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Attorneys at Law

August 26, 2020

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Via Email: billm@eltownhall.com
William Mulholland, Zoning Official
Via Email: ggoeschel@eltownhall.com
Gary Goeschel, Director of Planning
Town of East Lyme
108 Pennsylvania Avenue
Niantic, CT 06357

Re: Nottingham Hills Subdivision
Lots 19 & 21 – Re-Subdivision

Dear Gary & Bill:

I write in response to your email dated August 25, 2020 regarding zoning comments, Ex. A, on the above-referenced re-subdivision and to follow up on my several recent attempts to contact Gary. I note for the record the “**REVIEW DEADLINE**” on the zoning comments received August 25, 2020 was July 7, 2020.

Please enter this letter into the record of the above referenced re-subdivision application.

I need to first address the untimeliness of these comments which together with others demonstrates a rather troubling pattern by Town Staff regarding my client’s application that has been pending since March 3, 2020. A timeline demonstrating this troubling pattern is attached as Ex. B. Notwithstanding the fact Gary has on at least two occasions, indicated during the public hearings held to date that the application was complete we have thereafter received comments and requests from staff, who presumably had previously reviewed the application, and have requested additional changes subsequent thereto.

First, regarding Mr. Goeschel’s email;

1. The language of Section 23.3 of the Zoning Regulations states as follows:
“the Planning Commission *may require* Conservation Subdivision by Design for subdivisions of any parcel of land less than 10 acres or a subdivision of less than 4 lots upon finding that such development will further the objectives specified in Section 23.1” (Emphasis added).

Replies to New London only at:

38 GRANITE STREET, PO BOX 231
NEW LONDON, CONNECTICUT 06320

WWW.GERAGHTYBONNANO.COM

131 DWIGHT STREET
NEW HAVEN, CONNECTICUT 06511

TELEPHONE (860) 447-8077 / FAX (860) 447-9833

What this section of the regulations clearly provides by use of the words “may require” is the right of the Planning Commission to require the use by an applicant of a Conservation by Design Development subdivision notwithstanding the fact it may contain less than four (4) lots or less than ten (10) acres. What Section 23.3 clearly **does not do**, is to prohibit an applicant from electing on its own to pursue a Conservation by Design Development subdivision containing less than 4 lots or on less than 10 acres nor does it require the applicant to “demonstrate” how the proposed subdivision furthers the objectives of Section 23. Any position to the contrary is incorrect. As evidence of this we would direct you to the Darrow’s Ridge/Pazzaglia Conservation by Design Development subdivision that the East Lyme Planning Commission just approved on July 27, 2020 that created 2 lots on a total of 5.2 acres (the same night our application was initially heard).

2. With regard to the buffer Gary and the Planning Commission both well know from the “Fusari” Green Valley Road Conservation by Design Development subdivision that Town Counsel opined pursuant to the attached Ex. C. that the entire property is not subject to this buffer. Moreover given the facts of this application, including but not limited to the demonstration of the conventional yield plan of 4 lots, the creation of one additional residential, and similar sized, lot in a residential subdivision and the Open Space this lot will back up to, entitles this application to the waiver of section 23.5 of the zoning regulations. This waiver would be consistent with the waivers previously granted by this commission for similar applications.

Section 25 B., goes on to state that the waiver can be granted when the adjoining land, here the open space, and topography are such they obviate the need for a buffer, the waiver can be granted. I would submit that the topography, surrounding open space and proposed location of the houses obviates the need for the buffer. Not to mention the fact the property itself can be used for counting the buffer.

3. With regard to Open Space you are well aware that this subdivision has “banked” land to use for Open Space as is evidenced the minutes of the Planning Commission dated November 2010 and is further supported by the Opinion Letter provided to Gary Goeschel in his capacity as Director of Planning by Town Counsel that in a phased subdivision, as is the case with Nottingham Hills Subdivision, the development has otherwise met its Open Space obligations as such no further Open Space is required. Ex. D.
4. With regard to road frontage none is required in a Conservation by Design Development as is addressed in Section 23 of the Town of East Lyme Zoning Regulations.

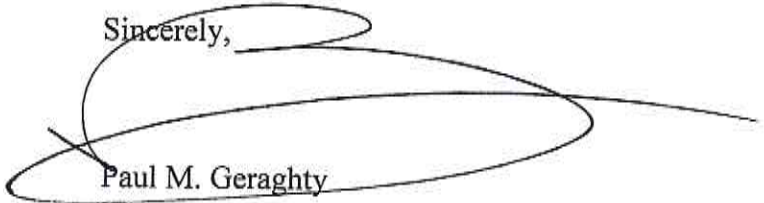
In response to Bill’s comments not already addressed;

1. Wetlands are identified by the wetland flag numbers and wetlands boundary delineation on the plans both of which are further identified in the plans legend.

2. Access is available to Open Space which about the lots on their northwestern boundary. We will identify the Open Space area on the revised plans being prepared to the extent that it is unclear as presently exists.

Finally, this correspondence will request an immediate meeting with Mr. Goeschel, Mr. Mulholland and Mr. Benni to address the matters identified by each of you this past week together with my concerns regarding the untimely review of this application amongst other related matters.

Sincerely,



Paul M. Geraghty

Cc: Kristen T. Clarke PE via email kristentclarke@gmail.com
Mark Nickerson via email mnickerson@eltownhall.com
Victor Benni PE via email vbenni@eltownhall.com
Danielle Holmes via email dholmes@llhd.ord

EXHIBIT A

EAST LYME DEPARTMENT OF PLANNING

SUBDIVISION REVIEW SHEET

TITLE OF PLAN:	Conservation Design Development Nottingham Hills Subdivision; 4 lot Re-subdivision of Lots 19 and 21
DATE RECEIVED:	March 2020
DATE DISTRIBUTED:	May 2020
REVIEW DEADLINE:	July 7, 2020

	Storm Water Calculations	Plans
William Mulholland, Zoning Official		✓

COMMENTS:

Section 23.6-F, E12 Regulations requires "open space" to be labeled if purpose of such area labeled on plan - not there?; 23.6-E requires wetlands to be labeled. Section 23.5-B requires 610' buffer to be labeled on plan unless waived. Section 23.6-D requires all lots to have access to "open space". Section 23.2-D requires compliance with 2-Regs. - lot frontage? - lot # 2-?

REVIEWED BY: WMM DATE: 8/24/2020

- note. ^{IS} ~~Does~~ a 3 lot subdivision under 10 acres allowed under Section 23.2-?
- See Section 23.3 Planning may require CBD - must make a finding that it meets Section 23.1 Purpose A-D.

8/25/2020

Fwd: Nottingham Hills 4-Lot Re-subdivision, Conservation Design Development

From: kristentclarke@gmail.com,

To: jtorra5608@aol.com,

Subject: Fwd: Nottingham Hills 4-Lot Re-subdivision, Conservation Design Development

Date: Tue, Aug 25, 2020 11:56 am

Attachments: Zoning Comments 8-24-20.pdf (100K)

Sent from my iPhone

Begin forwarded message:

From: Gary Goeschel <ggoeschel@eltownhall.com>

Date: August 25, 2020 at 11:52:47 AM EDT

To: Kristen Clarke <kristentclarke@gmail.com>, "pgeraghty@geraghtybonnano.com" <pgeraghty@geraghtybonnano.com>

Cc: Jennifer Lindo <jlindo@eltownhall.com>, Bill Mulholland <billm@eltownhall.com>, Victor Benni <vbenni@eltownhall.com>, "dholmes@llhd.org" <dholmes@llhd.org>

Subject: Nottingham Hills 4-Lot Re-subdivision, Conservation Design Development

Kristen and Paul,

Attached are comments from William Mulholland, our Zoning Official, regarding the above proposed resubdivision. Upon review of those comments, it appears Section 23. 2 of the Zoning Regulations requires the Conservation Design Development (CDD) provisions in the subdivision of any parcel 10-acres or more or any subdivision of 4 or more lots. I would note the proposed subdivision was initially proposed as 4-lots and has subsequently been reduced to 3 during the review process. As noted by the Zoning Official, the Planning Commission may require a Conservation Subdivision by Design (CDD) for subdivisions of less than 10-acres or a subdivision of less than 4 lots. As such, you will need to demonstrate how the proposed resubdivision furthers the objectives in Section 23. 1 of the East Lyme Zoning Regulations in order for the Planning Commission to make the necessary findings to approve the application as a CDD Subdivision. In addition, it comments indicate Section 23.5 B of the Zoning Regulations requires a wooded or otherwise landscaped buffer be provided along the perimeter of the CDD to Screen Development on the proposed lots from existing contiguous lots. The minimum width if the buffer shall be 40-ft, any portion of which may either subdivision open space area or area contained within the lots (e.g. conservation easement). Further, Section 23.6 – D requires all lot to have access to the open space. He also questions how the proposed resubdivision meets Section 23.2 D and 23.5 of the Zoning Regulations (e.g. lot#2 has no lot frontage as proposed).

If you have any questions regarding this correspondence, the attached, or any of the East Lyme Subdivision Regulations, please do not hesitate to contact me.

Regards,

Gary

EXHIBIT B

<u>Ex. No.</u>	<u>Date</u>	<u>Subject of Document</u>	<u># of Pages</u>
1.	June 29, 2020	Email form Gary Goeschel	1
2.	March 3, 2020	Yield Plan	1
3.	March 3, 2020	Cultural Resources Plan	1
4.	March 3, 2020	Lot Line Revision Plan	1
5.	March 16, 2020	Email from Jen Lindo Cancellation of April 7, 2020 Public Hearing	1
6.	March 16, 2020	Letter from Gary Goeschel Notice of rescheduled Public Hearing :May 5, 2020	1
7.	4/20/2020	Email to Goeschel Re: Abutter (Thomas)	2
8.	4/23/2020	Email re Compliance with 3/16/2020 letter from Goeschel re: site sign, certificate of mailing	46
9.	4/23/2020	Email re: Plan Revisions, Open Space Letter from East Lyme Land Trust	3
10.	6/22/2020	Plan Revisions	2
11.	6/30/2020	Email form Goeschel Beni Plan Comments (Only reviewed original plans submitted March 3, 2020 and not revisions which had been submitted on 4/23 & 6/22)	2
12.	7/7/2020	Applicants response to Benni & additional application exhibits	
13.	7/24/2020	Plan revisions (4 pages) emailed to Planning Department per East Lyme "Covid" policy.	
14.	7/24/2020	Applicants submission of additional application exhibits AA thru HH inclusive.	
15.	7/25/2020	Applicants submission of additional application exhibits II thru NN inclusive.	

16. 7/26/2020 Applicant delivers original stamped and signed 4 pages plan Planning Office.
17. 8/4/2020 Applicant submission of additional application exhibits OO thru TT inclusive.
18. 8/2/2020 Email received from Goeschel re: plans submitted on July 24, 2020
19. 8/10/2020 Applicants response to Goeschel 8/5/2020 email providing requested information
20. 8/20/2020 Geraghty & Clarke both email Benni re: no comments attached or included in 8/17/2020 email.
21. 8/20/2020 Benni response to Geraghty & Clarke email "I sent them to Jen Lindo"
22. 8/20/2020 Benni "second round of comments" received to plans provided On July 24, 2020.
23. 8/25/2020 Email from Goeschel re: zoning comments
24. 8/26/2020 Geraghty response to Goeschel 8/25/2020 email and demand for meeting with staff to address "untimely comments" amongst other legal issues.

EXHIBIT C



WALLER
SMITH &
PALMER^{PC}
Attorneys at Law

HUGHES GRIFFIS
EDWARD B. O'CONNELL
TRACY M. COLLINS*
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CHARLES C. ANDERSON
KERIN M. WOODS+
ELLEN C. BROWN*
KARL-ERIK STERNLOF
MARK S. ZAMARKA
CATHERINE A. MARRION
RACHAEL M. GAUDIO+*

BY EMAIL AND REGULAR MAIL

May 15, 2017

William Mulholland
Zoning Official
Town of East Lyme
P.O. Box 519
Niantic, CT 06357
Billm@eltownhall.com

OF COUNSEL:
ROBERT W. MARRION
ROBERT P. ANDERSON, JR.
FREDERICK B. GAHAGAN

+ ALSO ADMITTED IN RI
*ALSO ADMITTED IN MA

Re: Twin Valley Subdivision

Dear Mr. Mulholland:

On April 28, 2017, we provided an opinion letter regarding the above proposed subdivision. Our letter addressed three specific questions:

- (1) Is a 40' buffer required around existing lots?
- (2) Must the subdivision have a 200' no cut/no build buffer from the roadway?
- (3) If the 200' buffer from the roadway is required, can the entry road into the subdivision go through that buffer?

Since that time, another issue has arisen regarding the 40' buffer found in section 23.5.B.1 of the East Lyme Zoning Regulations ("Regulations" or "ZR"). The plans provided for our review show two existing lots along Green Valley Lakes Road, and provide for a 40' buffer between those existing lots and the proposed lot #1 in the new development. The plans also show a proposed access street or road that would run parallel to the western most existing lot, noted on the plans as "N/F Brian Lepkowski & Diane Lepkowski" (the "Lepkowski lot"). The developer has now inquired whether a 40' buffer is also required along the portion of the Lepkowski lot that abuts the proposed road. Put another way, must a 40' buffer be installed to screen an existing contiguous lot from a proposed road or street?

ZR 23.5.B.1 states in relevant part that a "wooded or otherwise landscaped buffer shall be provided along the perimeter ... to Screen Development on the proposed lots from existing contiguous lots." (Emphasis added).¹ The plain wording of this section indicates that the purpose of the 40' buffer is to screen existing lots from development on proposed new lots, not roads. This interpretation is consistent with the Regulations and principles of statutory construction. "Zoning regulations are local legislative

¹ Although capitalized, neither "Screen" nor "Development" are defined terms in the Regulations.

EX "KKK"



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enactments ... and, therefore, their interpretation is governed by the same principles that apply to the construction of statutes...." Trumbull Falls, LLC v. Planning & Zoning Commission, 97 Conn. App. 17, 21–22, cert. denied, 280 Conn. 923 (2006); see also 9A R. Fuller, § 33:7, p. 261. "In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language ... If a statute or regulation does not sufficiently define a term, it is appropriate to look to the common understanding of the term as expressed in a dictionary." Moon v. Zoning Board of Appeals, supra, 291 Conn. 16, 21 (2009)

The Regulations also draw a clear distinction between a lot and a street. A lot is defined in pertinent part as a "... parcel of land occupied or capable of being occupied by one principal building ..." ZR 1.29. The Lepkowski lot, and the proposed numbered lots on the plans all meet this definition. In contrast, ZR 1.54 provides in pertinent part that a street is "Any way which is an existing town or state highway ..." or any way which is shown on a recorded and duly approved subdivision map. While the Regulations do not provide a definition of road, Webster's Dictionary notes that a road is "... an open way for vehicles ... especially one lying outside an urban district." Here, the proposed access road is not a lot, as it would not be occupied, or be capable of being occupied, by a building.

Based on the foregoing, it is our advice that the 40' buffer found in ZR 23.5.B.1 is not intended to screen existing lots from proposed streets or roads in a Conservation Design Development. As applied here, a 40' buffer would not be required to separate or screen the Lepkowski lot from the proposed access road.

If you have any additional comments or questions, we would be pleased to respond.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark S. Zamarka", is written over a circular stamp.

Mark S. Zamarka, of
Waller, Smith & Palmer, P.C.

cc. East Lyme Town Planner

EXHIBIT D

MEMORANDUM

TO: GARY GOESCHEL, DIRECTOR OF PLANNING
FROM: MARK E. BLOCK, ESQ.
DATE: FEBRUARY 1, 2010
RE: OPEN SPACE DEDICATION - HERITAGE AT EAST LYME RESUBDIVISION

You have asked for an opinion in regards to open space dedication for the proposed resubdivision of Heritage at East Lyme. (the "Resubdivision")

The facts as related to me are that Heritage at East Lyme was, when first subdivided ("Original Subdivision"), an estimated 330 acre tract of land ("Original Tract"). The Original Subdivision contained one lot comprised of a 198 acre tract, which is the subject of the resubdivision application ("Subject Parcel"). At the time of the approval of the Original Subdivision, there was approximately 39.45 acres dedicated as open space as a condition of that approval.

The question presented is can the Planning Commission require a dedication of additional open space as part of the approval of the Resubdivision.

Conn. Gen. Stat. §8-25 provides that the Town's subdivision regulations may require the applicant by deed, payment of a fee or combination of the two, to provide the Town with open space of a value not to exceed 10% of the fair market value of the land to be subdivided "prior to the approval of the subdivision".

Section 10-5 of the Subdivision regulations is consistent with the General Statutes, and says that in arriving at the fee in lieu of the dedication of the land, the fee cannot equal more than 10% of the "fair market value of the land to be subdivided "prior to approval of the subdivision."

Further, Section 10-2-2 of the Subdivision Regulations says that if a parcel "is subdivided in stages, the open space dedication attributable to the subdivision of a portion of the entire tract" may be deferred to a later date. The critical language in this section is the reference to the subdivision being in stages and calculating open space based upon the entire tract.

There are no cases on this precise issue, so one must look to the language of the statute and the regulations. In this case the Original Tract that was submitted to the Commission for subdivision approval comprised 330 acres. The Commission required, per its regulations, that the Developer set aside open space calculated on the number of acres in the Original Tract, i.e., 300 acres. Both the Statute and the Regulations speak of the dedication for open space to be from the land to be subdivided. The Town's regulations also speak of a subdivision developed in stages, with provision for deferral of the open space. In my opinion, since with original developer met the open space requirements at the time of the

Original Subdivision, and made that dedication out of the Original Tract, the Commission cannot require an additional dedication from the Subject Parcel, which is a resubdivision of a portion of the Original Tract/Subdivision.

M:\users\MEB\East Lynn\open space memo.wpd