of any improvements.

9-3 APPLICABILITY - These financial guarantee requirements shall apply to improvements shown on the approved plans whether the streets are to be public or private, except that no maintenance financial guarantee shall be required for private improvements.

9-4 FINANCIAL GUARANTEE FORM – Financial guarantees shall be duly executed on forms provided by the town and available from the Planning Department, with proper reference to all maps and plans showing the streets, drainage, and other improvements covered by the financial guarantee. To ensure the completion of all required improvements, including storm drainage system, erosion and sedimentation control measures, roads and pavements, sidewalks and curbs, trees, grading, setting of monuments, and any other requirements made as a condition for subdivision approval or depicted on the endorsed Record Subdivision Plan, Plan and Profile Plan, Grading Plan, Erosion and Sedimentation Control Plan, the Commission shall require, prior to the release of the signed Approved Maps (mylar copy) any one of the following:

9-4-1 The submission to the Town of a financial guaranty, as described in Section 9-1.

9-4-2 A security agreement, in a form acceptable by the Commission, which provides that no lots may be sold, or building permits issued until such time that all required improvements are complete, or financial guarantee delivered, as outlined in Section 9-4-1 for the remaining improvements.

9-5 FAILURE TO COMPLETE IMPROVEMENTS – Where a financial guarantee has been posted and required improvements have not been installed within the terms of such financial guarantee, the town may thereupon declare the financial guarantee to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the financial guarantee is declared to be in default.

9-6 PARTIAL RELEASE – When the Town Engineer determines, based on site inspection and certification by the applicant's engineer that a substantial portion of the public improvements called for in the final plan approved by the Commission have been completed, a recommendation may be made for one or more partial releases of a portion of the financial guarantee, the balance to be sufficient to guarantee completion of the public improvements. Such partial release shall be authorized by the Planning Commission upon recommendation of the Town Engineer. Releases shall be granted in amounts of no less than \$1,000. In no event shall a financial guarantee be released below two percent (2%) of the actual cost of improvements or no less than \$3,000, whichever is greater.

9-6-1 – Financial Guarantee Reduction Schedule for Private Roads – delete entire section

9-7 FINAL RELEASE – Financial guarantees will not be released until the following conditions have been met:

- (A) The Town Engineer has submitted a certificate stating that all required improvements have been satisfactorily completed;
- (B) The applicant's engineer or surveyor has certified to the Town Engineer, through submission of detailed as-built plans that the layout of the line and grade of all public improvements is in accordance with the Construction Plan for the subdivision. As-built plans shall include, a Grading Plan and a Construction Plan as described in Section 5 of these Regulations. Such plans shall show any modification or changes made during construction.
- (C) All public improvements called for in the final plan have been accepted by the town. A maintenance financial guarantee, as described in Section 9-8-1 shall be filed with the town.
- (D) All conditions and requirements of the Commission's approval of the subdivision application have been satisfied.
- (E) The deed to all roads has been accepted by the town.

9-8 MAINTENANCE OF IMPROVEMENTS – The applicant shall be required to maintain all improvements and provide for snow removal on streets until acceptance of said improvements by the town. (move 9-8-1 to 9-3 and renumber?)

9-8-1 Financial Guarantees for Maintenance of Public Improvements –

As a condition of the Town's acceptance of the public improvements, the subdivision owner shall provide to the town a financial guarantee for the maintenance of public improvements to ensure that funds are available to the Town to maintain or repair the public improvements. The Commission may accept surety bonds and shall accept cash bonds, passbook or statement savings accounts and other financial guarantees other than surety bonds including, but not limited to, letters of credit, provided such financial guarantee is in a form acceptable to the Commission and the financial institution or other entity issuing any letter of credit.

The financial guarantee for the maintenance of public improvements shall be in full force and effect for a period of one year after the date that the public improvements are determined to be complete by the Commission, or on the effective date of the acceptance of improvements by the Town, whichever is later.

The Town shall not require the establishment of a homeowners association or the placement of a deed restriction, easement or similar burden on property for the maintenance of approved public improvements, except that this prohibition shall not apply to the placement of a deed restriction, easement or similar burden necessary to grant the Town access to such approved site improvements.

Such financial guarantee for maintenance shall be in an amount equal to two percent (2%) of the cost of improvements and shall be of such form as described in these Regulations. Pursuant to Section 9-3 of these Regulations, no maintenance financial guaranty shall be required for private improvements.

If the person posting a financial guarantee under this section requests a release of all or a portion of such financial guarantee, the Commission shall, not later than sixty-five (65)

days after receiving such request, (A) release or authorize the release of any such financial guarantee or portion thereof, provided the Commission is reasonably satisfied that the improvements for which such financial guarantee or portion thereof was posted have been completed, or (B) provide the person posting such financial guarantee with a written explanation as to the additional improvements that must be completed before such financial guarantee or portion thereof may be released.

9-8-2 Snow Plowing and Other Maintenance - In the case of conditional or final approval a financial guarantee, as described in Section 9-1, in the amount of \$10,000 or five percent of the cost of improvements excluding utilities not intended to be conveyed to the town, whichever is the greater amount, shall be posted with the Town of East Lyme. Such bond shall be accompanied by an agreement under which the Director of Public Works may draw on such funds, after adequate notice, to effect snow plowing or other maintenance necessary for the public health, safety and convenience. Such monies may also be used to pay any electrical charges necessary for street lighting. The extent of such payments to the Town shall be specified in the agreement with the Town of East Lyme.

Exhibit C

Town of East Lyme
Planning Commission
P.O. Box 519
Niantic, Connecticut 06357

February 9, 2016

Account #D20604 Planning
Vendor # 55554

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The Day Publishing Co.
Eugene O'Neill Drive
New London, CT 06320

FILED IN EAST LYME
CONNECTICUT
Feb 9 2016 AT 2:45 AM PM
Karin Galbo
EAST LYME TOWN CLERK

Please publish the following notice on February 18, 2016 and February 26, 2016.

TOWN OF EAST LYME
PLANNING COMMISSION
Notice of Public Hearing

The East Lyme Planning Commission will hold a Public Hearing on March 1, 2016, at 7:00PM, at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, CT, to consider the following:

Application of the East Lyme Planning Commission to amend the East Lyme Subdivision Regulations Section 9 - Assurances for Completion and Maintenance of Improvements.

Copies of the full text are on file in the Office of the Town Clerk and the Land Use Office at the East Lyme Town Hall. All interested persons are invited to attend this hearing.

Brian Schuch, Chairman



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New London, CT 06320
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Gary Goeschel
EAST LYME PLANNING COMMITTEE
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TOWN OF EAST LYME
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Brian Schuch, Chairman

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Exhibit E

Town of

P.O. Drawer 519
06357

**Department of Planning &
Inland Wetlands Agency**

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



East Lyme

108 Pennsylvania Ave
Niantic, Connecticut

Phone: (860) 691-4114
Fax: (860) 860-691-0351

Memorandum

To: East Lyme Planning Commission

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

Date: March 1, 2016

Re: **Application of the Town of East Lyme Planning Commission for a Text Amendment to Section 9 of the Subdivision Regulations**

As enacted, §8-25(d)(1) provides that there are several forms of financial guarantee that municipal planning commissions must accept to satisfy the financial guarantee requirements of §8-25, irrespective of municipality subdivision regulations. These include but are not limited to letters of credit, provided such letter of credit is in a form acceptable to the commission and the financial institution issuing the letter of credit is acceptable to the commission. The above referenced text amendment is a result of Public Act (PA) 11-79 and PA 12-183 which resulted in changes to the Connecticut General Statutes (CGS) Section 8-25.

The proposed changes to Section 9 of the Subdivision Regulations include:

- the types of financial guarantee that towns must accept
- the limiting of financial guarantee amounts and duration
- the release of all or portions of financial guarantees
- prohibiting transfers of lots to buyers before a financial guarantee is posted
- prohibiting the Commission from imposing the maintenance of public improvements on homeowner associations; and
- clarifying that financial guarantees under the Statute are not applicable to private property

As a result of changes of terminology used in the statute, specifically the use of the term "financial guarantee" to cover all instruments that may be posted, numerous other minor changes are required to the subdivision regulations. As such, the term "bond" as used throughout the Regulations will be replaced with the term "financial guarantee".

Therefore, I offer the following for your discussion:

SUGGESTED MOTION

Exercising its authority pursuant to CGS 8-24 and having reviewed the proposal for a text amendment to Section 9 of the East Lyme Subdivision Regulations, I hereby move the Planning Commission of the Town of East Lyme **APPROVE** the proposed text amendment to Section 9 – Assurance for the Completion and Maintenance of Improvements of the East Lyme Subdivision Regulations which shall become effective March 23, 2016.