

**Planning Commission Regular Meeting Minutes
Tuesday October 2nd, 2018**

Present: Peter Lynch
Thomas W. Fitting Jr.
Lawrence Fitzgerald
Kirk Scott
Michelle Williams
Kathryn Johnson, Alternate (*Sat as Regular Member)

Also Present: Gary Goeschel, Planning Director
Marc Salerno, Ex-Officio

Absent: Don Phimister

Mr. Scott called the Planning Commission meeting to order at 7:02 p.m.

Mr. Scott sat Ms. Johnson as a Regular Member for the meeting.

I. Pledge and Roll Call

Mr. Scott led the Pledge.

II. Call for Public Delegations

There were none.

IV. Reports

A. Communications-

Mr. Goeschel had no communications to report.

B. Zoning Representative

Mr. Fitting said he had nothing to report from the September 20th meeting.

C. Ex-Officio: Marc Salerno

Mr. Salerno had no report.

D. Planning Director: Gary Goeschel

Mr. Goeschel had no report.

E. Sub-Committees

- 1. Walkability**
- 2. Sustainability and Climate Adaptation**

Mr. Goeschel said the coastal resilience workshop is moving forward; Walkability has not met. He added that a corridor study will be done in the future from the high school and down Route 156.

V. Approval of Minutes

FILED IN EAST LYME
CONNECTICUT
OCT 5 2018 AT 2:40 AM/PM
Brooke Brown
EAST LYME TOWN CLERK

There were no corrections.

Motion (1)

Mr. Lynch moved to approve the Special Meeting Minutes of September 10th, 2018.

Ms. Williams seconded the motion.

Motion carried, 6-0-0.

VI. Public Hearing

A. Continuation of the Application of Robert Fusari, Real Estate Service of Connecticut, Inc, Applicant/Owner; Application for a 23-Lot Re-subdivision of approximately 97.3+ acres, Zoned RU-40 at Spring Rock Road and Green Valley Lakes Road, East Lyme, Assessor's Map # 14.0 Lot #45, together with a waiver request from Section 6-10-11 Of the East Lyme Subdivision Regulations.

Mr. Goeschel noted the new exhibits submitted for the record.

Attorney Ted Harris of 351 Main Street came forward to represent the Applicant. He noted they went through their entire presentation during previous meetings but that they would like to highlight some of the aspects of their application. Mr. Harris submitted a memorandum (Exhibit AAA) which summarizes some of the things we have discussed such as the location of the road.

Mr. Harris said he would like to mention a few facets of the application:

A. The location for the roads were shown on approved subdivision plans and Mr. Pfanner, the surveyor is here tonight to address this.

- When the Town Attorneys were asked their opinion as to the status of the paved aprons or stubs their conclusion was they be treated as if owned by the Town and available for improvement.

B. The 24 ft wide road width and its commonality with Town regulations as well as the State of CT:

- Section 24.6B of the East Lyme Zoning Regulations provides for 24 ft roadways for two way access including both commercial and residential developments.
- An example would be elderly housing- the provision indicates the main access road be no less than 24 ft in width and other interior roads shall be no less than 20 ft in length.
- When no specific width is specified 24 ft roadways are required for two way traffic.
- The 24 ft width roadway is consistent with local regulation and is actually larger than recommended by the CT DOT; in their "Guidelines for Subdivision Streets" a road serving 50 homes has a recommended pavement width of 22 ft.

C. The requirement for an ERT study:

Mr. Harris explained they requested the study and were told by Jeanne Davies that they are no longer doing development work but that it might be possible if requested by a municipality, which in turn they also declined to do.

Mr. Harris said his memo cites the case Scandia Construction & Development Corp., vs. Planning and Zoning Commission of the Town of Ridgefield, 2001 Westlaw 1523831; the Planning Commission denied an application based upon a provision of the subdivision regulations, relative to dry building area of 1.4 acres in the context of 1 acre lots, which by

variance were allowed. The Court ruled the application should not have been denied since the variance validated the lots, and it was not possible to comply.

He noted that in the case of the ERT, you can't comply with something that's impossible to do.

Mr. Pfanner of 37 Grand Street came forward to speak. He said he's been in business for 42 years and this subdivision was first designed in 1972/1973; the paved roads and aprons were and still are there. He explained that subdivisions are completed in phases and it was always intended to build here. Mr. Pfanner explained the two brothers who originally owned the land fought with each other for decades which is why it was not completed sooner.

Ms. Johnson asked what the expected road width was in the 1970s and Mr. Pfanner said 30 ft.

The applicant's traffic engineer Dave Sullivan of came forward to discuss the site lines. He said for the one to the left all that needs to be done is to trim the trees. Mr. Fitzgerald asked who would be responsible for maintaining this and Mr. Sullivan said the Town.

Mr. Sullivan showed a picture taken from his car to illustrate the sight line to the right. He said they have suggested coming up the driveway to gain some inches but it's important to note the sight lines do meet the requirements.

Joe Wren P.E. of Indigo Design, 40 Elm Street, Old Saybrook came forward to speak. He reminded the Commission of the detailed presentation they gave in August and said he simply wants to reorientate them with the plan. Mr. Wren showed the overall plan that was submitted along with their application. He detailed the approval they received from the Inland Wetlands Agency and their condition that Lots 11, 12, and 13 share a common driveway.

Mr. Wren said they prepared a concept plan of the common driveway for the Commission to see. Mr. Fitzgerald asked about the driveway maintenance and he explained an easement over Lot 11 for Lot 12 and 13 will be needed so they have access.

Mr. Scott asked if the driveway will be gravel and Mr. Wren said crushed stone per the Inland Wetlands Agency.

Mr. Wren discussed the road width and cited some of the 24 ft wide or less, roads in Town:

- Dean Road is actually 18 ft wide in some areas
- Alexander Drive
- Willow Drive is 21 ft wide
- Nathan Hale Drive is 18 ft wide
- North Bridebrook at Apple Commons is 24 ft wide and varies from 22 ft on

Mr. Wren explained there is a lot more traffic on these roads than what they're talking about here; this is a destination street. He said the actual paved width of their road is 26 ft to the shoulder and the trend everywhere is 24 ft. Mr. Wren cited the road regulations for both Old Lyme and Waterford who require 22 to 24 ft wide roads.

Mr. Wren also cited the bottom of page 141 of the POCD item #4: "Consider a reduction in required road width from 30' to 24' for new subdivisions to minimize impervious surfaces and the amount of clearing/regrading made necessary for road construction." He noted that the Planning Commission is responsible for implementing this.

Mr. Wren also imparted the following:

- Town Engineer Victor Benni requested that no parking signs be installed on the west side of the street.
- 30 ft wide roads are under used for their size, more expensive to maintain, and lead to more water runoff.
- The subdivision regulations still read 28 ft because they haven't caught up with Zoning, the POCD, and the Board of Selectmen.

Mr. Fitzgerald asked about first response and Mr. Wren explained the Fire Department can easily access this whole street.

Mr. Wren reminded the Commission about the cul-de-sac discussion at a previous meeting; Public Works doesn't like center islands but the subdivision regulations actually require them and a waiver is necessary in order to not have the center island. He noted the regulations require the cul-de-sac be not more than 2,000 feet and they meet this requirement.

Mr. Wren briefly discussed the August 10th, 2018 letter from SHPO (State Historic Preservation Office) submitted for the record; they reviewed the interim archeological study by Greg Waller and ACS. They recommended the additional phases of the study be completed which Mr. Waller would do upon approval by this Board.

Mr. Wren showed the original subdivision plans Mr. Pfanner was referring to earlier in the evening.

Mr. Wren discussed the 73% of open space of which 14 acres is usable. He said the houses are 25 feet from the road and the regulations only require 10 feet plus 5 feet for the tree buffer.

Mr. Lynch asked about the emergency gated path and asked if people could park there and Mr. Wren said no.

Mr. Scott asked if the case law Mr. Harris mentioned was in the State of CT and Mr. Harris said yes, and that the full citation is in his memorandum.

Ms. Williams asked about the Town Attorney's interpretation of the case law citation and Mr. Goeschel said he would find out.

The Intervener said they would be happy to have the Public speak first.

Harvey Beeman of 11 Green Valley Lakes Road came forward to speak about his letter presented at the August 7, 2018 meeting (Exhibit BB) and noted he would like to review his original concerns since he doesn't think they have been adequately addressed. Mr. Beeman read a new letter regarding these concerns into the record (attached.)

Mr. Beeman said after hearing the open space discussion this evening, he is satisfied the requirement is being fulfilled. He noted the quality of the open space however is a different requirement. He calculates 35 acres and approximately 50% is wetlands therefore this requirement is not satisfied.

Mr. Beeman said in regards to the ERT the regulations don't give an option not to get one. He thinks it should have been performed when the application was first submitted. He said the application therefore is and has been incomplete; the ERT requirement was not requested to be waived and the same issue applies to the architectural review which was not completed.

Mr. Scott asked Mr. Goeschel to ask the Town Attorney about the timing Mr. Beeman is referring to as well as if this constitutes an incomplete application.

Don Ross of 22 Overbrook Road came forward to speak. He said Mr. Wren had him convinced the road width was not an issue until he cited his examples; Dean Road in particular is a dangerous road. He believes citizens have the right to develop their property. Mr. Ross said the subdivision regulations call for a road width of 28 ft and he doesn't know which rules take precedence. He said he is more concerned with safety than impervious surfaces. He said he hopes this moves forward but done in the standards set forth.

The Commission took a five minute comfort break and reconvened at 8:33p.m.

Mr. Harris clarified that he did contact Jeanne Davies before this application was submitted and that this is a new application, the one in 2017 was withdrawn. He said he was told they don't have a protocol in place and can't do it in the immediate future no matter when it was requested.

Mr. Harris reviewed the court citation again and observed the regulations should be modified. He said they're not operating within sensitive areas and the wetlands permit was granted.

Mr. Goeschel read a copy of his correspondence with Jeanne Davies into the record and said he thinks this will clarify any questions.

Ms. Williams said since the ERT can't be completed they recommended contacting the Eastern CT Conservation District. She asked if it's in their purview to require that and Mr. Goeschel said he would consult Town Council.

Kristen Chantrell of 13 Green Valley Lakes Road asked the following:

- Does Bayberry Road require a traffic study?
- How will the noise from the gun club affect the noise ordinance?

Ms. Chantrell said the noise from the gun club is already an issue even with the trees as a buffer. She also questioned why the Old Lyme regulations can be brought up tonight by the Applicant; during the Inland Wetlands Hearing they were told it was irrelevant when they brought up their 500 ft buffer to the wetlands and vernal pools.

Diane Lepkowski of 27 Green Valley Lakes Road came forward to speak. She prepared a presentation to offer the Commission a glimpse of their neighborhood (attached.) Her presentation included photos of the natural tree canopy, the 30 ft wide road throughout the entire neighborhood and in other developments in Town, and existing homes set back from the road. The example setbacks range from 62.5 to 98 feet.

Ms. Lepkowski also submitted a letter to the Commission dated October 2nd, 2018 which she read into the record (attached.)

Alisa Sheriff of 3 Frog Hollow Road came forward to speak. She said she is concerned about the width of the road; it may be adequate but it's not safe. She added there is a blind curve where Spring Rock meets Green Valley Lakes Road.

Deborah Diehl of 26 Green Valley Lakes Road came forward and said her house is directly across from the proposed road. She said she knows the other road is closer to the wetlands but it would be safer. She said she doesn't want to see no parking signs in the neighborhood- this isn't downtown Niantic. Ms. Diehl

said the traffic expert last year said he didn't recommend the 24 ft road, period; this is a high traffic area. Her final comment was that Town Council is not impartial because money always wins.

David Spier P.E. of DLS, Windsor, CT came forward and noted he presented his report at a previous meeting. He said if you look at the sight line submitted tonight there is a large hedge in front of the property which will have to be maintained, and a 10 ft sight line easement which he thinks is a good idea. He however, would recommend larger than 10 ft.

Mr. Spier reiterated the idea of a site triangle and calculation of speed percentile; speed is not an issue as much as the site line is. He said you can't see the site line from the guardrail and when looking left you don't have a clear line of site through the triangle. He said there is also a vertical turn coming off of Spring Rock Road which dips down and results in a site line issue.

Mr. Spier said the current 30 ft width in the neighborhood provides an adequate design for pedestrians, bicycles, and so forth. He said this is a safety issue not a capacity issue. Mr. Spier said the length of the cul-de-sac makes emergency access an issue but there are a number of ways you can make it safer.

Steven Trinkaus of Trinkaus Engineering LLC came forward and discussed the rain gardens. He said LLHD says the soil suitable but they don't say they're in compliance, which is a different issue. Mr. Trinkaus discussed the alternate road as a viable option and explained why the basins are not in compliance with the water quality manual.

Attorney Matthew Berger came forward on behalf of Brian Lepkowski, the Intervener. He submitted a letter dated October 2nd, 2018 for the record (attached.) He referenced the legal briefs he supplied at a previous meeting and said they should not defer to the aprons as anything and said the regulations of nearby Towns are irrelevant. He said it's the Commission who interpret the regulations so they can require certain reviews be done.

Mr. Scott asked Mr. Spier about the two possible places to put the T intersection he was discussing earlier. He asked what the difference in sight line is from the proposed road to the one they prefer and Mr. Spier said about 30 ft. Mr. Lepkowski corrected Mr. Spier noting his report says it's 80 ft better.

Brian Lepkowski, the Intervener came forward to speak. He gave a brief back story for the new faces on the Commission and read a letter he prepared for the record (attached.)

Mr. Sullivan returned to address some of the comments on traffic:

- The sight lines meet the DOT requirements so they're not marginal.
- The only obstruction to the left is the growth which is very common and can be maintained.
- We've identified that we can meet speeds of 25 mph but people are not going 25 mph around that curve.
- In terms of the other road location, its comparing apples to oranges because of the driveway.
- Both would meet the sight line requirement but if you slice and dice this issue you confuse thing.

Mr. Harris returned and discussed the Commission's legislative role. He said he believes the length of the cul-de-sac has been clarified and again mentioned the adoption of the private road regulation. He said their regulations have made a finding that the 18 ft road width is safe.

Mr. Harris said in terms of the other road location that was proposed in the days when the wetlands were not a consideration. The Inland Wetlands Agency has made a specific finding that this is not prudent and feasible alternative and based on their wetlands approval that can't be their access.

Mr. Goeschel said in response to Attorney Berger's comment, they do have a photocopy of the signature that went with the submitted application.

Bob Russo, Environmental Scientist of CLA Engineers returned to speak. He discussed the setback of the houses from the road noting the smaller distance offers less impervious surfaces, less runoff, less clearing and cutting of trees and less disturbance to the forests. These houses will be more environmentally sensitive than the existing homes which are set much further back from the road.

Mr. Russo detailed how improper segmentation is not true in this scenario and explained how an intervener needs to demonstrate that unreasonable pollution will occur.

Mr. Harris said he can't finish his rebuttal in 15 minutes but wrote written consent for an extension which he submitted to Mr. Goeschel for the record.

Mr. Goeschel said he would compile the list of questions from the Commission for the Town Attorney.

The Applicant Bob Fusari came forward and explained how he lives on a 24 ft road in Old Lyme and said to come live on one and tell him it's not safe.

Mr. Goeschel clarified the open space requirement explaining the percentage requirements would actually result in less open space.

The Commission decided to continue the Public Hearing at the Special Planning meeting scheduled for October 9th, 2018.

Motion (1)

Mr. Lynch moved to continue the Planning Commission Public Hearing on October 9th, 2018.

Mr. Fitzgerald seconded the motion.

Vote: 6-0-0, Motion passed.

VII. Adjournment

Motion (2)

Mr. Lynch moved to adjourn the Planning Commission Meeting at 10:26 p.m.

Mr. Fitzgerald seconded the motion.

Vote: 6-0-0, Motion passed.

Respectfully Submitted,

Brooke Stevens,
Recording Secretary

HARVEY BEEHMAN
11 Green Valley Lakes Rd.

On Aug 1, 2018, I submitted a letter regarding three concerns with the application for this sub-division. It was entered into the documents as Exhibit BB and was presented at the 8/7/18 Planning Meeting. I would like to review these concerns since I do not believe that they have been adequately addressed.

Concern 1 deals with Zoning Regulation 23.6 Open Space Standards and Controls. This regulation specifies five requirements for open space. Of these five requirements, there are two which I would like to discuss in detail.

Requirement 23.6 B deals with the minimum size of open space as a percentage of the overall CDD acreage. It has a table which indicates that the minimum open space area needs to be a minimum of 30% of the CDD area. The application indicates that 70 acres of the 97 total acres will be open space. Therefore this requirement is clearly met.

The second requirement (23.6 C) deals with what I would call the quality of the open space being provided. This requirement is separate and distinct from 23.6 B. This requirement simply states that not more than 50% of the open space to be provided shall be wetlands, watercourses or steep slopes. As indicated in the application, 70 acres will be provided as open space. Therefore, the maximum acreage which could be wetlands, watercourses or steep slopes would be 35 acres (50% of 70 acres). The application, however, indicates that 50 acres of the open space are wetlands, watercourses and steep slopes. This acreage clearly exceeds the 35 acre maximum by a significant amount and does not satisfy requirement 23.6 C.

Concern 2 deals with a requirement to perform an Environmental Review Team Evaluation (ERT) per Subdivision Regulation 4-13-3.

There has been no such ERT report in the planning records nor in the Planning Meeting minutes. On Sept 19, 2018 I contacted Jeanne Davies of the CT ERT and confirmed that there is an active application to perform an evaluation for this

CDD subdivision. It appears that an ERT has not been performed and should have been completed when the CDD subdivision application was first submitted to the Planning Dept on 3/31/17. It has now been over a year and a half since the CDD subdivision application was first submitted and no ERT or acceptable equivalent evaluation has been completed.

Therefore, the application is and has been incomplete. Subdivision regulation 4-9 provides direction to the Commission when an application is found to be incomplete.

Subdivision regulation 4-12 deals with WAIVERS. This paragraph indicates that the Commission may waive certain regulations, only as specifically authorized within the regulations. Secondly the regulation indicates that a waiver may be considered only if the applicant has requested a waiver in writing at the time of application. The regulation which requires an ERT is not subject to waiver and was not requested to be waived by the applicant at the time the CDD application was submitted.

Concern 3 deals with required Archaeological reviews per Subdivision Regulation 5-8.

This topic was discussed at the August 7, 2018 Planning Meeting. At that meeting, Mr Goeschel asked the applicant's archaeologist if a report had been submitted to the State Historical Preservation Office per Regulation 5-8. The archaeologist indicated that the report would not be submitted until the survey is complete. The Commission agreed that the survey is needed to make their decision.

As required by Subdivision Regulation 5-8, the Archaeological survey and report should have been completed and submitted to the State "a minimum of 35 days prior to submission of the subdivision application to the Planning Commission".

The CDD subdivision application was first submitted to the Planning Dept on 3/31/17. It has now been over a year and a half since the application was first submitted and the required State submittal has not been completed.

Therefore, the application is and has been incomplete. Subdivision regulation 4-9 provides direction to the Commission when an application is found to be incomplete.

Subdivision regulation 4-12 deals with WAIVERS. This paragraph indicates that the Commission may waive certain regulations, only as specifically authorized within the regulations. Secondly the regulation indicates that a waiver may be considered only if the applicant has requested a waiver in writing at the time of application. The regulation which requires an Archaeological survey and submittal to the State is not subject to waiver and was not requested by the applicant at the time the CDD application was submitted.

October 2, 2018

Dear Kirk Scott and the members of the East Lyme Planning Commission,

I thank you for listening to my concerns and those of my fellow neighbors and I ask that you objectively consider all of the neighborhood's testimony and the evidence provided by our highly qualified experts. It is within your right as the planning commission to make changes to this proposal and to question what is being presented to you by the applicant.

The road placement is in a dangerous location and I ask that it be relocated to where it makes the most sense—onto Spring Rock Road. I ask that this proposal be consistent with the character of the existing neighborhood by having a 30-ft wide road like the two other existing cul-de-sacs within the neighborhood. The basin placement at the beginning of the development will be unsightly and is highly inconsiderate to those who live around it. The basin as designed will not function correctly, as stated by our engineer Mr. Trinkaus. No other development in town forces existing homeowners to look at basins. Instead of shielding the basin further from the entrance of the development, so as to not impact anyone living in the neighborhood now or in the future, the developer is proposing the basin right outside my kitchen window—very close to the road that the applicant is also shoving alongside my house, hugging my property with no buffer at all, forcing me to become a corner lot, which is not what we purchased. In my opinion this is very poor planning on the applicant's part and I ask that the planning commission find this unacceptable and require the applicant to make the necessary changes.

The applicant and his team's sole goal is to exploit the Town of East Lyme's rules and regulations to maximize profits by continuing to push an ill-conceived plan, instead of doing what is right. I myself find it very hard to understand how they can continue to be so greedy and selfish with a total disregard for the safety of the neighborhood, those who reside in it, and the environment.

Thank you for your consideration,



Diane Lepkowski

27 Green Valley Lakes Road

12

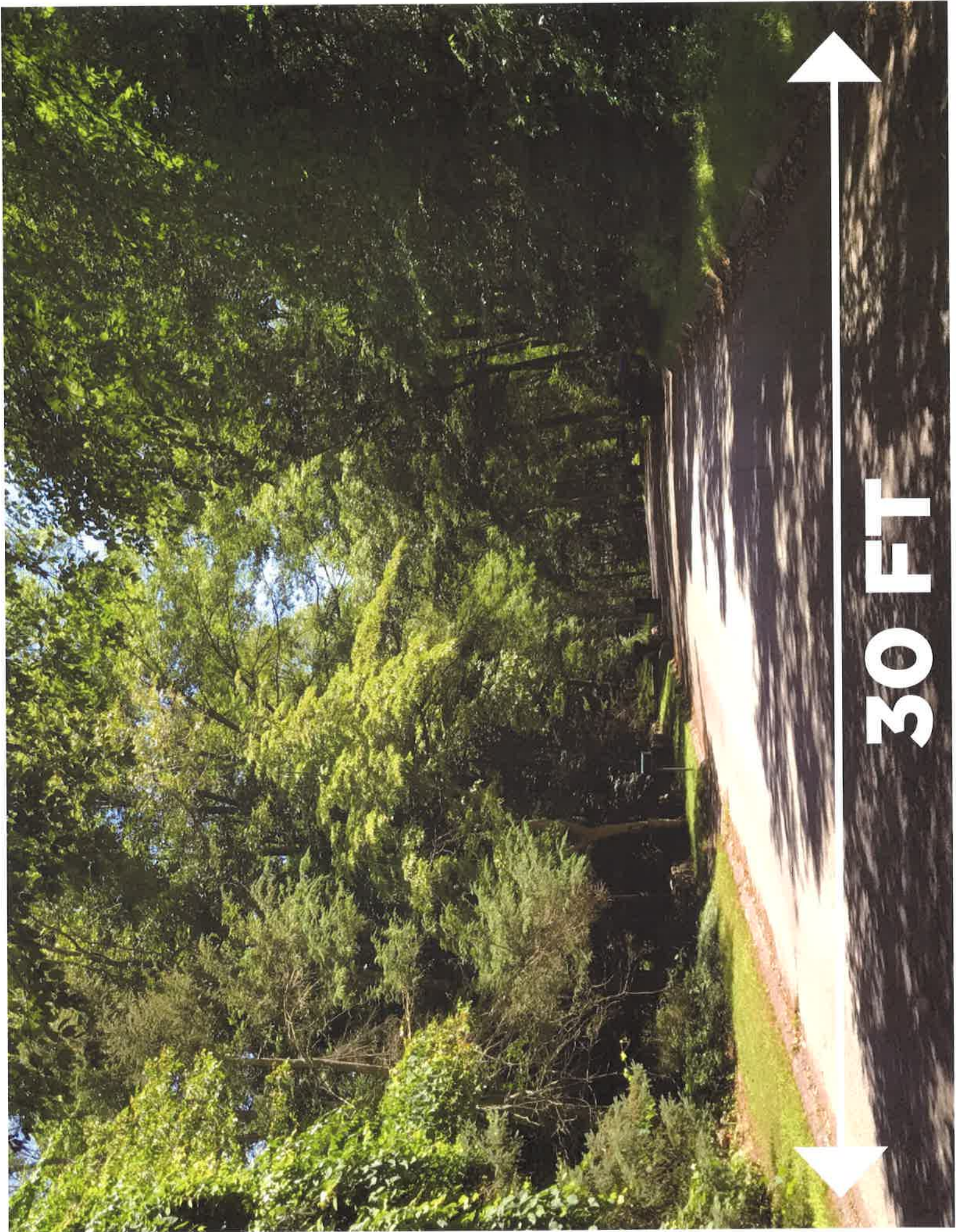
A GLIMPSE AT OUR NEIGHBORHOOD

13

**A NATURAL TREE
CANOPY WITH
MATURE TREES**



**A 30 FT WIDE ROAD
IN THE ENTIRE
NEIGHBORHOOD**



30 FT

**3 OF THE MORE RECENT
DEVELOPMENTS IN TOWN
WERE BUILT WITH MORE
REASONABLE
28-30FT WIDE ROADS,
& 2 OF THE 3 EVEN HAVE
SIDEWALKS!**



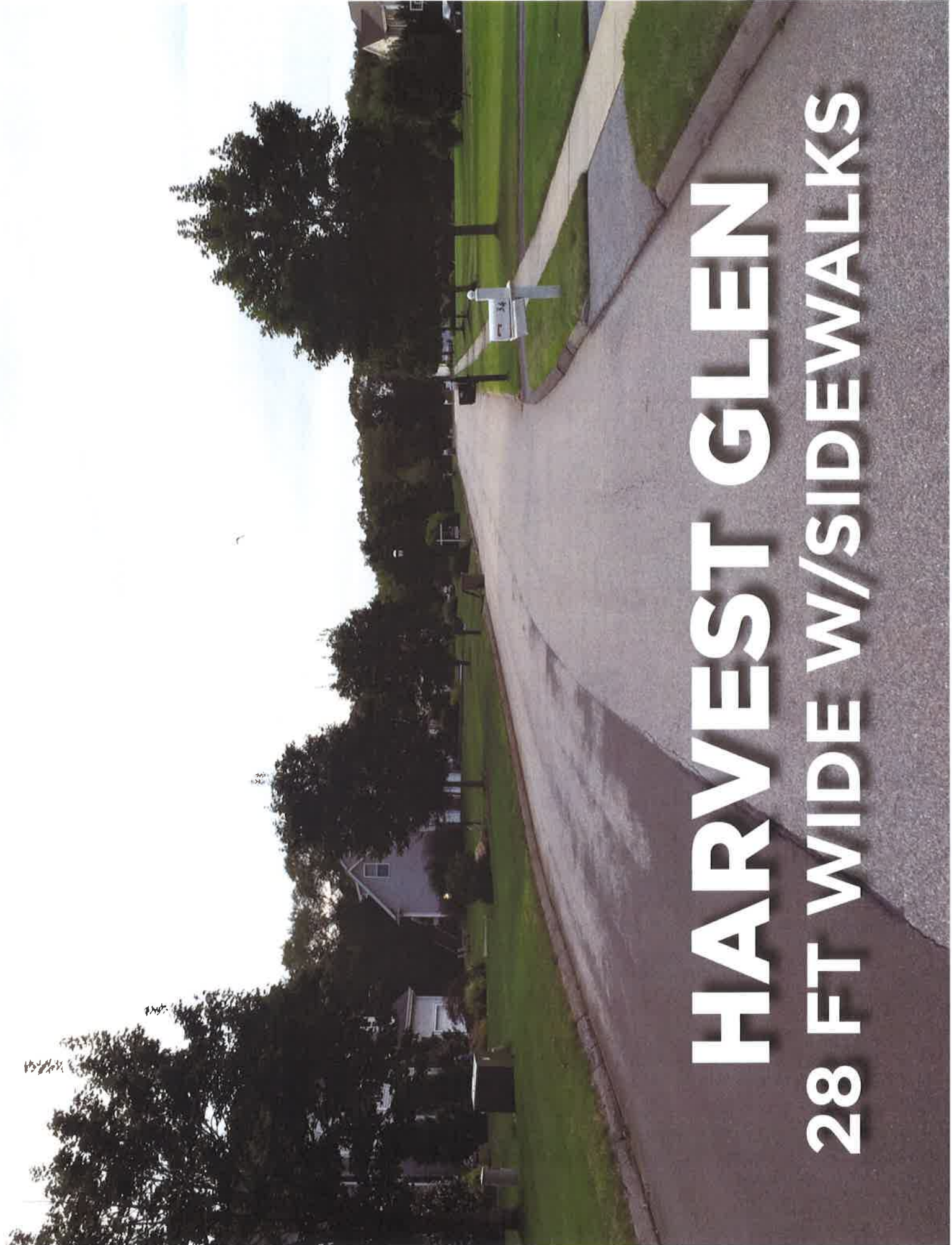
MIRANDA WAY

30 FT WIDE



THE ORCHARDS

28 FT WIDE W/SIDEWALKS



HARVEST GLEN

28 FT WIDE W/SIDEWALKS

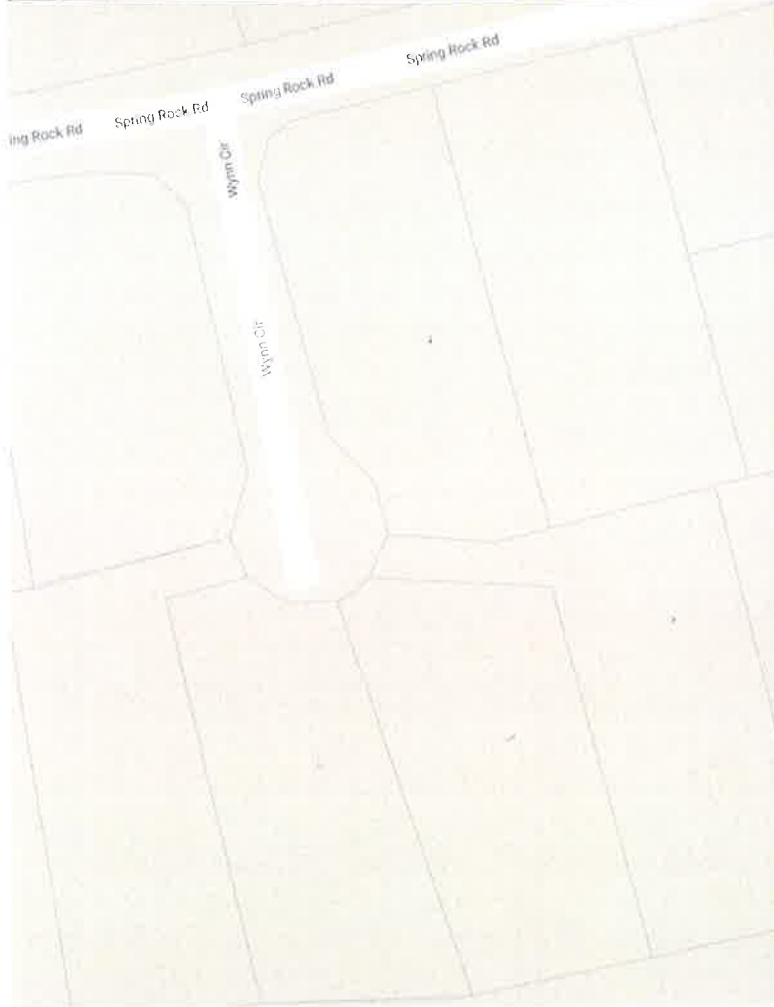
**THE EXISTING
NEIGHBORHOOD
ALREADY HAS TWO**

Stark **CUL-DE-SACS,**

WYNN CIRCLE &

RED FOX ROAD^{co}

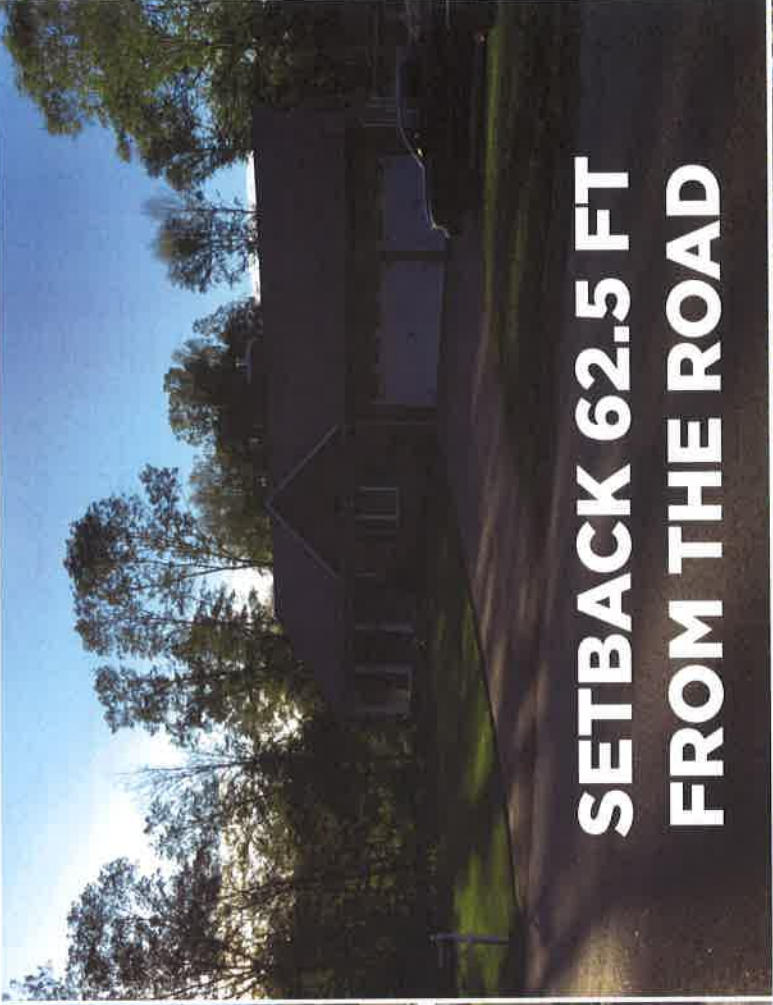




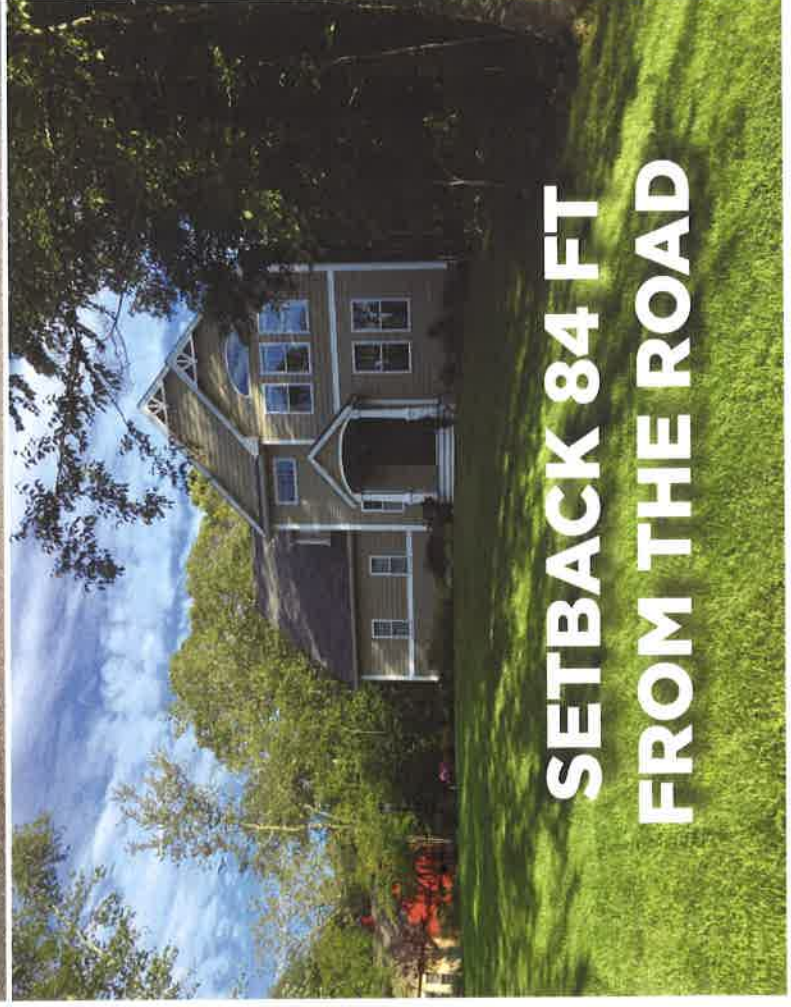
**THE EXISTING
HOMES ARE SET BACK
FROM THE ROAD**



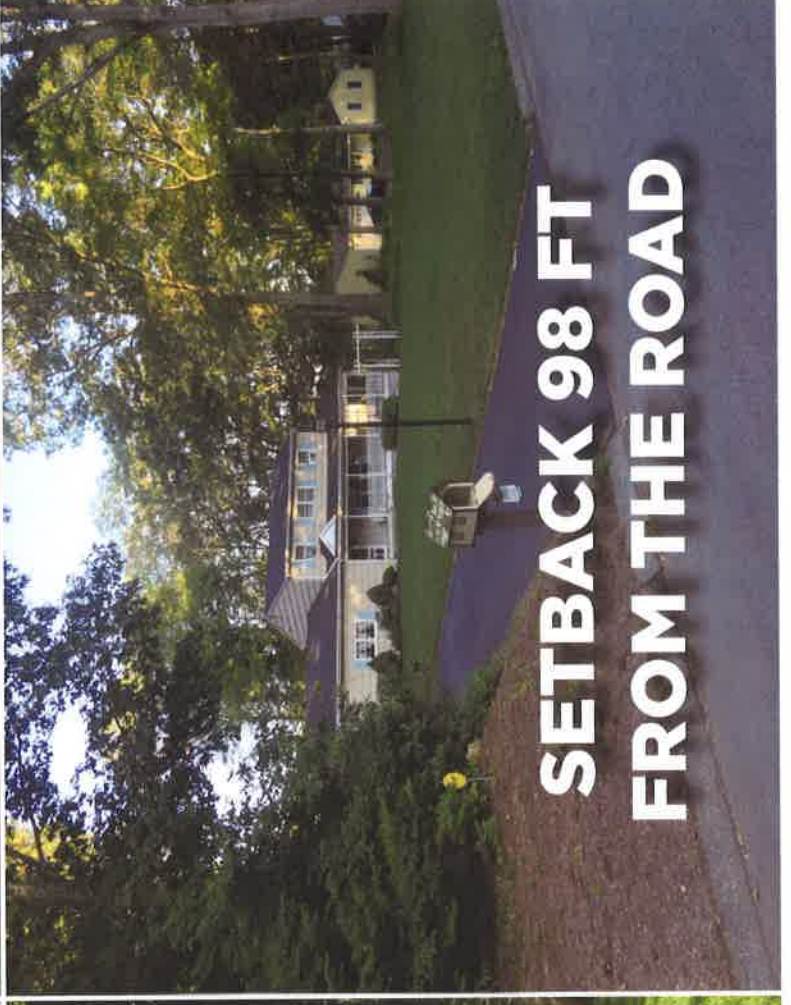
**SETBACK 74 FT
FROM THE ROAD**



**SETBACK 62.5 FT
FROM THE ROAD**



**SETBACK 84 FT
FROM THE ROAD**



**SETBACK 98 FT
FROM THE ROAD**

**THE CURRENT
NEIGHBORHOOD
HAS CHARACTER &
A CONSISTENT FEEL**

**MANY LOTS ARE
LARGE, 1+ Acres
and are ARE LARGE
ENOUGH TO SET
THE HOMES BACK
PROPERLY**



**The proposed plan IS very
out of character with and is
NOT CONSISTENT with the
existing neighborhood.**

**THE CURRENT
NEIGHBORHOOD
DOES NOT HAVE
“NO PARKING”
SIGNS**

**THE ARBITRARY LOT SIZES
ARE NOT CONSISTENT,
THE PLACEMENT OF THE
PROPOSED HOMES ON THE
PLAN IS NOT CONSISTENT.**

THE BASIN

Placement is as close to the road as possible, and it will be an eyesore. It will affect the surrounding neighbors negatively.



Hole in the Wall Beach Basin



The Orchards - No homes close to the pond or facing it.

Dear Kirk Scott and the members of the East Lyme Planning Commission,

I've lived in East Lyme most of my life, it's my hometown, and it's the place I chose to settle in when I became an adult, the community I brought my wife to, and it's the community I do business in. We love our town, and we love the part of Town we live in. It's a great place to be, in no small part because of Commission members like yourselves, who ensure that the Town we live in now enters the 21st century, but still remains a place we all want to stay. I think good planning ensures this, and having a good Planning Commission is the only way to make that happen.

I feel that an excerpt from the East Lyme Planning department webpage perfectly summarizes this:

"Many public decisions are made without adequate planning, often in response to pressure groups **with little thought for bettering the community's general welfare. Or with no thought as to how their input once implemented will be detrimental to others.** East Lyme continues to be affected by events and trends in the community, the region, the country, and the world. Changes in population, housing, and the economy are influenced by transportation, utility, business and regulatory changes. As East Lyme landscape changes, population increases, and resources utilized, a conscious effort and **intelligent thoughtful planning are necessary in order to guide future events to achieve a desirable place to live,** work, and do business. From a land use perspective, the challenge lies in addressing growth and change so that the needs of the community and its residents, both present and future are met in the most efficient and cost-effective manner, the character of the Town is maintained, and the overall quality of life is enhanced."

I work with machines, and I spend a lot of my time indoors doing so, but since we chose to build near the Four Mile River I've developed a new appreciation for and understanding of the important natural resources in our part of Town. Every week my wife refills our bird feeder and sends me pictures of her animal visitors and we spend more time than I ever expected observing the wildlife in the area. I've learned a lot about the plants and the animals. On the site walk last summer someone found a salamander. I loved seeing that, not just because it was an interesting creature I would probably not have spotted years ago, but because I know that it's a sign of a healthy and functioning wetlands community. My wife and I love knowing that we live in, and are part of an area that is providing sanctuary for all this wildlife.

I drive the roads of our town every day the same as I have done for nearly the last 20 years. I know that the proposed long cul-de-sac is poor planning, it's a poorly designed and unsafe road that doesn't belong where it's proposed—East Lyme can expect better for our Town, and you the Planning commission should demand better.

Another excerpt from the East Lyme Planning department page summarizes the role of your commission regarding subdivisions:

- Subdivision control, which acts as a preventative measure **guarding against improper lot layout and inadequate subdivision preparation**. Subdivision control serves to promote and ensure the orderly development of the land within the town in order that the land, when subdivided, may be used for building purposes **without danger to the public health, safety and general welfare of the town**. Additionally, subdivision control protects East Lyme's community character and social and economic stability of the Town.

Before this plan is implemented some necessary changes should be required to ensure a better plan for all of us. A crammed lot layout on an environmentally sensitive parcel that is completely out of character with the rest of the neighborhood, a dangerous narrow 24-ft rd. with a poorly conceived intersection and an unsightly, faulty treatment water basin I feel definitely contradicts with the charge of the planning commission expressed in the excerpt above.

I've reviewed the application, and, because this is not my area of expertise, I've hired highly qualified, respected and accredited experts to look at them for me, and for the Town's benefit, as well.

I'm deeply concerned about this application. Not because someone will build near where I built—I understand that there is a right to do that and I support it—but that they will try to build too much, in a badly designed plan, in a way that threatens some functioning wetlands that are critical to the Four Mile River and to our Town not to mention the character and safety of our neighborhood.

This is not a plan designed to make East Lyme a better community, it makes us worse and much like what is described in the first excerpt included above, little thought has been given by the applicant for the welfare of the community and no thought has been given for the detriment of others. This parcel of land has been undeveloped for decades for a reason and unlike the surrounding, pre-existing neighborhood it is not suitable for a large scale development.

A few lots, on a shorter road, without a cul-de-sac, further away from the wetlands, would provide the owners an opportunity to make a fair profit off of their land, but would also say to the residents, and potential future residents, that East Lyme is a community where we care about who we are, that we plan to make sure that we preserve that, that as we grow we plan our growth, carefully, to keep the great Town we are.

I urge you to review this plan carefully, when you do I'm confident you will find that the applicant needs to go back and revise their plans. There are feasible and prudent alternatives that would allow them to join us as neighbors, without damaging the wetlands and other natural resources in our Town, and in a manner that is appropriate for our community, in compliance with our Regulations and with the Plan of Conservation and Development. This plan does not, and I urge you the commission, to please preserve the welfare of our great Town and neighborhood by rejecting it.

Thank you for your time and consideration,

Sincerely, Brian Lepkowski
27 Green Valley Lakes Rd.

TOWN OF EAST LYME

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Niantic, CT 06357
t: 860-739-6931

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Why We Plan and the Planning Process

Why do we plan?

Many public decisions are made without adequate planning, often in response to pressure groups with little thought for bettering the community's general welfare. Or with no thought as to how their input once implemented will be detrimental to others. East Lyme continues to be affected by events and trends in the community, the region, the country, and the world. Changes in population, housing, and the economy are influenced by transportation, utility, business and regulatory changes. As East Lyme landscape changes, population increases, and resources utilized, a conscious effort and intelligent thoughtful planning are necessary in order to guide future events to achieve a desirable place to live, work, and do business. From a land use perspective, the challenge lies in addressing growth and change so that the needs of the community and its residents, both present and future are met in the most efficient and cost-effective manner, the character of the Town is maintained, and the overall quality of life is enhanced.

What Planning is Designed to Do

Public planning is a process that guides decision making aimed at reaching community goals, such as maintaining East Lyme's community character and overall quality-of-life.

Advantages of Planning

Helps local government insure adequate services for its citizens; and minimizes costs for Town funded projects. As an example, proper planning will prevent ripping up a road just paved to install new water lines. With planning, the water lines would be installed before the road was paved, thus preventing the re-work.

Contributes to area stability so individuals may plan for the future with respect to their residence or business.

Establishes and preserves acceptable land and water use patterns for agriculture, business, industries, communities, recreation and highways.

Assists in preventing premature urbanization and overcrowding of areas, which would result in increased demands for services and facilities and the need for higher taxes to support these facilities and services.

Subdivision control, which acts as a preventative measure guarding against improper lot layout and inadequate subdivision preparation. Subdivision control serves to promote and ensure the orderly development of the land within the town in order that the land, when subdivided, may be used for building purposes without danger to the public health, safety and general welfare of the town. Additionally, subdivision control protects East Lyme's community character and social and economic stability of the Town.

The Planning Process

Planning requires a constant evaluation of what has happened in terms of implementation and making necessary refinements to ensure that desired results are achieved. Also, we must continually adapt and respond to changes in population, housing, and the economy that are influenced by transportation, utility, business, and regulatory changes beyond community control. Pressing issues in East Lyme addressed in the 2009 Plan of Conservation and Development include affordable housing, limiting sprawl into rural areas, maintaining and enhancing community character, and protecting sensitive environmental resources. Other issues to be addressed in future updates include the following:

Unexpected disaster control;

Stormwater Management/Watershed Issues;

Creating Tax Base Sufficient to maintain services; and

Adequate Infrastructure to support growth.

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August 7, 2018

Ms. Rita Franco-Palazzo, Chairwoman
Town of East Lyme Planning Commission
108 Pennsylvania Avenue
Niantic, CT 06357

**RE: Twin Valley CDD Re-subdivision at Green Valley Lakes Road & Spring
Rock Road; Real Estate Services of CT, Inc., Applicant/Frank & Rajko Maric
Owners,**

Dear Ms. Rita Franco-Palazzo:

I represent Brian A. Lepkowski of 27 Green Valley Lakes Road, an abutting property owner to the proposed re-subdivision, and an environmental intervenor in this hearing pursuant to C.G.S. § 22a-19 of the Connecticut Environmental Protection Act, and am writing you regarding the application for resubdivision.

Your decision with regard to the resubdivision is governed by G.G.S. § 8-26 and the Subdivision Regulations of the Town of East Lyme.

Subdivision Regulations 1-2 lays out of the considerations this Commission must take into consideration in evaluating the pending application. Subdivision Regulation 6-1-1 provides the standard to be applied in evaluating design standards.

In addition, any subdivision application must conform to the Plan of Conservation and Development pursuant to Subdivision Regulation 3-4. In particular, you must apply a coordinated, cooperative system of land-use decision making to ensure that development continues to meet high performance standards, specifically with regard to open space preservation, view corridor protection, environmental protection, sustainability, and landscaping and building design treatments consistent with East Lyme's New England setting.

See: Why We Plan and the Planning Process | Town of East Lyme
<https://eltownhall.com/government/departments/department-of-planning/why-we-plan-what-planning-is-designed-to-do-and-the-planning-process-2/>

After reviewing the pending applications and the circumstance giving rise to it, I believe that the property does not qualify for the proposed resubdivision and the application ought to be denied. There are several issues and concerns that relate to the Application that require a denial, most of which have been detailed in the testimony and reports of Mr. Trinkus and Mr. Spear, along with the testimony of the neighbors,

including my client, Mr. Lepowski. A few specific issues are, however, noted below.
ADD IN TRINKUS & SPEAR

The application is not signed by the record owners. One of the record owners apparently signed a previous application (Frank Maric) and that signature page, from 2017, is attached to the current May 1, 2018 application.

Regulation 4-2-1 requires the application shall be signed by the applicant and the record owner of the property if different than the applicant.

The application does not have a 40' buffer to screen existing lots from the proposed road pursuant to Zoning Regulation 23.5.B.1. It is the responsibility of this Commission to determine if that is a violation of the Regulations, but a review of the plain language of the Regulations indicates that a 40' buffer should be required in this matter. It is a well-recognized principle of administrative law that a State agency charged with the responsibility of administering and implementing a statute is routinely called upon to interpret that statute, and that such interpretations are normally entitled to great deference. See: Perkins v. Freedom of Information Commission, 228 Conn. 158, 165 (1993).

The application also creates a nonconformity under the cluster subdivision regulations on the Lepkowski property.

Subdivision Regulation 4-13-3 require an Environmental Review Team evaluation. Based upon the October 1, 2018 email to Gary Goeschel from L. Jeannie Davis it appears the applicant will be unable to ensure that an ERT evaluation is provided, a critical omission on property this sensitive. (Notably, the ERT was not requested until September 4, 2018, had the request been made earlier the Eastern Connecticut Conservation District may have been able to provide one (and still might be able to if the hearing remains open pending receipt of that)).

Phase II Archeological Review was requested at the last meeting by the Commission and as of the end of the business day none was turned in. If no Review is provided then pursuant to Subdivision Regulation 5-8 the application should be denied.

The applicant fails to put forth a valid basis for a waiver pursuant to Regulation 6-10-11 (c) resulting in an impermissible cul de sac road with an excessive length.

The Open Space requirements set forth in Zoning Regulation 23.6 are exceeded in this application. The applicant's attempt to dedicate wetlands and slope, which can not be used towards open space above a certain percentage, is improper and should not be permitted.

The proposal is an example of improper segmentation. "Segmentation is an attempt to circumvent [regulations] by breaking up one project into small projects and not studying the overall impacts of the single overall project. Segmentation is to be avoided in order to ensure that interrelated projects . . . not be fractionalized . . . A project is properly segmented if it (1) connects logical termini and is of sufficient length to address environmental matters of a broad scope; (2) has independent utility or independent significance; and (3) will not restrict consideration of alternatives for other reasonably foreseeable transportation improvements . . . A project has been improperly segmented, on the other hand, if the segmented project has no independent utility, no life of its own, or is simply illogical when viewed in isolation" Stewart Park & Reserve Coalition v. Slater, 352 F.3d 545, 559 (2d Cir. 2003)

Finally, Mr. Lepowski intervened in the application pursuant to Connecticut Environmental Protection ("CEPA"), Conn. Gen. Stat. §§ 22a-14 through 22a-20t. The petitioner, also known as the environmental intervenor, has alleged harm to a natural resource over which the Commission's has authority to act. The Commission's job is this:

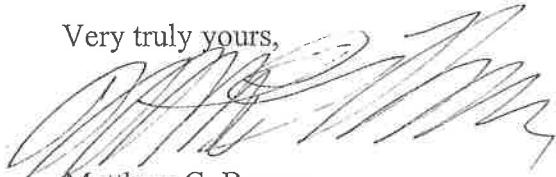
In any administrative, licensing or other proceeding, the agency shall consider the alleged unreasonable pollution, impairment or destruction of the public trust in the air, water or other natural resources of the state and no conduct shall be authorized or approved which does, or is reasonably likely to, have such effect as long as, considering all relevant surrounding circumstances and factors, there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare.

Conn. Gen. Stat. § 22a-19(b).

Therefore, in addition to reviewing the resubdivision application the Commission must also evaluate the environmental claims raised by the CEPA intervenor. Mr. Lepowski has presented substantial evidence to establish "the pollution, impairment or destruction" then the agency must consider whether the pollution is "unreasonable." "The question of what is reasonable is one of fact." Mystic Marinelife Aquarium, Inc. v. Gill, 175 Conn. 483, 503 (1979). The Commission must therefore determine whether "considering all relevant surrounding circumstances and factors, there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare." "Even minimal environmental harm is to be avoided if, "considering all relevant surrounding circumstances and factors, there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare." General Statutes 22a-19(b)." Gardiner v. Conservation Commission of the Town of Waterford, 222 Conn. 98, 110 (1992).

"Feasible" has been defined by the courts "as a matter of sound engineering." Manchester Environmental Coalition v. Stockton, 184 Conn. 51, 62 (1981). We are confident that the evidence before you supports a finding that there is an unreasonable impairment to East Lyme's natural resources, and that feasible and prudent alternatives exist, as noted in the Danzer reports submitted to you, and that the Application fails to comply with your regulations on many other grounds, detailed above, so that the pending application should be denied.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Matthew G. Berger', written over a circular stamp or seal.

Matthew G. Berger
matthew.berger@sbcglobal.net

MGB/dtm