

Town of

P.O. Drawer 519

**Department of Planning &
Inland Wetlands**

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Inland Wetlands Agent*



East Lyme

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MEMORANDUM

To: East Lyme Planning Commission

From: Gary A. Goeschel II, Director of Planning

Date: January 11, 2022

Re: Application of Kristen Clarke, P.E., for Cold Spring Lot Management, LLC/John Drabik, Owner, for Nottingham Hills Subdivision Phase 5, Prepared for Kristen T. Clarke, P.E., English Harbour Asset Management, LLC, for an 8-lot subdivision of property at 121 upper Pattagansett Road, East Lyme Assessor's Map 35.0, Lot 41.

Upon review of the above referenced application and the following documentation:

- Proposed plans entitled "Pattagansett Preserve At Nottingham Hills (Also known as Nottingham Hills Phase 5)" prepared for Kristen T. Clarke, P.E., English Harbour Asset Management, LLC, 1712 Pioneer Avenue, Suite 1939, Cheyenne, WY 82001, property owner Cold Spring Lot Management, LLC, 18 Drabik Road, East Lyme, CT 06333, dated August 3, 2021, and revised through August 8, 2021, prepared by John Paul Merein of Gerwick-Merein, LLC and plan entitled "Plan of Subdivision Showing existing Buildings and Roads, dated October 11, 2021, scale 1" = 100', Nottingham Hills Phase V, 121 Upper Pattagansett Road, East Lyme, CT 06333", prepared by Tim May, P.E. of May Engineering, LLC;
- Proposed plans entitled "Plan Showing Demonstration of 40-foot Boundary Buffer and 200-foot house setback Requirement for Conservation Design Development Regulations, Nottingham Hills Subdivision, Phase 5, Property of Cold Spring Lot Management, LLC, 121 Upper Pattagansett Road, East Lyme, CT 06333 dated January 5, 2022";
- Proposed plan entitled Drainage Swales, Nottingham Hills Subdivision Phase V, 121 Upper Pattagansett Road, East Lyme, CT 06333, showing Building Lot Development and Grading, Rain Garden Location and Drainage, dated December 15, 2021 received January 7, 2022;
- Correspondence dated January 10, 2022, from Kristen T. Clarke, PE, of English Harbour Associates to the East Lyme Planning Commission regarding Nottingham Hills Subdivision Phase 5; and
- Correspondence dated January 9, 2022, from Kristen T. Clarke, PE, of English Harbour Associates to the Gary Goeschel, Director of Planning, regarding Nottingham Hills Subdivision Phase 5.

I offer the following comments and findings:

FINDINGS:

Whereas: The Commission received the above referenced application at its August 10, 2021, regularly scheduled meeting.

Whereas: The Commission has reviewed the application and received testimony from the applicant, her professionals, and representatives. In addition, Town staff also provided the Commission with comment concerning this application's compliance with local requirements and regulations.

Whereas: The parcel of land constituting the property subject to this application is zoned R-40/20 Rural Residential and the properties abutting the site in all directions are zoned R-40/20 Rural Residential.

Whereas: The Application does not request any waivers.

Whereas: The proposed Subdivision is found to meet the requirements of the East Lyme Subdivision Regulations and the East Lyme Plan of Conservation and Development (POCD) as demonstrated by the following:

Section 4-2-11 Easements and Deeds: Requires copies of all easements and deeds necessary to carry the subdivision plan into effect, conforming to the requirements of these Regulations, including instruments proposed to be executed or delivered after approval of the application shall be submitted. As such, any shared driveway, utility, drainage, or open space easements need to be provided.

Section 5-2-2(E) and 6-8 Stormwater Management Plan: As indicated in Exhibit "MM" Memo from Alex Klose, P.E., Town Engineer, dated December 7, 2021, indicates that the Drainage and Stormwater Report along with the revised plans and calculations address and satisfy his previous comments in Exhibit "H". As such, the proposed plans meet the intent of Section 6-8 of the East Lyme Subdivision Regulations, and the proposed site development will not adversely affect the water quality of downstream water features or exacerbate any downstream flooding. However, the Town Engineer recommends detailed grading and drainage plan(s) for each lot be provided and the proposed drives outlining the spillway management for the raingardens and the grading of the drives/swales in relation to the check dams. In addition, the Town Engineer also recommends an Operations and Maintenance Plan be submitted to the Town with clarification on who the responsible parties for the check dams and raingardens will be, including inspection and maintenance criteria and schedule.

Further, as demonstrated by Exhibits "YY" and "WW" email from Alex Klose, P.E., Town Engineer to Tim May, P.E., indicated that a bio-swale along the north side of Upper Pattagansett Road in front of lots 51, 52, 54, and 55 is not necessary as the existing topography provides a naturally occurring swale. As such, the Town Engineer would not recommend clearing this area to install a swale when the naturally occurring vegetation and topography already serve this function.

Section 5-2-2(G) Erosion and Sedimentation Control Plan: As indicated by Exhibit "NN" the two sheet plan set entitled "Plan Showing Driveway Easements, Eversource Easements, Grading and E&S, Nottingham Hills Subdivision, Phase 5, property of Cold Spring Lot Management, LLC, 121 Upper Pattagansett Road, East Lyme, CT 06333, sheet 4 of 5 and 5 of 5, dated August 3, 2021 and revised through December 8, 2021, was prepared in accordance with the 2002 CT E&S Guidelines. Review of the proposed Erosion and Sedimentation Control Plan revealed the appropriate notes, details, and provisions regarding erosion control measures adequate to control accelerated erosion and sedimentation and reduce the danger from storm water runoff on the proposed site have been incorporated into the proposed plan. Therefore, the Planning Commission may hereby CERTIFY that the Soil Erosion and Sediment Control Plan complies with the requirements and objectives of this Subdivision Regulation.

Section 5-4 Sanitation Report: As indicated in Exhibit "RR" correspondence from Wendy K. Arnold-Brown, R.S., REHS, of Ledge Light Health District, dated December 12, 2021, indicates the proposed lots are "recommended suitable in their current condition" for subsurface sewage disposal systems.

Section 5-5 Water Supply Report: As indicated in Exhibit "RR" correspondence from Wendy K. Arnold-Brown, R.S., REHS, of Ledge Light Health District, dated December 12, 2021, indicates the proposed lots are "recommended suitable in their current condition."

Section 5-6 Pesticide Report: As evidenced by Exhibit “AAA” the applicant’s testimony during public hearing, there have been no known regular applications of pesticides on the subject site currently or historically. In addition, the site was previously used as a campground and is unlikely the use of pesticides and herbicides were used regularly or at all.

Section 5-8 Archeological Survey: Section 5-8 states a survey shall be conducted and a report sent to the State Historic Preservation Office (SHPO) a minimum of 35-days prior to the submission of the subdivision application to the Planning Commission. As demonstrated by Exhibit “CC” the Amended Design Report, indicates the applicant submitted a request to the State of Connecticut Archaeologist to review the proposed subdivision on August 10, 2021, which review resulted in the State requiring a Phase 1b Study be performed for the 14.3 acres encompassing the 8-lot subdivision. In addition, Exhibit “UU” indicates that Dr. Sarah Holmes, PhD. conducted the Phase 1b Study and a copy of said report has been submitted to the SHPO. However, no response from the SHPO has been received. It should also be noted that the Phase 1b Report indicates future disturbance or construction outside the proposed eight lots, where intact soils are present, continue to be categorized as having a high archaeological sensitivity.

Section 6-2 Lot Design Specifications: As indicated by the applicant’s testimony, the proposed subdivision is not a Conservation Design Development (CDD) and is a standard Conventional Subdivision. Second, as proposed the Application is an application for a Subdivision of 64.30-acres of land into 8-building lots and is clearly not a re-subdivision of any previously subdivided land. The proposed subdivision is located within a residential zoning district, adjacent to existing lots which were previously approved as part of a cluster subdivision and continues the pattern of development characteristic of the existing residential cluster development. In addition, the proposed Subdivision lots appear to be laid out in a manner generally consistent with the specifications of section 6 -2 of the East Lyme Subdivision Regulations.

Section 23.2 of the Zoning Regulations states, “The Planning Commission shall require the provisions of this section in the subdivision of any parcel of 10-acres or more in area or any subdivision of 4 or more lots.” Section 23.3 of the Zoning Regulations indicates 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 of Section 23.1.

As demonstrated by Exhibit “CCC”, proposed plans entitled “Plan Showing Demonstration of 40-foot Boundary Buffer and 200-foot house setback Requirement for Conservation Design Development Regulations, Nottingham Hills Subdivision, Phase 5, Property of Cold Spring Lot Management, LLC, 121 Upper Pattagansett Road, East Lyme, CT 06333 dated January 5, 2022” provides a 40-foot wooded or otherwise landscaped buffer along the perimeter of the development to screen development of the proposed lots from existing contiguous lots pursuant to Section 23.5 B1 of the Zoning Regulations. In addition, Exhibit “CCC” also demonstrates a deep “no-build, no-plant” buffer of a minimum of 200-feet may be obtained pursuant to Section 23.5 B2 of the Zoning Regulations, which is required in wooded areas where the sense of enclosure is a feature that should be maintained.

Section 6-2-6 Energy Efficiency and Conservation: As demonstrated by Exhibit “AAA” the applicant describes the use of passive solar energy techniques which would not significantly increase the cost of the housing to the buyer, after any available tax credits, subsidies, and exemptions, has been considered. Such techniques shall maximize solar heat gain, minimize heat loss, and provide natural ventilation during the cooling season.

Section 6-7 Open Spaces: As stated in my previous memorandum Exhibit “TT”, as indicated by the applicant’s testimony, the proposed subdivision is not a Conservation Design Development (CDD) and is a standard Conventional Subdivision. Second, as proposed the Application is an application for a Subdivision of 64.30-acres of land into 8-building lots and is clearly not a re-subdivision of any previously subdivided land. While the proposed subdivision is located within a residential zoning

district, adjacent to existing lots which were previously approved as part of a cluster subdivision and continues the pattern of development characteristic of the existing residential cluster development.

The subdivision is not being proposed as a Conservation Design Development (CDD). However, in order to take advantage of the dimensional flexibility offered by the regulations applicants must provide Open Space in accordance with Section 23.6 of the Zoning Regulations. However, the proposed Subdivision doesn't propose the dedication of Open Space in accordance with Section 23.6 of the Zoning Regulations nor does it propose any open space in accordance with Connecticut General Statutes 8-25. As the application proposes zero Open Space, the application indicates the Open Space requirement has been met through the previous dedication of open space associated with Phase 1, 2, 3, & 4 of the Nottingham Hills Subdivision. However, as previously indicated the subject parcel has never been under common ownership with the abutting, adjacent, or adjoining lands, nor has the subject parcel been previously subdivided or ever a part of any previous applications for subdivision.

As previously noted in Exhibit "TT" 121 Upper Pattagansett Road was never shown on any proposed or approved plan as being a part of the Nottingham Hills Subdivision at the time Phases 1, 2 & 3 were proposed. As indicated by the applicant's testimony and as demonstrated in Exhibit "EE", the subject parcel did abut lots in the Nottingham Hills Subdivision. However, they have never been nor are currently under common ownership. However, as demonstrated by Exhibit "CCC" the proposed plans entitled "Plan Showing Demonstration of 40-foot Boundary Buffer and 200-foot house setback Requirement for Conservation Design Development Regulations, Nottingham Hills Subdivision, Phase 5, Property of Cold Spring Lot Management, LLC, 121 Upper Pattagansett Road, East Lyme, CT 06333 dated January 5, 2022" provides open space in two locations totaling 4.23-acres of Open Space.

Section 6-8 Stormwater Management and Section 6-9 Requirements Regarding Flooding: Based on Exhibit "MM" memorandum from Alex Klose, P.E., Town Engineer dated December 7, 2021, indicates that all his previous comments have been addressed and recommends prior to construction, detailed grading and drainage plans be provided for the lots and the proposed driveways outlining the spillway management practices for the raingardens and the grading of the driveway/swales in relation to the check dams. In addition, he recommended an Operation and Maintenance plan be submitted to the Town, with clarification as to who the responsible parties are for the check dams and raingardens as well as including inspection and maintenance criteria and schedule for such work.

Section 6-9 Requirements Regarding Flooding: As indicated in Exhibit "MM", Memo from Alex Klose, P.E., Town Engineer, dated October 12, 2021, indicates that the revised plans and calculations provided by the applicant, address and satisfy his comments. As such, the Drainage Summary meets the overall intent of Section 6-8 of the East Lyme Subdivision Regulations, and the proposed site development will not adversely affect the water quality of downstream water features or exacerbate any downstream flooding.

However, as demonstrated by Exhibit "SS", the Inland Wetlands Agency modified the plan to include to include a bio-swale along the north side of Upper Pattagansett Road in front of proposed lots 51,52,54, and 55 to mitigate stormwater runoff not being treated by the rain gardens. As demonstrated by Exhibits "YY" and "WW" email from Alex Klose, P.E., Town Engineer to Tim May, P.E., indicated that a bio-swale along the north side of Upper Pattagansett Road in front of lots 51, 52, 54, and 55 is not necessary as the existing topography provides a naturally occurring swale. As such, the Town Engineer would not recommend clearing this area to install a swale when the naturally occurring vegetation and topography already serve this function.

Section 6-10 Street and Roadway Design Specifications: Pursuant to Section 6-10-6 of the Regulations, where a subdivision borders an existing street with less than adequate right-of-way, and the Commission determines that there may be a need to realign or widen the street, the Commission may require the applicant to dedicate land for such future realignment or widening. The proposed plans show a "Parcel 2, Lake Side Parcel of 41,150+/- square feet" in addition to the proposed 8 new lots. However, the plans do not provide a 25-ft right-of-way from the centerline of the existing street, Upper Pattagansett Road (a public Right-of-Way across the subject property) along the frontage of

the land to be subdivided pursuant to Section 6-10-7 of the Subdivision Regulations. However, as demonstrated by Exhibit "SS", the Inland Wetlands Agency modified the plan to also include a 25-foot Conservation Easement along southwest side of Upper Pattagansett Road over lot 55A to maintain the existing vegetative buffer along the lake front to the maximum extent practicable as the proposed plans require the clearing of vegetation on both sides of Upper Pattagansett Road in order to achieve adequate sightlines exiting from the proposed driveways.

Section 6-17 Underground Utilities: Requires underground electric transmission lines, telephone lines and cable television lines to be installed in each proposed subdivision, unless a waiver is granted in accordance with Section 4-13 of these Regulations. As demonstrated by Exhibit "FFF" a note has been placed on the plans indicating the same. Pursuant to Section 4-2-11, copies or drafts of the proposed easements for the installation of underground utilities need to be provided.

Section 6-18 Surety: As the Planning Commission may require surety (e.g. performance and maintenance financial guarantees or letters of credit), sufficient to ensure compliance and completion of site improvements with an approved subdivision or resubdivision and any conditions placed thereon, and pursuant to Section 4-2-12 Bond or Cost Estimate—an estimate for the cost of erosion and sedimentation control measures, driveways, rain gardens, and bio-filter/detention/retention pond should be provide. Pursuant to Section 6-18, financial guarantee improvements may include but are not limited to, erosion and sedimentation control measures, drainage, landscaping buffers, utilities, parking, recreational facilities, streets, private streets or roadways, driveways, and sidewalks, or other elements as approved by the subdivision or resubdivision plan. Surety requirements shall conform to the requirements of Section 8 of the East Lyme Subdivision Regulations.

PROPOSED RESOLUTION

The East Lyme Planning Commission based on the record before it with respect to this application, finds this application to be in conformance with the Subdivision Regulations of the Town of East Lyme as based on the above Findings indicated in the Memorandum from Gary A. Goeschel II, Director of Planning, dated January 11, 2022.

NOW THEREFORE, I hereby Move to APPROVE the application known as **Application of Kristen Clarke, P.E., for Cold Spring Lot Management, LLC/John Drabik, Owner, for Nottingham Hills Subdivision Phase 5**, Prepared for Kristen T. Clarke, P.E., English Harbour Asset Management, LLC, for an 8-lot subdivision of property at 121 upper Pattagansett Road, East Lyme Assessor's Map 35.0, Lot 41, which is further subject to the following administrative requirements and required modifications to the site plan and/or other materials submitted in support of this application:

1. An Erosion & Sedimentation Control bond in an amount satisfactory to the Town Engineer shall be posted with the Town in a form acceptable to the Town of East Lyme Planning Commission prior to the start of any site work including but not limited to clearing, grubbing, filling and grading.
2. Detailed grading and drainage plan(s) shall be provided for the lots and the proposed drives outlining the spillway management for the rain gardens and the grading of the drives/swales in relation to check dams, etc.... and submitted on 24x36 sheet at a scale of 1" = 40'.
3. An Operations and Maintenance manual shall be submitted to the Town, clarifying who the responsible parties for the maintenance of the check dams and raingardens will be and shall include a and inspection and maintenance criteria.
4. As the existing topography and vegetation provide a naturally occurring bio-swale which, obviates the need to construct a bio-swale in front of lots 51, 52, 54, the proposed limits of clearing shall be strictly adhered to and a drainage/conservation easement preventing the clearing or regrading of this area shall be provided.
5. Drafts of the proposed easements for the installation of underground utilities shall be provided to the Director of Planning for review by counsel as to content and form.

6. The applicable items above shall be accomplished prior to the filling of the subdivision on the land records, or other documentation of planning approval and no site work shall commence until all applicable conditions are satisfied.

This approval is specific to the subdivision plan submitted as the application known as the **Application of Kristen Clarke, P.E., for Cold Spring Lot Management, LLC/John Drabik, Owner, for Nottingham Hills Subdivision Phase 5**, Prepared for Kristen T. Clarke, P.E., English Harbour Asset Management, LLC, for an 8-lot subdivision of property at 121 upper Pattagansett Road, East Lyme Assessor's Map 35.0, Lot 41.

Any changes in the subdivision plan shall require prior approval from the Commission and/or the Director of Planning. Any change in the development plan layout other than those identified herein shall constitute a new application.

The owner/applicant shall be bound by the provisions of this Application and Approval.