

Geraghty & Bonnano, LLC

Attorneys at Law

PAUL M. GERAGHTY*
MICHAEL S. BONNANO
JOHANNA McCORMICK
MARK A. DUBOIS†
PATRICIA A. KING**
JONATHAN E. FRIEDLER††

*Also Admitted in New York
† Board Certified, Trial Advocate
**Se habla español

†† Also Admitted in Massachusetts and North Dakota

August 10, 2020

Via email ggoeschel@eltownhall.com

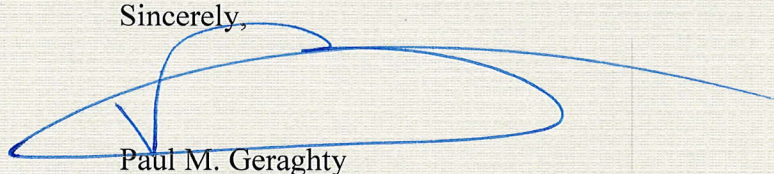
Gary Goeschel
Director of Planning
Town of East Lyme
108 Pennsylvania Avenue
Niantic, CT 06357

Re: Upper Pattagansett Drive English Harbour re Subdivision lots 19 & 21

Dear Gary:

I met with Danielle Homes of Ledge Light Health District this afternoon regarding her review of the above application. We are going to meet with her at the site next week to review test pits at which time she should have sufficient information to complete her review of the application before her. At this time we would request an extension of the Special Meeting scheduled for tomorrow night to the regular September meeting as her review will not be ready in time.

Sincerely,



Paul M. Geraghty

cc: English Harbour Asset Management, LLC

Replies to New London only at:

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

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ENGLISH HARBOUR ASSET MANAGEMENT, LLC
1712 Pioneer Avenue , Suite 1939
Cheyenne, Wyoming 82001
(307) 256-7229

August 10, 2020

Via email: ggoeschel@eltownhall.com
Gary Goeschel
Director of Planning
Town of East Lyme
108 Pennsylvania Avenue
Niantic, CT 06333

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

Dear Gary:

As an initial matter, and as evidenced by the July 24 & 27, 2020 submitted plan, we are no longer considering the land to be provided to the East Lyme Land Trust, Inc. “a lot” as this proved to be more trouble than it was worth and we can convey the land to the East Lyme Land Trust under Connecticut Law simply by providing a legal description of the property being conveyed. Accordingly the pending application should now be considered a 3 lot re-subdivision of existing lot 19 aka 22 Upper Kensington Drive and Lot 21 aka 24 Upper Kensington Drive.

1. Water Supply and Sanitation Report

Paul Geraghty met with Danielle Holmes on Monday afternoon August 10, 2020 to address this application and others. We are scheduling a few additional test holes for early next week. Proposed well locations appear to be code compliant given the current locations for the proposed septic systems.

2. Plans Stamped, Signed and Sealed

The most recent of these plans were submitted via email pursuant to the Town of East Lyme’s Covid policy as is identified on the Planning Department website on July 24, 2020 and originals were hand delivered to the Planning Department on July 27, 2020. These plans appear in the record of this application as the East Lyme Planning Department’s Ex. H

Please confirm you are in possession of original stamped, signed and sealed plans for this application.

3. Yield Plan Section 4-2-4

This was provided as part of the initial application on March 3, 2020 as page 3 of the submitted plans and appears in the record of this application as page 3 of the East Lyme Planning Department's Ex. B. I provided this plan again in my reply dated July 7, 2020 to your and Mr. Benni's comments received on June 30, 2020. The Conventional Plan appears as part of that response which is identified as Ex. E to the Planning Departments record.

If you believe this plan is deficient please provide me the specifics of your claimed deficiency so we can either discuss it/them or we can make the requested corrections.

4. Erosion and Sedimentation and Control Plan

See attached Ex. 1 which will be added to a new page (Page 5 of 5) to this applications plans.

If you believe this plan is deficient please provide me the specifics of your claimed deficiency so that we can either discuss it/them or we can make the requested corrections.

5. Construction Sequence Plan for Driveway and Rain Garden

See attached Ex. 2 which will also be added to new page 5 Of 5 of this applications plans.

If you believe this plan is deficient please provide me with the specifics of your claimed deficiency so that we can either discuss it/them or we can make the requested corrections.

Please be advised our Surveyor's office has been without power and closed for much of the past week due to Tropical Storm Isaias so it may be a few days before we are able to provide you with revised plans which will be provided to you in both electronic and original form stamped, signed and sealed.

Sincerely,



Kristen T. Clarke PE

Cc Paul Geraghty via email pgeraghty@geraghtybonnano.com
Danielle Holmes via email dholmes@llhd.org
Bill Mulholland via email billm@eltownhall.com
Mark Nickerson via email mnickerson@eltownhall.com

EXHIBIT 1

EROSION & SEDIMENT CONTROL NARRATIVE

PRE-CONSTRUCTION

1. DISTURBANCE OF SOIL SURFACES IS REGULATED BY STATE LAW. ALL WORK SHALL COMPLY WITH AN APPROVED 'EROSION AND SEDIMENT CONTROL PLAN' TO PREVENT OR MINIMIZE SOIL EROSION.
2. THE INSTALLATION AND MAINTENANCE OF EROSION CONTROL DEVICES IS THE RESPONSIBILITY OF THE LAND OWNER, DEVELOPER, AND THE EXCAVATION CONTRACTOR. TOWN OFFICIALS SHALL BE NOTIFIED IN WRITING OF THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE INDIVIDUAL RESPONSIBLE FOR THIS WORK.
3. THE CONTRACTOR SHALL USE THE 'CONNECTICUT GUIDELINES FOR SOIL EROSION AND SEDIMENT CONTROL' (2002), AS AMENDED, AS A GUIDE IN CONSTRUCTING THE EROSION AND SEDIMENT CONTROLS INDICATED ON THESE PLANS. THE GUIDELINES MAY BE OBTAINED FROM THE CONNECTICUT COUNCIL ON SOIL AND WATER CONSERVATION, STATE OFFICE BUILDING, HARTFORD, CT.06106.

DURING CONSTRUCTION

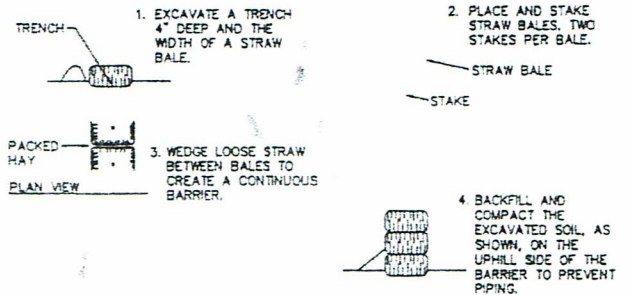
4. THE CONTRACTOR SHALL INFORM ALL CONSTRUCTION SITE WORKERS ABOUT THE MAJOR PROVISIONS OF THE EROSION AND SEDIMENT CONTROL PLAN AND SEEK THEIR COOPERATION IN AVOIDING THE DISTURBANCE OF THESE CONTROL MEASURES.
5. THE CONTRACTOR SHALL SCHEDULE ALL OPERATIONS TO LIMIT DISTURBANCE TO THE SMALLEST PRACTICAL AREA FOR THE SHORTEST POSSIBLE TIME.
6. THE CONTRACTOR IS RESPONSIBLE FOR THE TIMELY INSTALLATION, INSPECTION, REPAIR OR REPLACEMENT OF EROSION CONTROL DEVICES TO INSURE PROPER OPERATION.
7. THE CONTRACTOR SHALL INSPECT AND REPAIR EROSION AND SEDIMENT CONTROL DEVICES AT THE END OF EACH WORKING DAY AND AFTER EACH STORM.
8. THE CONTRACTOR SHALL NOTIFY THE ENGINEER OF UNSATISFACTORY EROSION CONDITIONS NOT CONTROLLED BY THE EROSION AND SEDIMENT CONTROL PLAN AND SHALL INSTALL ADDITIONAL MEASURES AS DIRECTED.
9. FIELD CHANGES TO THE EROSION AND SEDIMENT CONTROL PLAN SHALL BE MADE ONLY WITH THE APPROVAL OF THE ENVIRONMENTAL TOWN PLANNER OR AGENT. I.e. LOCATION OF SILT FENCE, STOCKPILE, DE-WATERING AREA etc.
10. ACCUMULATED SEDIMENT REMOVED FROM EROSION CONTROL DEVICES IS TO BE SPREAD AND STABILIZED IN LEVEL, EROSION RESISTANT LOCATIONS AS GENERAL FILL WITHIN LAWN AND LANDSCAPE AREAS.
11. ALL DISTURBED AREAS NOT COVERED BY BUILDINGS, PAVEMENT OR WOOD MULCH SHALL BE PLANTED WITH GRASS ON 4 IN. TOPSOIL.
12. MULCHING: IMMEDIATELY FOLLOWING SEEDING, MULCH THE SEEDED SURFACE WITH STRAW OR HAY AT A RATE OF 70 LBS./1000 SF. SPREAD MULCH BY HAND OR MULCH BLOWER. PUNCH MULCH INTO SOIL SURFACE WITH TRACK MACHINE APPROXIMATELY 2-3 IN. TO ANCHOR.
13. SEEDING: BETWEEN APRIL 1 TO JUNE 1, AND AUGUST 15 TO SEPTEMBER 1. ALL DISTURBED AREAS SHALL BE IMMEDIATELY GRADED AND SEEDED TO PROMOTE STABILIZATION OF SLOPES
14. A FABRIC FILTER SOCK SHALL BE USED FOR ANY DEWATERING.

SOIL AND EROSION CONTROL

1. HAY BALES / SILT FENCE ARE TO BE INSTALLED PRIOR TO CONSTRUCTION.
2. ONLY REMOVE TREES AND VEGETATION NECESSARY FOR CONSTRUCTION.
3. PERMANENT SEEDING SHOULD BE DONE AS SOON AS POSSIBLE AFTER CONSTRUCTION FINISHES. LIME AND FERTILIZE. RECOMMENDED SEEDING DATES ARE APRIL 15 TO JUNE & AUG. 15 TO OCT. 1.
4. RECOMMENDED SEED (PER EROSION AND SEDIMENT CONTROL HANDBOOK) KY31 TALL FESCUE 150 lbs. PER ACRE.
5. HAY BALES AND SILT FENCE TO REMAIN WHERE PLACED UNTIL ALL DISTURBED AREAS ARE PERMANENTLY STABILIZED.
6. NO ERODED SEDIMENT SHALL BE PERMITTED TO LEAVE THE SITE OR WASH INTO THE DRAINAGE SYSTEM.
7. IF SEEDING CANNOT MEET RECOMMENDED DATES, TEMPORARY MULCH IS TO BE APPLIED IN ACCORDANCE WITH THE TABLE BELOW.

MULCHES	RATES PER 1000 FT	NOTES
STRAW OR HAY 1/2 - 2 TONS PER ACRE	70-90lbs.	FREE FROM WEEDS & COARSE MATTER. MUST BE ANCHORED SPREAD WITH MULCH BLOWER OR BY HAND

8. ANY HAY BALES OR SILT FENCE REMOVED DURING CONSTRUCTION SHOULD BE REPLACED EACH NIGHT.
9. ANY MATERIAL STOCK PILED SHOULD BE TEMPORARILY SEEDED.



TYPICAL HAY BALE INSTALLATION

10. ALL ROAD SECTION EMBANKMENTS, EITHER CUT OR FILL, SHOULD BE STABILIZED AT THE TOE OF THE SLOPE BY STAKED HAYBALES OR SILT FENCE.
11. SWALES AND DIVERSION STRUCTURES SHOULD HAVE HAY BALES PLACED ACROSS THEM EVERY 100' IN ACCORDANCE WITH THE DETAIL BELOW.

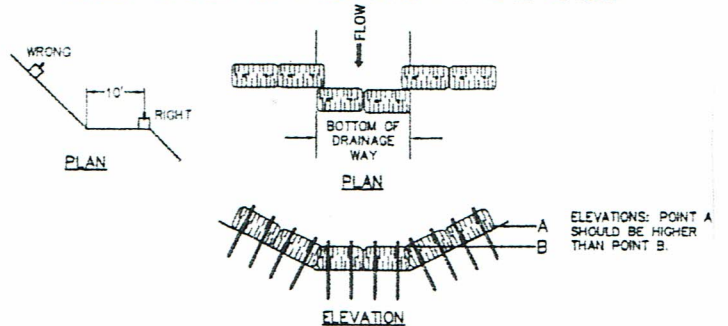


EXHIBIT 2

GENERAL CONSTRUCTION SEQUENCE-COMMON DRIVEWAY & RAIN GARDEN

1. Secure all necessary permits. Notify “call before you dig” (1-800-922-4455) at least 72 hours prior to excavation. Schedule and attend a pre-construction conference with Town Staff.
2. Clearing limits will be flagged by engineer prior to work being done. Limit of work adjacent to wetlands will not be exceeded.
3. Remove trees, branches and brush within areas to be cleared, chip branches and brush for use as mulch.
4. Install construction exit (anti-tracking pad) and install sediment barriers along the limits of grading and at the limits of clearing for tree protection.
5. Check and repair E&S controls as necessary.
6. Grub stumps and remove brush
7. Strip and stockpile topsoil only in areas to be filled or graded and stockpile on site in an area not in way of construction, seed and mulch stockpile or cover with netting. Place and stake hay bales around stockpiles.
8. Rough grade common driveway.
9. Construct rain garden. Plantings recommended in the months of May or September.
10. Place gravel and pavement in common driveway.
11. Re-spread topsoil on shoulders and disturbed areas.
12. Fine grade, lime, fertilize and seed remaining lawn areas with formal grass seed mixture by June 1 or October 1 depending on actual construction schedule.
13. Remove erosion control devices upon authorization of town officials.

**Geraghty &
Bonnano, LLC**
Attorneys at Law

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† Board Certified, Trial Advocate

**Se habla español

†† Also Admitted in Massachusetts and North Dakota

August 12 2020

Via email ggoeschel@eltownhall.com

Gary Goeschel
Director of Planning
Town of East Lyme
108 Pennsylvania Avenue
Niantic, CT 06357

Re: Lots 19 & 21 Upper Pattagansett Drive English Harbour

Dear Gary:

This letter is to follow up on my correspondence of Monday regarding the hearing for the above captioned re-subdivision. Given the executive orders regarding public hearings I wanted to confirm my understanding as to the time frame remaining for the commission to act. The initial public hearing was opened on July 27, 2020 by way of a special meeting. It was continued until August 4, 2020 and thereafter further continued to August 11, 2020 awaiting a response from Ledge Light Health District as to the septic approval. On August 10, 2020, I requested the August 11 meeting be cancelled and the hearing rescheduled to the regular September meeting which is September 8, 2020 in order that we will have a response from Ledge Light Health District so the commission may act. My client has consented to the extension of time to conclude the public hearing until September, 9, 2020

Please confirm that we are within time frame for conducting and concluding the public hearing in a timely manner or in the alternative schedule a public hearing on this matter on or before the August 31, 2020 original deadline

Replies to New London only at:

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

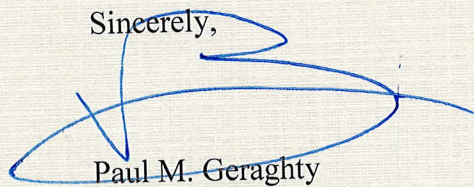
WWW.GERAGHTYBONNANO.COM

131 DWIGHT STREET
NEW HAVEN, CONNECTICUT 06511

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

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul M. Geraghty", is written over the printed name. The signature is stylized with a large loop and a horizontal stroke.

Paul M. Geraghty

cc: English Harbour Asset Management, LLC

Town of East Lyme

Exhibit Q


P.O. DRAWER 519

NIANTIC, CONNECTICUT 06357



Town Engineer
Victor A. Benni, P.E.

860-691-4112
FAX 860-739-6930

To: Gary A. Goeschel II, Director of Planning
From: Victor Benni, P.E., Town Engineer 
Date: August 12, 2020
Re: 22 & 24 Upper Kensington Drive – Nottingham Hills
Subdivision Application Review

A written review of this application was completed by this Department on March 30, 2020. It is anticipated that an additional review will be required by this Department; especially relating to revisions pertaining to Stormwater Management, the proposed Grading Plan, and the Erosion & Sedimentation Control Plan.

Information submitted by the Applicant which was considered in this review:

- (4-Sheet Drawing Set) Conservation Design Development, Nottingham Hills Subdivision, 3 Lot Resubdivision of Lots 19 & 21, East Lyme, Connecticut, Date: January 29, 2020, Revised: 6/25/2020, by: Gesick & Associates, P.C.
- Amended Design Report, 3 Lot Re-Subdivision, Lots 19 & 21, Upper Kensington Drive, East Lyme, Connecticut, Date: July 20, 2020, Exhibit MM.

This office has reviewed the above referenced information and has the following comments:

Certifications

1. The Site Plan and the Stormwater Management Plan, in the Amended Design Report, shall be signed and sealed by a CT licensed Professional Engineer. All drainage facilities shall be designed by an Engineer per Section 6-8-1(A) of the East Lyme Subdivision Regulations (the Regulations). E&S plans using control measures that contain “Design Criteria” shall be signed and sealed by a CT licensed Professional Engineer.

Subdivision Plan

2. A Subdivision Plan has not been included with the Drawing Set; refer to Section 5-2-2(D) of the Regulations.

3. Provide a label on the Subdivision Plan indicating Lot 1-3 property corners and angle points to be set; per Sections 5-2-2(D)xvi and 8-2 of the Regulations.

4. The Site Plan (Sheet 3 of 4) depicts proposed gutter drains from each lot, connecting into a Rain Garden being proposed on Lot 3. The Rain Garden is considered a stormwater management system that is being “shared” by each of the three lots; therefore, the Stormwater Management Area (Rain Garden) should be depicted on the Subdivision Plan. The Subdivision Plan should include the location of all easements stating specific responsibilities of the grantor and grantee as to the access and maintenance of the storm water system; per Section 5-2-2(E)ix of the Regulations. In lieu of the “shared” stormwater management system, the Applicant may wish to consider addressing stormwater management controls on a per lot basis.

5. Drainage, access, and utility rights/easements should be indicated on the Subdivision Plan. The Subdivision Plan should clearly indicate which Lots are sharing the common driveway; per Section 6-2-5(F) of the Regulations. Examples of required rights/easements listed below:

- Drainage: Over Lots 2 & 3 in favor of Lot 1;
- Drainage: Over Lot 3 in favor of Lot 2;
- Drainage: Over Lot 1 in favor of Lot 3;
- Utilities: Over Lot 1 (and/or Lot 3) in favor of Lot 2; and
- Access: Over Lots 1 & 3 in favor of Lot 2.

Site Plan (Sheet 3 of 4)

6. Update the Site Plan to include the proposed utility lines (power, telephone, and TV cables) serving each lot, from Upper Kensington Drive to each proposed house; per Sections 5-2-2(D)xxi of the Regulations.

7. Update the Site Plan to include appropriately designed components of the stormwater management system; per Section 5-2-2(E) of the Regulations. The Rain Garden design criteria, details, planting guidelines, and short/long-term maintenance plan should be included on the Site Plan. Particular attention to sub sections vii and xi should be considered by the design professional. Reference Material: A Design Guide for Connecticut and New England Homeowners, by UCONN CLEAR NEMO program.

8. Update the Site Plan to depict footing drain outlet locations for each of the proposed houses. The Amended Design Report (Stormwater Management Plan) still indicates that footing drains will be directed to the proposed rain garden. The Site Plan shall include notation indicating that footing drains are NOT allowed to discharge to the proposed rain garden.

9. A Grading Plan shall be provided per Section 5-2-2(F) of the Regulations. This Grading Plan will aid this Department in reviewing maximum proposed driveway grades, proposed drainage, and the potential need for additional Erosion & Sedimentation (E&S) control measures.

10. An E&S Control Plan shall be provided per Section 5-2-2(G) of the Regulations. At a minimum, this plan should include the locations of all E&S control measures, E&S construction details, a Narrative, and identification of the designated on-site individual responsible for the certified E&S plan. The Narrative should include a reference to the "2002 Connecticut Guidelines for Soil Erosion and Sediment Control" (CTDEEP). Additional considerations should be provided for silt fence detail, construction access, temporary Erosion Control Blankets (ECB's) for proposed grades exceeding 3:1 slope, vegetated waterway & permanent stone check dams to control concentrated erosive stormwater flows from proposed drives, temporary haybale check dams, and energy dissipators at gutter drain outlets to rain garden.

11. Update the Site Plan to include structural drainage design and erosion control measures for the proposed driveways; per Section 6-2-5(A) of the Regulations.

12. Update the Site Plan to include notation as to proposed grades and potential paved sections along the entire length of the shared & private drives; per Section 6-2-5(B) of the Regulations.

13. Provide a label on the Site Plan indicating all driveways to be paved with bituminous concrete from the edge of the street pavement to the edge of the street right-of-way; per Section 6-2-5(D) of the Regulations.

14. The Rain Garden design shall meet the requirements of Section 6-8-4(B) of the Regulations. A 3.5' cut has been proposed in the Rain Garden area; provide deep soil test pit information to verify that the bottom of the rain garden will be set a minimum of 1.5' above the maximum ground water elevation. Provide percolation test information in the Rain Garden area, at the appropriate depth, to verify that the rain garden will drain within 12 to 72 hours. Identify a suitable overflow point for the Rain Garden.

15. Update the Amended Design Report (Stormwater Management Plan) to include information to satisfy the requirements of Section 6-8-7(A) of the Regulations. Statements and/or calculations should be provided in the Stormwater Management Plan to demonstrate that the water quality of the receiving wetland is not adversely affected and that the proposed development will not cause or exacerbate downstream flooding.

From: [Danielle Holmes](#)
To: [Kristen Clarke](#)
Cc: pgeraghty@geraghtybonnano.com; [Jennifer Lindo](#); [Jeff](#); [Gary Goeschel](#); kirkscott@hotmail.com; [Steve Mansfield](#); [Wendy Brown-Arnold](#)
Subject: Lots 19&21 Upper Kensington Dr, East Lyme
Date: Wednesday, August 19, 2020 10:46:35 AM
Attachments: [Outlook-1493748028.png](#)
[Lots 19&21 test pit data 8.18.2020.pdf](#)
[Subdivision checklist 2020.docx](#)

Good morning Kristen,

Attached are my field notes from yesterday's additional site testing to explore the feasibility of further subdividing existing Lots 19&21 Upper Kensington Dr, East Lyme.

I understand the surveyor was working to complete the required percolation tests in the respective primary and reserve septic areas. Once those readings are available, all data can be included on the revised plans showing the proposed creation of one new building lot. Please note the items in our subdivision checklist, which I will be looking for for each of the three proposed building lots in order to issue final approval.

Feel free to contact me with any questions.

Respectfully,

Danielle Holmes, REHS/RS

Sanitarian II

p. 860.448.4884

f. 860.448.4885

dholmes@llhd.org

www.llhd.org

Promoting healthy communities



Location Upper Kensington, EL Date 8/18/2020Project / Client Lots 19 & 21 for sub -create 2 new bldg lot, Jeff Torrance

TPG depth 71"
 0-8 leaf litter & TS
 8-24 OB ESL friable
 24-56 YB fine silty sand, loose
 56-71 YB med coarse sand, trace
 gravel, friable

roots to 51"

No GW

No redox

No refusal

TPE depth 77" / L @ 6"
 machine was able to dig through
 * Not suitable *

TPF depth 14" / L @ 14"
 * Not suitable *

TPC depth 85" / L @ 31" (partially decomposed)
 0-10 leaf litter & TS
 10-19 OB med coarse sand
 19-31 light YB med sand w/rocks
 No GW
 No redox
 roots to 21"

31-85 mixed sand,
 rotten rock &
 non-typical ledge

Location _____

Date _____

Project / Client _____

TPD depth 72" / L @ 53"
 0-12 leaf litter & TS
 12-23 OB fine-med sandy loam
 23-53 YB fine glacial fill
 53-72 non-typical / decomposed
 ledge (rotten rock)

No GW

No redox

roots to 27"

TPH depth 70"
 0-12 leaf litter & TS
 12-36 compact gray brown glacial
 till - very compact
 36-70 YB med sand, friable
 roots to 30"
 No GW
 redox - could not ID

Location _____ Date _____

Project / Client _____

TPI depth 79 / L e 51

0-17 1st letter s. TS

17-51 compact YB med coarse
sand w/ rocks, very compact

51-79 YB med coarse sand

No GW

making e 71

Roto 30

Location _____ Date _____

Project / Client _____

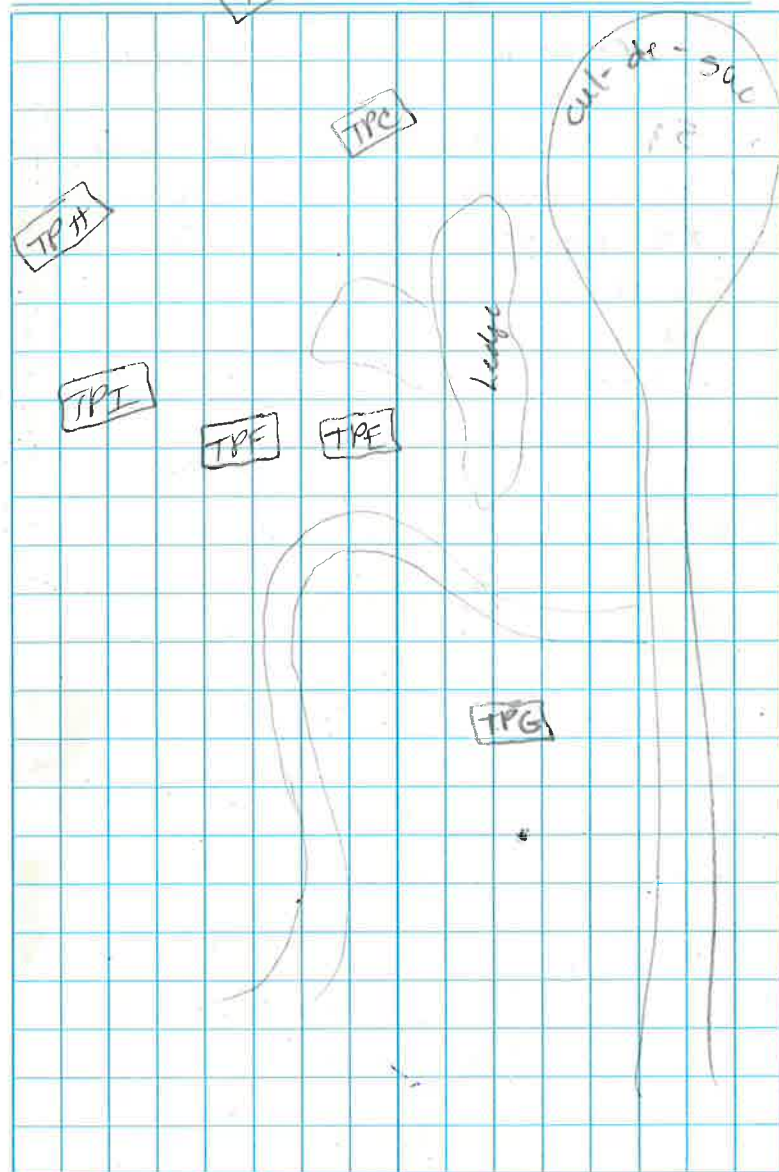


Exhibit S

From: [Paul Geraghty](#)
To: [Gary Goeschel](#); [Jennifer Lindo](#)
Subject: Lots 19 & 21
Date: Friday, August 21, 2020 4:01:41 PM

Gary, in light of the comments received today not from but on behalf of Mr Benni my client will be seeking a continuance of the hearing on the 1st to the 8th. Paul

From: [Gary Goeschel](#)
To: [Kristen Clarke](#); pgeraghty@geraghtybonnano.com
Cc: [Jennifer Lindo](#); [Bill Mulholland](#); [Victor Benni](#); dholmes@llhd.org
Subject: Nottingham Hills 4-Lot Re-subdivision, Conservation Design Development
Date: Tuesday, August 25, 2020 11:52:47 AM
Attachments: [Zoning Comments 8-24-20.pdf](#)

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

Gary A. Goeschel II

Director of Planning / Inland Wetlands Agent

Town of East Lyme

PO Box 519 | 108 Pennsylvania Avenue | Niantic, Connecticut 06357

Office 860-691-4105 | Fax 860-691-0351

ggoeschel@eltownhall.com

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 - El 2 Regulations requires "open space" to be labeled & purpose of such area labeled on plan - not there?; 23.6-E requires wetlands to be labeled. Section 23.5-B requires 60' 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: WJM DATE: 8/24/2020

- IS*
- note. 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.*

Geraghty & Bonnano, LLC

Attorneys at Law

August 26, 2020

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Via Email: billm@eltnh.com
William Mulholland, Zoning Official
Via Email: ggoeschel@eltnh.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:

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NEW LONDON, CONNECTICUT 06320

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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.

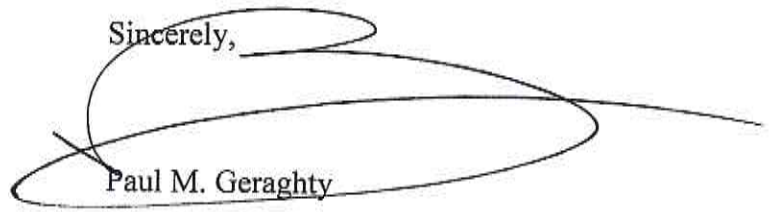
In response to Bill’s comments not already addressed;

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,

A large, stylized handwritten signature in black ink, appearing to read "Paul M. Geraghty". The signature is written over the printed name below it.

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*
PHILIP M. JOHNSTONE+*
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"



WALLER
SMITH &
PALMER, P.C.
Attorneys at Law

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

EXHIBIT 1

----- Forwarded message -----

From: **Kristen Clarke** <kristentclarke@gmail.com>

Date: Thu, Aug 13, 2020 at 4:35 PM

Subject: Re: Applications - Nottingham Hills

To: Gary Goeschel <ggoeschel@eltownhall.com>

Cc: Paul Geraghty <pgeraghty@geraghtybonnano.com>, Jennifer Lindo <jlindo@eltownhall.com>, dholmes@llhd.org <dholmes@llhd.org>, Victor Benni <vbenni@eltownhall.com>, Bill Mulholland <billm@eltownhall.com>, Mark Nickerson <mnickerson@eltownhall.com>

See attached additional information.

Thanks,
Kristen

On Thu, Aug 6, 2020 at 5:47 PM Gary Goeschel <ggoeschel@eltownhall.com> wrote:

Paul,

I left you a voicemail this afternoon to follow up. In regards to the two Applications for Lot Line Revisions:

- The Application for a Lot Line Revision between 11 and 15 Upper Kensington Road is still awaiting approval from the Ledge Light Health District.
- The Application for a Lot Line Revision Between 5, 9, and 11 Upper Kensington is also still awaiting approval from the Health District.

As previously discussed, upon receipt of a favorable review by the Ledge Light Health District, I will be able to approve the proposed lot line revisions.

In regards to the Application for a 4 Lot Re-Subdivision of 22 & 24 Upper Kensington, the Public Hearing remains open and was continued to a Special Meeting to be held on August 11, 2020. As you know, upon the close of the public hearing the Commission has 65-days to render a decision. The application appears relatively complete with the exception of the following:

- A Water Supply and Sanitation Report pursuant to Section 5-4 and 5-5 of the East Lyme Subdivision Regulations

- Plans stamped, signed, and sealed by a registered professional engineer or land surveyor licensed in the State of Connecticut pursuant to Section 5-2-2 of the East Lyme Subdivision Regulations.
- In my e-mail correspondence of June 29, 2020, I indicated a yield plan pursuant to Section 4-2-4 of the Subdivision Regulations needed to be provided. The narrative indicates the property could yield 4-lots. However, I do not have a "Yield" Plan prepared pursuant to Section 4-2-4 of the Subdivision regulations demonstrating a conventional lot and street layout.
- In addition, in my e-mail correspondence of June 29, 2020, I indicated an Erosion and Sedimentation Control Plan pursuant to Section 5-2-2(G) of the Subdivision Regulations needed to be provided. However, I do not have an Erosion and Sedimentation Control Plan prepared pursuant to Section 4-2-4 of the Subdivision Regulations.
- I recommend submitting a construction sequence report for the driveway and rain garden.

As always, if you have any questions please do not hesitate to contact me.

Best Regards,

Gary

Gary A. Goeschel II

Director of Planning / Inland Wetlands Agent

Town of East Lyme

PO Box 519 | 108 Pennsylvania Avenue | Niantic, Connecticut 06357

Office 860-691-4105 | Fax 860-691-0351

ggoeschel@eltownhall.com

From: Paul Geraghty <pgeraghty@geraghtybonnano.com>

Sent: Wednesday, August 05, 2020 10:45 AM

To: Gary Goeschel <ggoeschel@eltownhall.com>

Subject: Kensington

Importance: High

Gary, I just left another voice mail for you. Can you give me a call. Also Kristen will be down Friday and I'd like to set up a meeting to go where we are on lot 14 the IWC admin approval and lot 25 lot line revision. I am trying to get hold of Danielle today but I have to be clear my folks are getting extremely frustrated at the lack of a response by anyone on these applications. You had indicated when we met in mid-July the admin

approval for lot 14 would be forthcoming that week. We haven't heard anything one way or the other on it. Signed and stamped plans for lot 25 were submitted July 13th. Paul

Paul M. Geraghty

Geraghty & Bonnano, LLC

38 Granite Street

New London, CT 06320

p.860-447-8077

f.860-447-9833

"Please note that among the services that this firm provides is for attempting to collect a debt, and if this communication is in regards to a debt collection, any information obtained will be used for that purpose."

*****Confidentiality Notice*****

This email is intended solely for the use of the addressee hereof. In addition, this message may contain information that is confidential, privileged and exempt from disclosure under applicable law. If you are not the intended recipient of this message, you are prohibited from reading, disclosing, reproducing, distributing, disseminating or otherwise using this transmission. Delivery of this message to any person other than the intended recipient is not intended to waive any right or privilege. If you have received this message in error, please promptly notify the sender immediately and delete this message from your system.

EXHIBIT 2

ENGLISH HARBOUR ASSET MANAGEMENT, LLC
1712 Pioneer Avenue , Suite 1939
Cheyenne, Wyoming 82001
(307) 256-7229

August 10, 2020

Via email: ggoeschel@eltownhall.com
Gary Goeschel
Director of Planning
Town of East Lyme
108 Pennsylvania Avenue
Niantic, CT 06333

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

Dear Gary:

As an initial matter, and as evidenced by the July 24 & 27, 2020 submitted plan, we are no longer considering the land to be provided to the East Lyme Land Trust, Inc. "a lot" as this proved to be more trouble than it was worth and we can convey the land to the East Lyme Land Trust under Connecticut Law simply by providing a legal description of the property being conveyed. Accordingly the pending application should now be considered a 3 lot re-subdivision of existing lot 19 aka 22 Upper Kensington Drive and Lot 21 aka 24 Upper Kensington Drive.

1. Water Supply and Sanitation Report

Paul Geraghty met with Danielle Holmes on Monday afternoon August 10, 2020 to address this application and others. We are scheduling a few additional test holes for early next week. Proposed well locations appear to be code compliant given the current locations for the proposed septic systems.

2. Plans Stamped, Signed and Sealed

The most recent of these plans were submitted via email pursuant to the Town of East Lyme's Covid policy as is identified on the Planning Department website on July 24, 2020 and originals were hand delivered to the Planning Department on July 27, 2020. These plans appear in the record of this application as the East Lyme Planning Department's Ex. H

Please confirm you are in possession of original stamped, signed and sealed plans for this application.

GENERAL CONSTRUCTION SEQUENCE-COMMON DRIVEWAY & RAIN GARDEN

1. Secure all necessary permits. Notify "call before you dig" (1-800-922-4455) at least 72 hours prior to excavation. Schedule and attend a pre-construction conference with Town Staff.
2. Clearing limits will be flagged by engineer prior to work being done. Limit of work adjacent to wetlands will not be exceeded.
3. Remove trees, branches and brush within areas to be cleared, chip branches and brush for use as mulch.
4. Install construction exit (anti-tracking pad) and install sediment barriers along the limits of grading and at the limits of clearing for tree protection.
5. Check and repair E&S controls as necessary.
6. Grub stumps and remove brush
7. Strip and stockpile topsoil only in areas to be filled or graded and stockpile on site in an area not in way of construction, seed and mulch stockpile or cover with netting. Place and stake hay bales around stockpiles.
8. Rough grade common driveway.
9. Construct rain garden. Plantings recommended in the months of May or September.
10. Place gravel and pavement in common driveway.
11. Re-spread topsoil on shoulders and disturbed areas.
12. Fine grade, lime, fertilize and seed remaining lawn areas with formal grass seed mixture by June 1 or October 1 depending on actual construction schedule.
13. Remove erosion control devices upon authorization of town officials.

EXHIBIT 2

EROSION & SEDIMENT CONTROL NARRATIVE

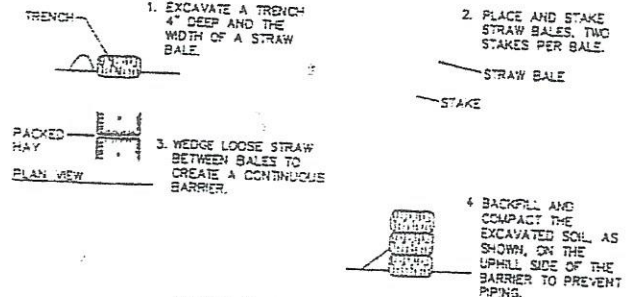
- PRE-CONSTRUCTION**
1. DISTURBANCE OF SOIL SURFACES IS REGULATED BY STATE LAW. ALL WORK SHALL COMPLY WITH AN APPROVED "EROSION AND SEDIMENT CONTROL PLAN" TO PREVENT OR MINIMIZE SOIL EROSION.
 2. THE INSTALLATION AND MAINTENANCE OF EROSION CONTROL DEVICES IS THE RESPONSIBILITY OF THE LAND OWNER, DEVELOPER, AND THE EXCAVATION CONTRACTOR. TOWN OFFICIALS SHALL BE NOTIFIED IN WRITING OF THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE INDIVIDUAL RESPONSIBLE FOR THIS WORK.
 3. THE CONTRACTOR SHALL USE THE "CONNECTICUT GUIDELINES FOR SOIL EROSION AND SEDIMENT CONTROL" (2002), AS AMENDED, AS A GUIDE IN CONSTRUCTING THE EROSION AND SEDIMENT CONTROLS INDICATED ON THESE PLANS. THE GUIDELINES MAY BE OBTAINED FROM THE CONNECTICUT COUNCIL ON SOIL AND WATER CONSERVATION, STATE OFFICE BUILDING, HARTFORD, CT.06106.
- DURING CONSTRUCTION**
4. THE CONTRACTOR SHALL INFORM ALL CONSTRUCTION SITE WORKERS ABOUT THE MAJOR PROVISIONS OF THE EROSION AND SEDIMENT CONTROL PLAN AND SEEK THEIR COOPERATION IN AVOIDING THE DISTURBANCE OF THESE CONTROL MEASURES.
 5. THE CONTRACTOR SHALL SCHEDULE ALL OPERATIONS TO LIMIT DISTURBANCE TO THE SMALLEST PRACTICAL AREA FOR THE SHORTEST POSSIBLE TIME.
 6. THE CONTRACTOR IS RESPONSIBLE FOR THE TIMELY INSTALLATION, INSPECTION, REPAIR OR REPLACEMENT OF EROSION CONTROL DEVICES TO INSURE PROPER OPERATION.
 7. THE CONTRACTOR SHALL INSPECT AND REPAIR EROSION AND SEDIMENT CONTROL DEVICES AT THE END OF EACH WORKING DAY AND AFTER EACH STORM.
 8. THE CONTRACTOR SHALL NOTIFY THE ENGINEER OF UNSATISFACTORY EROSION CONDITIONS NOT CONTROLLED BY THE EROSION AND SEDIMENT CONTROL PLAN AND SHALL INSTALL ADDITIONAL MEASURES AS DIRECTED.
 9. FIELD CHANGES TO THE EROSION AND SEDIMENT CONTROL PLAN SHALL BE MADE ONLY WITH THE APPROVAL OF THE ENVIRONMENTAL TOWN PLANNER OR AGENT, I.e. LOCATION OF SILT FENCE, STOCKPILE, DEWATERING AREA etc.
 10. ACCUMULATED SEDIMENT REMOVED FROM EROSION CONTROL DEVICES IS TO BE SPREAD AND STABILIZED IN LEVEL, EROSION RESISTANT LOCATIONS AS GENERAL FILL WITHIN LAWN AND LANDSCAPE AREAS.
 11. ALL DISTURBED AREAS NOT COVERED BY BUILDINGS, PAVEMENT OR WOOD MULCH SHALL BE PLANTED WITH GRASS ON 4 IN. TOPSOIL.
 12. MULCHING: IMMEDIATELY FOLLOWING SEEDING, MULCH THE SEEDED SURFACE WITH STRAW OR HAY AT A RATE OF 70 LBS./1000 SF. SPREAD MULCH BY HAND OR MULCH BLOWER. PUNCH MULCH INTO SOIL SURFACE WITH TRACK MACHINE APPROXIMATELY 2-3 IN. TO ANCHOR.
 13. SEEDING BETWEEN APRIL 1 TO JUNE 1, AND AUGUST 15 TO SEPTEMBER 1. ALL DISTURBED AREAS SHALL BE IMMEDIATELY GRADED AND SEEDED TO PROMOTE STABILIZATION OF SLOPES.
 14. A FABRIC FILTER SOCK SHALL BE USED FOR ANY DEWATERING.

SOIL AND EROSION CONTROL

1. HAY BALES / SILT FENCE ARE TO BE INSTALLED PRIOR TO CONSTRUCTION.
2. ONLY REMOVE TREES AND VEGETATION NECESSARY FOR CONSTRUCTION.
3. PERMANENT SEEDING SHOULD BE DONE AS SOON AS POSSIBLE AFTER CONSTRUCTION FINISHES. LIME AND FERTILIZE. RECOMMENDED SEEDING DATES ARE APRIL 15 TO JUNE & AUG. 15 TO OCT. 1.
4. RECOMMENDED SEED (PER EROSION AND SEDIMENT CONTROL HANDBOOK) KY31 TALL FESCUE 150 lbs. PER ACRE.
5. HAY BALES AND SILT FENCE TO REMAIN WHERE PLACED UNTIL ALL DISTURBED AREAS ARE PERMANENTLY STABILIZED.
6. NO ERODED SEDIMENT SHALL BE PERMITTED TO LEAVE THE SITE OR WASH INTO THE DRAINAGE SYSTEM.
7. IF SEEDING CANNOT MEET RECOMMENDED DATES, TEMPORARY MULCH IS TO BE APPLIED IN ACCORDANCE WITH THE TABLE BELOW.

MULCHES	RATES PER 1000 FT	NOTES
STRAW OR HAY 1/2 - 2 TONS PER ACRE	70-90lbs	FREE FROM WEEDS & COARSE MATTER. MUST BE ANCHORED SPREAD WITH MULCH BLOWER OR BY HAND

8. ANY HAY BALES OR SILT FENCE REMOVED DURING CONSTRUCTION SHOULD BE REPLACED EACH NIGHT.
9. ANY MATERIAL STOCK PILED SHOULD BE TEMPORARILY SEEDED.



10. ALL ROAD SECTION EMBANKMENTS, EITHER CUT OR FILL, SHOULD BE STABILIZED AT THE TOE OF THE SLOPE BY STAKED HAYBALES OR SILT FENCE.
11. SWALES AND DIVERSION STRUCTURES SHOULD HAVE HAY BALES PLACED ACROSS THEM EVERY 100' IN ACCORDANCE WITH THE DETAIL BELOW.

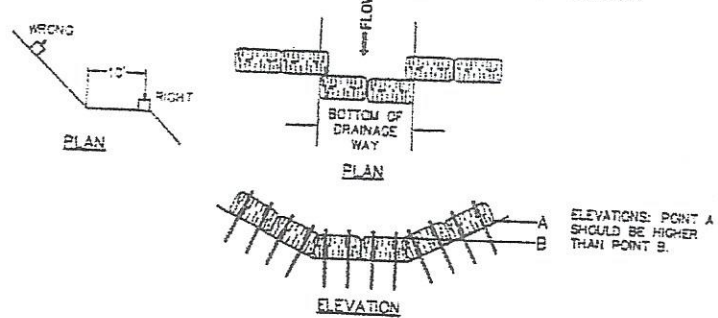


EXHIBIT 1

Sincerely,

A handwritten signature in cursive script that reads "Kristen Clarke".

Kristen T. Clarke PE

Cc Paul Geraghty via email pgeraghty@geraghtybonnano.com

Danielle Holmes via email dholmes@llhd.org

Bill Mulholland via email billm@eltownhall.com

Mark Nickerson via email mnickerson@eltownhall.com

3. Yield Plan Section 4-2-4

This was provided as part of the initial application on March 3, 2020 as page 3 of the submitted plans and appears in the record of this application as page 3 of the East Lyme Planning Department's Ex. B. I provided this plan again in my reply dated July 7, 2020 to your and Mr. Benni's comments received on June 30, 2020. The Conventional Plan appears as part of that response which is identified as Ex. E to the Planning Departments record.

If you believe this plan is deficient please provide me the specifics of your claimed deficiency so we can either discuss it/them or we can make the requested corrections.

4. Erosion and Sedimentation and Control Plan

See attached Ex. 1 which will be added to a new page (Page 5 of 5) to this applications plans.

If you believe this plan is deficient please provide me the specifics of your claimed deficiency so that we can either discuss it/them or we can make the requested corrections.

5. Construction Sequence Plan for Driveway and Rain Garden

See attached Ex. 2 which will also be added to new page 5 Of 5 of this applications plans.

If you believe this plan is deficient please provide me with the specifics of your claimed deficiency so that we can either discuss it/them or we can make the requested corrections.

Please be advised our Surveyor's office has been without power and closed for much of the past week due to Tropical Storm Isaias so it may be a few days before we are able to provide you with revised plans which will be provided to you in both electronic and original form stamped, signed and sealed.

EXHIBIT 3

From: [Gary Goeschel](#)
To: [Kristen Clarke: pgeraghty@geraghtybonnano.com](#)
Cc: [Jennifer Lindo](#); [Bill Mulholland](#); [Victor Benni: dholmes@lhd.org](#)
Subject: Nottingham Hills 4-Lot Re-subdivision, Conservation Design Development
Date: Tuesday, August 25, 2020 11:52:47 AM
Attachments: [Zoning Comments 8-24-20.pdf](#)

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

Gary A. Goeschel II

Director of Planning / Inland Wetlands Agent

Town of East Lyme

PO Box 519 | 108 Pennsylvania Avenue | Niantic, Connecticut 06357

Office 860-691-4105 | Fax 860-691-0351

ggoeschel@eltownhall.com

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, 23.6-E requires "open space" to be labeled & purpose of such area labeled on plan - not there?; 23.6-E requires setbacks to be labeled. Section 23.5-B requires 60' 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.*

EXHIBIT 4

Geraghty & Bonnano, LLC

Attorneys at Law

August 26, 2020

PAUL M. GERAGHTY*
MICHAEL S. BONNANO
JOHANNA McCORMICK
MARK A. DUBOIS'
PATRICIA A. KING**
JONATHAN E. FRIEDLER††

*Also Admitted in New York
† Board Certified, Trial Advocate

**Se habla español

†† Also Admitted in Massachusetts and North Dakota

Via Email: billm@eltonhall.com
William Mulholland, Zoning Official
Via Email: ggoeschel@eltonhall.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.

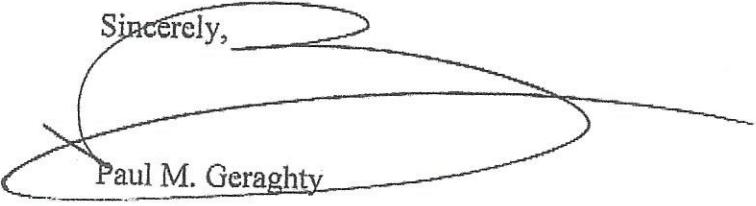
In response to Bill’s comments not already addressed;

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 abut 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.org

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
 Section 23.2 Regulations requires "open space" to be labeled if purpose of such area labeled on plans - not there?; 23.6-E requires setbacks to be labeled. Section 23.5-B requires 60' setbacks to be labeled on plans 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: WJM DATE: 8/24/2020

- ^{IS} note. ~~is~~ 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
Attorneys at Law

HUGHES GRIFFIS
EDWARD B. O'CONNELL
TRACY M. COLLINS*
PHILIP M. JOHNSTONE+*
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"



WALLER
SMITH &
PALMER, P.C.
Attorneys at Law

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,

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.

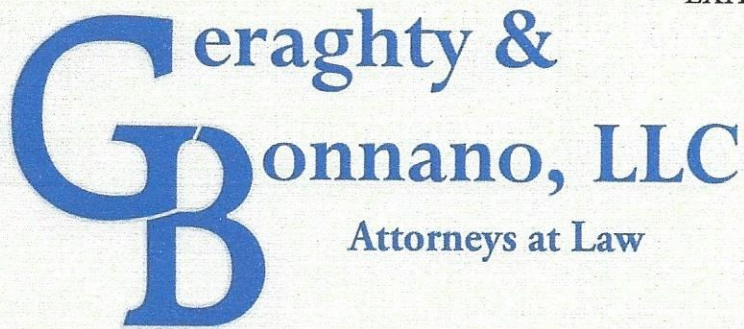
There are no cases on this precise issue, so one must look to the language of the statute and the regulations. In this case the Original Tract that was submitted to the Commission for subdivision approval comprised 330 acres. The Commission required, per its regulations, that the Developer set aside 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

EXHIBIT 5



PAUL M. GERAGHTY*
MICHAEL S. BONNANO
JOHANNA McCORMICK
MARK A. DUBOIS†
PATRICIA A. KING**
JONATHAN E. FRIEDLER††

*Also Admitted in New York
† Board Certified, Trial Advocate

**Se habla español

†† Also Admitted in Massachusetts and North Dakota

August 12 2020

Via email ggoeschel@eltownhall.com

Gary Goeschel
Director of Planning
Town of East Lyme
108 Pennsylvania Avenue
Niantic, CT 06357

Re: Lots 19 & 21 Upper Pattagansett Drive English Harbour

Dear Gary:

This letter is to follow up on my correspondence of Monday regarding the hearing for the above captioned re-subdivision. Given the executive orders regarding public hearings I wanted to confirm my understanding as to the time frame remaining for the commission to act. The initial public hearing was opened on July 27, 2020 by way of a special meeting. It was continued until August 4, 2020 and thereafter further continued to August 11, 2020 awaiting a response from Ledge Light Health District as to the septic approval. On August 10, 2020, I requested the August 11 meeting be cancelled and the hearing rescheduled to the regular September meeting which is September 8, 2020 in order that we will have a response from Ledge Light Health District so the commission may act. My client has consented to the extension of time to conclude the public hearing until September, 9, 2020

Please confirm that we are within time frame for conducting and concluding the public hearing in a timely manner or in the alternative schedule a public hearing on this matter on or before the August 31, 2020 original deadline

Replies to New London only at:

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

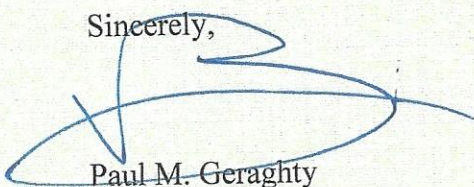
WWW.GERAGHTYBONNANO.COM

131 DWIGHT STREET
NEW HAVEN, CONNECTICUT 06511

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

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Paul M. Geraghty', written over the printed name.

Paul M. Geraghty

cc: English Harbour Asset Management, LLC

EXHIBIT 6

Exhibit S

From: [Paul Geraghty](#)
To: [Gary Goeschel; Jennifer Lindo](#)
Subject: Lots 19 & 21
Date: Friday, August 21, 2020 4:01:41 PM

Gary, in light of the comments received today not from but on behalf of Mr Benni my client will be seeking a continuance of the hearing on the 1st to the 8th. Paul

Geraghty & Bonnano, LLC

Attorneys at Law

PAUL M. GERAGHTY*
MICHAEL S. BONNANO
JOHANNA McCORMICK
MARK A. DUBOIS†
PATRICIA A. KING**
JONATHAN E. FRIEDLER††

*Also Admitted in New York
† Board Certified, Trial Advocate

**Se habla español

†† Also Admitted in Massachusetts and North Dakota

August 28, 2020

Via Email kirkscott@hotmail.com & Hand Delivery to East Lyme Planning Department
Kirk Scott, Chairman
Town of East Lyme Planning Commission
108 Pennsylvania Avenue
Niantic, CT 06357

Re: Lot Line Revisions/Re-Subdivision
Nottingham Hills Subdivision Lots 19 & 21

Dear Chairman Scott:

On behalf of my client English Harbour Asset Management LLC, this correspondence shall serve as my client's consent to keep open the Public Hearing on the above referenced application until December 1, 2020. This request is based on the following analysis after review of the relevant Connecticut Statutes and the 2020 Executive Orders of the State of Connecticut's Governor and for the reasons set forth herein, which will be addressed in further detail beginning at the East Lyme Planning Commission meeting on September 1, 2020 and continuing thereafter as necessary :

Pursuant to C.G.S. 8-7d (a) an applicant may consent to the extension of s public hearing up to 65 days from the date the public hearing should have been closed. Once a public hearing is commenced the commission has 65 days in which to conclude it. Section 7d (a) allows the applicant to consent to an additional 65 days. Please accept his as my client's consent to an additional 65 days to close the hearing. To avoid the possibility of having to resubmit the application we are seeking a continuance. The reasons for my client's consent are set forth more fully herein.

This action to increase the time for the public hearing is necessitated by the fact that my client's application and its plans are receiving rather extremely untimely reviews by Town Staff as evidenced by the following.

As you may recall from the record of the August 4, 2020 public hearing, and the video recording thereof, Mr. Gooschel indicated on at least two occasions that my client's

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

131 DWIGHT STREET
NEW HAVEN, CONNECTICUT 06511

WWW.GERAGHTYBONNANO.COM

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

application/plans were substantially complete except for receipt of the review by Ledge Light Health District of Septic/Well locations which consisted of two B-100a application reviews for the existing two lots and a one lot subdivision review of the proposed new lot. Mr. Goeschel confirmed this fact to me via email dated 8/6/2020 @ 5:47 pm, Ex. 1. In response to Mr. Goeschel's email my client provided the requested information on August 13, 2020, Ex. 2, to which we have received no further response.

On August 10, 2020 I met with Danielle Holmes at Ledge Light Health District to review the outstanding issues that ultimately included review of the plan revisions submitted to the East Lyme Planning Department on July 24, 2020 (which she had not been provided a copy of by the East Lyme Planning Department as of the date of our meeting some 18 days after submission) and we scheduled site testing for August 19, 2020. We received Ms. Holmes test hole results the following day and have added the results and new test hole and perk locations to our revised plans. I would note for the record the review by Ledge Light are B-100 a's for the existing two lots and "subdivision feasibility" for proposed new lot #23. Copies of these applications were included as an exhibit to the design report that was submitted with the pending application on March 3, 2020. The applicant and I wish to thank Ms. Holmes for her cooperation and assistance.

Throughout the recent interaction with Ledge Light Health District/Ms. Holmes It became clear to the undersigned that the sole reason Ledge Light had not completed their review resulted from the failure of the Planning Department to provide her with the revised plans submitted to the East Lyme Planning Department by my client on April 23, 2020, June 25, 2020 and July 24, 2020, all of which are or should be a part of the record of this application, pursuant to and in accordance with the Town of East Lyme's Application/Document/Plan(s) "COVID SUBMISSION POLICY" identified on the Town's web site.

With regard to the town engineers review of my client's plans the Town of East Lyme Planning Commissions record of this application reflects the following:

- | | |
|--|-----------------|
| 1) Plans and application submitted: | March 3, 2020 |
| 2) Receipt of first comments from town engineer | June 30, 2020 |
| 3) Revised Plans submitted (responsive to town engineer) | July 24, 2020 |
| 4) Receipt of comments from town engineer re #3 | August 21, 2020 |
| 5) Immediate meeting requested with staff | August 26, 2020 |
| 6) Staff unavailable until 8/31/2020 | |

With regard to the zoning review.

- | | |
|------------------------------------|---------------|
| 1) Plans and application submitted | March 3, 2020 |
|------------------------------------|---------------|

2) Comments received August 25, 2020

3) Response to Zoning/Town Planner 8/25 comments August 26, 2020

The zoning comments are attached to this letter as Ex. 3 which also appears in the record of this application as Ex. T. As it is of significant importance, I would direct you to the "review deadline" date identified thereon which is July 7, 2020 making these comments nearly seven (7) weeks late and submitted nearly a month after the public hearing was opened on this application.

I enclose as Ex. 4 to this letter my response to the zoning comments dated, and emailed to Mr. Goeschel, Ms. Lindo and Mr. Mulholland on August 26, 2020 which is yet to be uploaded onto the Planning Commissions website for Tuesday's hearing despite my request for it to be included in the record of this application and town staff's legal obligation to timely upload it for public review.

Additionally on August 12, 2020 I requested a continuance of the public hearing until September 8, 2020, Ex. 5. As I was told by town staff it was the next regularly scheduled meeting date of the Planning Commission. This request was to allow time to address Ledge Light Health District's issues previously discussed herein. Some 10 days later I was notified by planning department staff that the meeting was actually to be held on September 1, 2020. Additionally, I received further comments from Mr. . Benni resulting in my email which is Ex. 6. I note that the Planning Commissions scheduled meeting dates are not posted on the Town of East Lyme's web site as is required by Connecticut Law.

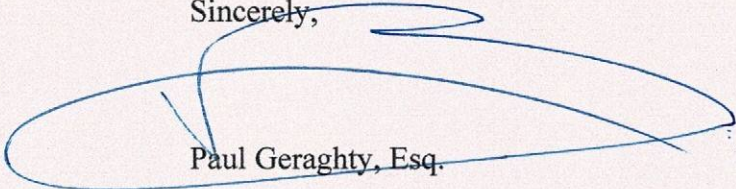
As demonstrated by their respective records my client has been timely responsive to every request made to them by this Commission, town staff and the East Lyme Inland Wetlands Agency (per the statutory "wetlands determination" process). Unfortunately, and as is demonstrated by this letter and the record of this application, town staff have been, at best, uncooperative in reviewing this application which upon information and belief has its origins elsewhere in the East Lyme Town Hall through person(s) with superior authority over said staff who have ulterior motives resulting from matters that do not involve my client, this application or this property. This is not to suggest that we believe it to be the commission.

In the final analysis based on the record of this application and the law my client is entitled to the extension of time requested and would respectfully request this be addressed by the planning Commission on or before September 8, 2020.

In conclusion I note for the record my client has incurred substantial economic damage resulting from town staff's untimely reviews of this applications plans, amongst the other nefarious conduct that is occurring, which is causing unnecessary delay and increased cost to my client.

I thank the Commission for its review of the request made herein.

Sincerely,



Paul Geraghty, Esq.

cc: Kristen T. Clarke, PE (via email: kristentclarke@gmail.com)
Victor Benni PE (via email: vbennie@eltonhall.com)
Mark Nickerson (via email: mnickerson@eltonhall.com)
Danielle Holmes (via email: dholmes@llhd.org)
Gary Goeschel (via email: ggoeschel@eltonhall.com)

From: [Brian Bohmbach](#)
To: [Jennifer Lindo](#); [Gary Goeschel](#); Gary@uptonbass.com
Subject: Comments on the 22-24 Upper Kensington Re-subdivision
Date: Tuesday, September 01, 2020 8:12:17 PM

Gary,

I have the following opinion of the 22-24 Upper Kensington Re-subdivision; after reviewing the Architect's drawings and viewing the site plan from the road, it is my opinion the re-subdivision is inconsistent with the POCD. My opinion is based on Section 1.1 of the POCD that describes that part of the mission of the POCD is for the "maintenance of property values."

The lot on Kensington is a wooded, slopped lot that will require significant site work to cut the property into the proposed building lots, versus the original property layout. The lots shown on the drawings show proposed homes with very little distance from one another and lot sizes that will limit the square footage of homes that can be built there. This plan is inconsistent with the neighborhood houses, which consist of large lots with large single family homes situated on them. Build up of these lots in my opinion will negatively affect the property values of the surrounding properties.

Thanks.

Sent from [Mail](#) for Windows 10

From: [Jennifer Lindo](#)
Sent: Wednesday, August 26, 2020 11:22 AM
To: [Balint, Marcy](#); [Brian Bohmbach](#); [Elizabeth Allen \(eallensocialphd@gmail.com\)](mailto:eallensocialphd@gmail.com); [Gary Goeschel](#); Gary@uptonbass.com; [Jennifer Lindo](#); [Karen Zmitruk](#); [kirk scott](#); [Marc Salerno \(marcsalerno@sbcglobal.net\)](#); [Mark Nickerson](#); [Mary Ann Salvatore](#); [Michelle Royce Williams \(m.roycewilliams@gmail.com\)](mailto:Michelle.Royce.Williams@m.roycewilliams@gmail.com); [Nichole Davison \(affair2remember22@gmail.com\)](mailto:Nichole.Davison@affair2remember22@gmail.com); [Rich Gordon \(richgordon@frontier.com\)](mailto:Rich.Gordon@frontier.com); [Rose Ann Hardy \(rannhardy@yahoo.com\)](mailto:RoseAnn.Hardy@rannhardy@yahoo.com); [Sue Spang \(suespang58@gmail.com\)](mailto:Sue.Spang@suespang58@gmail.com); [Tom Fitting \(tomfitting9@hotmail.com\)](mailto:Tom.Fitting@tomfitting9@hotmail.com)
Subject: Planning Commission Meeting of September 1 2020

Good Morning,

Attached please find the Agenda for Tuesday's meeting and last months minutes for review.

Below please find the link to the website where all of the documents are located for your review:
<https://eltownhall.com/government/boards-commissions/planning-commission/planning-commission-2020-materials/planning-commission-2020-materials-september-1/>

Below is the link to the Zoom meeting for Tuesday:

Join Zoom Meeting

<https://us02web.zoom.us/j/88057365418?pwd=UVIrbTN6YnhydTJvRFJlOQ1NHVTJlVQ09>

Please be sure to RSVP for attendance purposes.

Thank you,
Jenn

Jennifer Lindo
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