

# EASTLYME PLANNING COMMISSION

Regular Meeting, December 14, 2021. 7:00 PM

East Lyme Town Hall, main room

CHAIRMAN: Kirk Scott

PLANNING DIRECTOR: Gary Goeschel II

SECRETARY: Michelle Williams

RECORDING SECRETARY: Sue Spang

## CALL TO ORDER 7:0

### I. ROLL CALL

**Present:** Kirk Scott, Michelle Williams, Richard Gordon, Nichole Davison, Jason Deeble, Thomas Fitting, Brian Bohmbach, Alt., Timothy La Ducer, Alt., Olivia Fairchild, Alt.

**Absent:** none

**Also, Present:** G. Goeschel, John Casey, Special Counsel for the Commission.

### II. CALL FOR ADDITIONS TO THE AGENDA

**A. MOTION: (Williams/Davison) to add under New Business the request for release of bond from Jason Pazzaglia, Owner, Pazz Construction LLC, for 249 Upper Pattagansett Road and 41 Scott Road. Vote: APPROVED unanimously.** FILED

### III. CALL FOR PUBLIC DELEGATIONS-none

### IV. REPORTS

Dec 16 20 21 AT 8:11 AM/PM  
*(Signature)*  
EAST LYME TOWN CLERK

**A. Communications-no report**

**B. Zoning Representative-K. Scott** reported that the Viking Arms application was approved.

**C. Ex-Officio-no report**

**D. Planning Director-** members can have town issued emails if they choose

**E. Subcommittees**

M. Williams informed the members, the POCD subcommittee has not met since October. The Commission set a date of January 25, 2022, 6:30 for the first POCD meeting of 2022.

**F. Chairman: Kirk Scott-** thanked everyone for their service and congratulated the newly elected members

### V. APPROVAL OF MINUTES

**A. October 12, 2021, Regular Meeting Minutes**

**MOTION: (Williams/Gordon) to APPROVE the minutes of October 12, 2021, as presented.**

**Vote: APPROVED. In favor-Williams, Scott, Gordon, Davison, Fitting. Opposed-none. Abstaining-Deeble**

### VI. PUBLIC HEARINGS-none

### VII. SUBDIVISIONS / RE-SUBDIVISIONS (Pending)

**B. Application of Kristen Clarke, P.E., Applicant, Cold Spring Lot Management, LLC, Owner, for an 8-lot subdivision of property located at 121 Upper Pattagansett Road, East Lyme, Assessor's Map 35.0, Lot 44.**

G. Goeschel informed the members that the Inland Wetlands Agency approved the application with conditions to include a bio swale on the north side of the road and a conservation easement along the south side of Upper Pattagansett Road. He reiterated the application is for a sub-division not a re-

subdivision.

Attorney P. Geraghty, for the applicant, informed the members that the application is up to date and though the Inland Wetlands Agency approved the application last night a condition of approval needs to be worked out between the applicants engineer and the town engineer.

J. Deeble stated that he was not a member of the Commission when this application was discussed but he has kept up with it and was a member of the Inland Wetlands Agency when it came before them.

- P. Geraghty submitted a report from the State Archeologist. He introduced Tim May and J.P. Mereen to answer any questions the Commission may have. Jeffery Torrence is also available as someone who was there at the beginning of the project to answer questions on open space.
- P. Geraghty submitted an email (11/16/2021) to Special Counsel to the Commission, John Casey, asking for G. Goeschel to recuse himself due to a conflict of interest.
- P. Geraghty stated he has received an email from the Town Engineer informing him that all comments/concerns have been addressed.
- Ledge Light letter (12/13/2021) review letter for septic systems. He said a typo on the original letter has since been corrected

P. Geraghty reviewed what has been presented at the last meeting, specifically exhibits A, B, and CC, the application proposes dividing 14 acres of the property into 8 building lots. The remaining land will remain in the same historical manner and is not proposed for any residential use. He noted the following items:

- The applicant has not received comments from the zoning department as it meets all regulations.
- The plan calls for GST septic systems which are the most advanced system approved by the State of Connecticut.
- The town engineer has approved the storm water management plans and the erosion and sedimentation plans.
- The applicant has fulfilled the sub-division regulations and received approval of the Inland Wetlands Agency.
- The Natural Diversity Data Base letter
- The determination letter concerning construction letters and site design protection
- Phase IB archeology letter
- Site line plan

P. Geraghty believes the open space issues have been resolved and the position taken by the town is incorrect.

He referenced exhibit EE which gives the history of the project stating at the onset of development of Nottingham Hills sub-division. P. Geraghty states that the town knew it was to be a phased project over an unknow period of time. The land was not all acquired at the same time and lots/land were added to the sub-division as the properties were acquired.

Phase I of the Nottingham Hills Sub-division is 7 lots, land acquired by Robert Blatt with a common boundary with the girl scout camp. Lot 6 notes an area for future phase development and an open space covenant which defers the dedication of open space until a future phase.

Letter from attorney Attorney Block indicating that an applicant engaging in a phased sub-division

can reserve land for open space for future development and at the completion of the phases can allocate that open space to a different area, therefore the applicant can move the open space if desired as long as the appropriate amount is satisfied.

Phase II consists of 46 lots and received Inland Wetlands Agency approval but final approval for development was delayed due to litigation with the town. As a result, the property was split into IIA and III.

Phase IIA consists of additional contiguous land bought April 2005 and land bought from Torrence Family Limited Partnership in 2003

Twenty-three acres of land were deeded to the Town of East Lyme, for open space.

Phase III approved by the East Lyme Planning Commission, December 2005 which included the required addition of land bought from Robert Blatt. The boundary of the contiguous property of Nottingham Hills, page SD3 was noted.

Phase IV, approved by East Lyme Planning Commission on November 16, 2010, approved the additional land acquired by Robert Blatt. Mr. Blatt was a member of New England National and as part of the settlement with the Town of East Lyme, New England National was obligated to assign its properties and development rights to another entity, that entity ended up being English Harbour Asset Management.

New England Management and East Lyme Planning commission reached an agreement providing a conservation easement of 10 acres despite the developer had already met the open space requirements, with the understanding the sub-division would use/bank the open space for future development.

Phase V, English Harbour Asset Management obtained the development rights to the Nottingham Hills sub-division in March 2020.

The open space provided is more than required and has exceeded the requirement by 9.1 acres. The combined total transferred to the East Lyme Land Trust is 37.9 acres as of December 2020. Upon recalculating the open space, it totals 79.34 acres of the total sub-division of 107.82 acres, approximately 73.5% of the sub-divisions land is now in open space.

Therefore, the proposed application is part of the original sub-division and does not require any additional open space dedication. If this was a stand-alone sub-division, 4.2 acres would be required.

K. Scott asked when does the sub-division end, does it keep going with acquisition of new properties.

P. Geraghty stated that as long as there is land that can be acquired and added to the sub-division it will go on.

M. Williams asked about exhibit EE and if there is evidence of master plan from the beginning and if so, the current parcel would not be included. When open space was dedicated, not knowing if more property would be acquired, then the dedication of opens space would have been complete. If someone else acquired the property, they would have to dedicate the 4.2 acres of open space.

P. Geraghty agreed, but language in prior approvals give them the right to bank the already dedicated open space to apply to future development.

M. Williams asked for clarification on the most recent approval in dealing with already approved lots which did not include any new open space requirements for that re-subdivision.

P. Geraghty stated that application was for lot line revisions so there were no new open space requirements. He said back to 2011, it was clear the open space was meant to be banked for future development.

M. Williams stated the application is for newly acquired property and it appears that in regard to the

applicants stand on the banked open space, if they started out with one big piece of land they can do as they say when banking of opens space but does that hold when pieces are added for development. Only 10 aces are banked.

P. Geraghty said it is not clear if all the property was under single ownership but according to the 2011 approval it was clear they were banking open space for future development. It was clear that the applicant was intending to buy more land to add to the common development project. The required open space for this application can come out of the 10 acres, banked open space.

K. Scott asked about the status of development, P. Geraghty stated approved lots have been built and others are empty lots. Most are owned by English Harbour.

K. Scott asked what would terminate development rights which include banked open space.

P. Geraghty stated the development would be terminated when development is done.

John Casey, Special Counsel for the Commission with the law firm of Robinson and Cole, addressed the letter asking for the recusal of G. Goeschel. He stated he has not investigated the issue. If it was a member of the commission, then it would be up to that individual member to decide if they had a conflict of interest. There is nothing he can refer to when a conflict addresses a town staff member. He said it was not up to the commission to decide if G. Goeschel should recuse himself.

G. Goeschel asked why he was not made aware of the concerns earlier in the application process. He said he would have been more than happy to refer the application to the SECCOG.

G. Goeschel addressed the question of the contiguousness of this property to the Nottingham Hills subdivision. Yes, it abuts the subdivision but the land along Kensington Drive has already conveyed out. So, the question is if it is separate from the overall subdivision.

J. Casey asked G. Geraghty what section of the regulations he is proceeding under regarding open space.

P. Geraghty stated it was a conventional subdivision.

J. Casey said it was his understanding they are proceeding under section 7.2.2., of the sub-division regulations. He asked if it was the applicants understanding that this section applies to abutting parcels under common ownership in the future and not just abutting parcels under common ownership at the start of the original subdivision.

P. Geraghty believed that it would any abutting parcel acquired since the start of the original subdivision.

J. Casey read section 7.2.2. which would seem to say you can subdivide and dedicate open space in the future, but it is the applicant's stance that you can dedicate open space and bank it. P. Geraghty agreed with that interpretation of his view.

J. Casey asked if there was notation on the approved maps stating the banking of open space, size and location. P. Geraghty did not know if it was on the map but would research it.

M. Williams stated they should review the zoning regulations of the conservation design development as the application exceeds section 23 of a subdivision of over 10 acres or over 4 lots.

P. Geraghty stated that because of the shared driveways there is less impact, so it falls under a common subdivision.

G. Goeschel said the outstanding items are figuring out the open space issue. But if this is determined this is a separate piece/parcel then it needs to comply with current regulations.

The conditions of the Wetlands approval still need to be worked out between engineers for the applicant and town.

J. Casey stated the record from the 12/13/2021 Inland Wetlands Agency will reflect that if the bio

swales are needed it would be in the opinion of the town engineer.

J. Casey said this property has had a long and complicated history and both sides need to have their questions and concerns addressed.

G. Goeschel stated the Commission has 35 days from the issuance of the Wetlands decision. The members discussed continuing the application to January 11, 2022. The Commission decided to discuss outstanding issues to be addressed.

It was noted for the record the applicant has left the room while the application is still being discussed.

The members discussed issues they would like to have researched/answered:

- Can the Commission require a conservation design development (CDD) Section 23, as opposed to a common/conventional design?
- Get clarifying case law on section 7.2.2 of the zoning regulations
- Is the application and the new property considered contiguous now that the abutting property is no longer owned by the applicant/developer
- Provide confirmation of banking of open space for the future and provide documentation with maps other sources
- Clarify if the original permit expiration as well as conveyance of the original land to landowners other than applicant, count as part of the newly acquired land as being contiguous to the original expired and conveyed subdivision land
- What subdivision regulations existed prior to 2011 in regard to banked open space
- Bond being called on Nottingham, is that considered completion of the development

G. Goeschel will be proactive and make the First Selectman aware of an accusation of a conflict of interest by the applicant.

The application will be tabled to the January 11, 2022, meeting.

**MOTION: (Deeble/Gordon) to schedule a special meeting for January 11, 2022. Vote: APPROVED unanimously.**

**VIII. ZONING REFERRALS: [Connecticut General Statute (CGS) 8-3a]- none**

**IX. MUNICIPAL REFERRALS [Connecticut General Statute (CGS) 8-24]-none**

**X. OLD BUSINESS**

**A. Affordable Housing Plan-no report**

**XI. NEW BUSINESS**

**A. 2022 Meeting Calendar**

The members discussed the presented meeting dates for 2022 and amended as follows:

\* January 25, 2022

February 8, 2022

March 8, 2022

April 12, 2022

May 10, 2022

June 14, 2022

July 12, 2022  
August 9, 2022  
September 13, 2022  
October 11, 2022  
November 15, 2022  
December 13, 2022

**MOTION: (Williams/Davison) to accept the 2022 meeting dates as amended. Vote: APPROVED unanimously.**

**B. ELECTION OF OFFICERS**

**MOTION: (Deeble/Gordon) to add election of Vice Chairman as B 1.5. Vote: APPROVED unanimously**

**1. Chairman**

G. Goeschel called for nominations for Chairman.

R. Gordon nominated M. Williams for Chairman. There were no other nominations when called for.

M. Williams was elected unanimously as Chairman

**1.5 Vice Chairman**

M. Williams called for nominations for Vice Chairman.

M. Williams nominated K. Scott for Vice Chairman. There were no other nominations when called for.

K. Scott was elected unanimously as Vice Chairman of the Planning Commission

**2. Secretary**

M. Williams called for nominations for Secretary

J. Deeble nominated R. Gordon for Secretary. There were no other nominations when called for.

R. Gordon was elected unanimously as Secretary of the Planning Commission

M. Williams noted the passing of Peter Lynch, a long time and valued member of the Planning Commission and expressed the Commission's sympathies to his family.

**C. Request for release of bond from Jason Pazzaglia, Owner, Pass Construction LLC, for 249 Upper Pattagansett Road and 41 Scott Road.**

G. Goeschel stated the site has been stabilized and he is comfortable releasing the bonds.

**MOTION: (Scott/Davison) to approve the release of the bonds for Jason Pazzaglia, Owner, Pass Construction LLC, for 249 Upper Pattagansett Road and 41 Scott Road. Vote: APPROVED unanimously.**

**XII. ADJOURNMENT:**

**MOTION: (Scott/Gordon) to adjourn at 9:04. Vote: APPROVED Unanimously.**

Respectfully Submitted,  
Sue Spang,  
Recording Secretary

**2022 Meeting dates: January 11, (special meeting) January 25, February 8, March 8, April 12, May 10,  
June 14, July 12, August 9, September 13, October 11, November 15 & December 13.**