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January 31, 2024

Via email to billm@eltonhall.com
William Mulholland, Zoning Official
Town of East Lyme
108 Pennsylvania Avenue
Niantic, CT 06357

Re: 91 Boston Post Road
Conceptual Site Plan Application

Dear Bill,

As a follow up to our meeting and the above reference application submission on January 17, 2024, as well as the subsequent follow up emails, Ex. A., I wanted to confirm with you that the statutory acceptance date of my client's application pursuant to Conn. Gen. Statute 8-7d subsection C is January 18, 2024.

Given the fact that my clients application is made solely for conceptual site plan approval pursuant to Conn. General Statute 8-30 g, the Town of East Lyme Zoning Commission ("the Commission") is required by Conn. Gen. Statute 8-7 (d) subsection B, Ex. B, to render a decision within sixty five (65) days ("the decision date") which based upon my calculations would be March 24, 2024. As a result of this statutory deadline I would submit a minimum of two meetings prior to the decision date will be needed to present and respond to questions and comments from Town Staff and the Commission. Accordingly, and as a matter of procedural due process and fundamental fairness I am requesting my client's application be scheduled to commence no later than March 7, 2024 regularly scheduled meeting of the Zoning Commission.

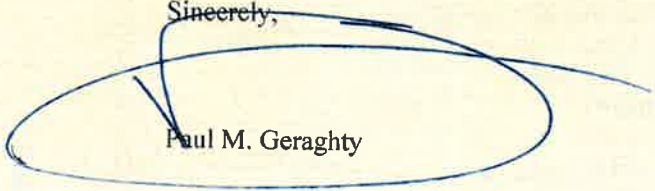
In advance of the commencement of the Commissions hearing I am requesting a meeting with town staff to review the plans and supporting documents submitted or to be submitted in an effort to address any matters or other information that would be helpful. In this regard, I believe it is important for staff and the Commission to be aware of the statutory requirements for Conceptual Site Plan approval which is what is before the Commission vs. a request for final site plan approval. As the Commission knows, from decisions made by the Connecticut Superior Court in matters pertaining to conceptual site plan approvals in re Landmark Development Group vs. East Lyme Zoning Commission Case No. LND-CV-15-6064232, the Court stated the following: "The conceptual site plan is a common sense land use tool providing for staged planning and early review and benefits all parties by allowing for a determination of whether a proposed project is feasible without the expenditure of great sums of money by the developer and of substantial amounts of time and money by town staff and town volunteers as well as residents interested in the review process".

"The statutory requirements for a conceptual site plan approval under Conn. Gen. Statute 8-30g and established case law requires submission and review of a "site plan describing the proposed developments total number of residential units and their arrangement on the property and the proposed development's roads and traffic circulation, sewage deposal and water supply" and "meets the affordability requirements as a set aside development as those terms are defined in the statute". Id.

Please contact me with a date and time for the requested staff meeting as soon as possible.

Please make this correspondence a part of the record of my client's pending application.

Sincerely,



Paul M. Geraghty

Enc.
cc. client w/enc.

EXHIBIT A

From: Bill Mulholland <billm@eltownhall.com>
Sent: Thursday, January 18, 2024 1:00 PM
To: Paul Geraghty <pgeraghty@geraghtybonnano.com>
Subject: RE: 91 Boston Post Road

agreed

From: Paul Geraghty <pgeraghty@geraghtybonnano.com>
Sent: Wednesday, January 17, 2024 12:54 PM
To: Bill Mulholland <billm@eltownhall.com>
Subject: 91 Boston Post Road

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Bill, just to follow up. My read of the statute says that it has to be accepted at the next regularly scheduled meeting which is tomorrow night. It can be added to the agenda as new business since it is a regular meeting. Paul.

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EXHIBIT B

JUSTIA

[Go to previous versions of this Section](#)



2022 Connecticut General Statutes

Title 8 - Zoning, Planning, Housing and Economic and Community Development

Chapter 124 - Zoning

Section 8-7d. - Hearings and decisions. Time limits. Day of receipt. Notice to adjoining municipality. Public notice registry.

Universal Citation: CT Gen Stat § 8-7d. (2022)

(a) In all matters wherein a formal petition, application, request or appeal must be submitted to a zoning commission, planning and zoning commission or zoning board of appeals under this chapter, a planning commission under chapter 126 or an inland wetlands agency under chapter 440 or an aquifer protection agency under chapter 446i and a hearing is required or otherwise held on such petition, application, request or appeal, such hearing shall commence within sixty-five days after receipt of such petition, application, request or appeal and shall be completed within thirty-five days after such hearing commences, unless a shorter period of time is required under this chapter, chapter 126, chapter 440 or chapter 446i. Notice of the hearing shall be published in a newspaper having a general circulation in such municipality where the land that is the subject of the hearing is located at least twice, at intervals of not less than two days, the first not more than fifteen days or less than ten days and the last not less than two days before the date set for the hearing. In addition to such notice, such commission, board or agency may, by regulation, provide for additional notice. Such regulations shall include provisions that the notice be mailed to persons who own land that is adjacent to the land that is the subject of the hearing or be provided by posting a sign on the land that is the subject of the hearing, or both. For purposes of such additional notice, (1) proof of mailing shall be evidenced by a certificate of mailing, (2) the person who owns land shall be the owner indicated on the property tax map or on the last-completed grand list as of the date such notice is mailed, and (3) a title search or any other additional method of identifying persons who own land that is adjacent to the land that is the subject of the hearing shall not be required. All applications and maps and documents relating thereto shall be open for public inspection. At such hearing, any person or persons may appear and be heard and may be represented by agent or by attorney. All decisions on such matters shall be rendered not later than sixty-five days after completion of such hearing, unless a shorter period of time is required under this chapter, chapter 126, chapter 440 or chapter 446i. The petitioner or applicant may consent to one or more extensions of any period specified in this subsection,

provided the total extension of all such periods shall not be for longer than sixty-five days, or may withdraw such petition, application, request or appeal.

(b) Notwithstanding the provisions of subsection (a) of this section, whenever the approval of a site plan is the only requirement to be met or remaining to be met under the zoning regulations for any building, use or structure, a decision on an application for approval of such site plan shall be rendered not later than sixty-five days after receipt of such site plan. Whenever a decision is to be made on an application for subdivision approval under chapter 126 on which no hearing is held, such decision shall be rendered not later than sixty-five days after receipt of such application. Whenever a decision is to be made on an inland wetlands and watercourses application under chapter 440 on which no hearing is held, such decision shall be rendered not later than sixty-five days after receipt of such application. Whenever a decision is to be made on an aquifer protection area application under chapter 446i on which no hearing is held, such decision shall be rendered not later than sixty-five days after receipt of such application. The applicant may consent to one or more extensions of such period, provided the total period of any such extension or extensions shall not exceed sixty-five days or may withdraw such plan or application.

(c) For purposes of subsection (a) or (b) of this section and section 7-246a, the date of receipt of a petition, application, request or appeal shall be the day of the next regularly scheduled meeting of such commission, board or agency, immediately following the day of submission to such commission, board or agency or its agent of such petition, application, request or appeal or thirty-five days after such submission, whichever is sooner. If the commission, board or agency does not maintain an office with regular office hours, the office of the clerk of the municipality shall act as the agent of such commission, board or agency for the receipt of any petition, application, request or appeal.

(d) The provisions of subsection (a) of this section shall not apply to any action initiated by any zoning commission, planning commission or planning and zoning commission regarding adoption or change of any zoning regulation or boundary or any subdivision regulation.

(e) Notwithstanding the provisions of this section, if an application involves an activity regulated pursuant to sections 22a-36 to 22a-45, inclusive, and the time for a decision by a zoning commission or planning and zoning commission established pursuant to this section would elapse prior to the thirty-fifth day after a decision by the inland wetlands agency, the time period for a decision shall be extended to thirty-five days after the decision of such agency. The provisions of this subsection shall not be construed to apply to any extension consented to by an applicant or petitioner.

(f) The zoning commission, planning commission, zoning and planning commission, zoning board of appeals, inland wetlands agency or aquifer protection agency shall notify the clerk of any adjoining municipality of the pendency of any application, petition, appeal, request or plan concerning any project on any site in which: (1) Any portion of the property affected by a decision of such commission, board or agency is within five hundred feet of the boundary of the adjoining municipality; (2) a significant portion of the traffic to the completed project on the site will use streets within the adjoining municipality to enter or exit the site; (3) a significant portion of the sewer or water drainage from the project on the site will flow through and significantly impact the drainage or sewerage system within the adjoining municipality; or (4) water runoff from the improved site will impact streets or other municipal or private property within the adjoining municipality. Such notice shall be made by certified mail, return receipt requested, and shall be mailed within seven days of the date of receipt of the application, petition, request or plan. Such adjoining municipality may, through a representative, appear and be heard at any hearing on any such application, petition, appeal, request or plan.

(g) (1) Any zoning commission, planning commission or planning and zoning commission initiating any action regarding adoption or change of any zoning regulation or boundary or any subdivision regulation or regarding the preparation or amendment of the plan of conservation and development shall provide notice of such action in accordance with this subsection in addition to any other notice required under any provision of the general statutes.

(2) A zoning commission, planning commission or planning and zoning commission shall establish a public notice registry of landowners, electors and nonprofit organizations qualified as tax-exempt organizations under the provisions of Section 501(c) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, requesting notice under this subsection. Each municipality shall notify residents of such registry and the process for registering for notice under this subsection. The zoning commission, planning commission or planning and zoning commission shall place on such registry the names and addresses of any such landowner, elector or organization upon written request of such landowner, elector or organization. A landowner, elector or organization may request such notice be sent by mail or by electronic mail. The name and address of a landowner, elector or organization who requests to be placed on the public notice registry shall remain on such registry for a period of three years after the establishment of such registry. Thereafter any land owner, elector or organization may request to be placed on such registry for additional periods of three years.

(3) Any notice under this subsection shall be mailed to all landowners, electors and organizations in the public notice registry not later than seven days prior to the commencement of the public hearing on such action, if feasible. Such notice may be mailed by electronic mail if the zoning commission, planning commission or planning and zoning commission or the municipality has an electronic mail service provider.

(4) No zoning commission, planning commission or planning and zoning commission shall be civilly liable to any landowner, elector or nonprofit organization requesting notice under this subsection with respect to any act done or omitted in good faith or through a bona fide error that occurred despite reasonable procedures maintained by the zoning commission, planning commission or planning and zoning commission to prevent such errors in complying with the provisions of this section.

(1971, P.A. 862, S. 12; P.A. 77-450, S. 4; P.A. 78-104, S. 1; P.A. 82-81, S. 1; P.A. 87-533, S. 10, 14; P.A. 93-385, S. 2; P.A. 99-21, S. 1; P.A. 03-177, S. 5; P.A. 04-257, S. 6; P.A. 06-80, S. 1; P.A. 07-85, S. 1; P.A. 15-68, S. 2.)

History: P.A. 77-450 reworded previous provisions and designated them as Subsec. (c) and inserted new Subsecs. (a) and (b) before and new Subsec. (d) after; P.A. 78-104 amended Subsec. (a) to allow more than one extension and changed maximum extension time from double the original period to a time equaling the original period, made Subsec. (b) applicable to cases where site plan approval is only requirement to be met or remaining to be met and clarified Subsec. (c) by replacing references to "official receipt" with references to "submission"; P.A. 82-81 provided that town clerk would act as agent for receipt of documents for any board or commission not having regular office hours; P.A. 87-533 added Subsec. (e) regarding applications involving activity regulated pursuant to Secs. 22a-36 to 22a-45, inclusive; P.A. 93-385 amended Subsec. (b) by applying provisions to all buildings, uses or structures instead of limiting applications to proposals; P.A. 99-21 amended Subsec. (a) to extend the time for completion of a hearing from 30 to 35 days after commencement; P.A. 03-177 amended Subsec. (a) to apply provisions to planning commissions and inland wetlands agencies and add provisions re public hearings, amended Subsec. (b) to add provisions re date for rendering decisions, amended Subsec. (c) to add reference to Sec. 7-246a and make conforming changes and added new Subsec. (f) re notification to adjoining municipalities, effective October 1, 2003, and applicable to applications filed on or

after that date; P.A. 04-257 made technical changes in Subsec. (a), effective June 14, 2004; P.A. 06-80 amended Subsec. (a) to add provisions re mailing and posting of additional notice, amended Subsec. (d) to add reference to planning commission and to any subdivision regulation and added Subsec. (g) re a public notice registry for changes initiated by commissions for zoning regulations or boundaries, subdivision regulations or the plan of conservation and development; P.A. 07-85 amended Subsecs. (a), (b) and (f) to apply provisions to aquifer protection agency and made technical changes in Subsecs. (a) and (b); P.A. 15-68 amended Subsec. (a) by adding Subdiv. (3) re title search or other method of identifying owners of adjacent land not required for purposes of additional notice, effective June 19, 2015.

Cited. 192 C. 353; 194 C. 187; 206 C. 554; 211 C. 331; 219 C. 352; 222 C. 269; 224 C. 44; 225 C. 432; Id., 575; 230 C. 641. If site plan and accompanying documents are separable, time constraints in section do not apply. 253 C. 183. When approval for site plan and special exception are separate actions, provisions re statutory timelines do not apply. Id., 195.

Cited. 3 CA 556; 7 CA 684; 15 CA 561; 17 CA 405. Requirements satisfied only by commencement of timely public hearing. 27 CA 412. Cited. 29 CA 469; 35 CA 599; 43 CA 512. When site plan is separable from its accompanying documents and the special permit application is for a use not permitted as of right, section is not applicable, and where the special permit application must contain a site plan, automatic approval under section may not occur if commission does not meet the time limits in Sec. 8-3c. 60 CA 504. Zoning board required to hold a hearing on plaintiff's zoning application. 69 CA 230. The absence of proposed locations contemplated by an applicant in the public notice renders such notice insufficient. 116 CA 542.

Cited. 42 CS 57.

Subsec. (a):

Cited. 209 C. 812; 222 C. 911.

Cited. 14 CA 365; 23 CA 256; 33 CA 281; 35 CA 317; Id., 599. Trial court properly determined that failure of planning and zoning commission to comply with statutory notice and hearing requirements entitled individual plaintiffs to automatic approval of their application for special permit and site plan approval; notice of commission hearing was invalid and because failure to give notice was a jurisdictional defect, action of commission in denying plaintiffs' application was void. 52 CA 763. There is no language in section indicating that if the commission chose to impose on an applicant a supplemental notice requirement by regulation, that the applicant's failure to comply with the supplemental notice provision would be attributable to the commission and trigger the lengthy appeal period in Sec. 8-8(r). 165 CA 488.

Cited. 41 CS 196.

Subsec. (b):

Cited. 194 C. 152; 209 C. 812; 211 C. 331; 222 C. 269; 226 C. 684. Applicant's submission of revised site plan did not create a new 65-day period within which planning and zoning commission could act. 278 C. 408.

Cited. 2 CA 489; 21 CA 347; Id., 421; 35 CA 317. Section not unconstitutional just because it does not expressly provide for a right of appeal from automatic approval of site plan applications. Id., 599. Cited. 37 CA 348.

Subsec. (f):

It is implicit in Subdiv. (2) that a zoning commission cannot unilaterally bind an adjoining town to a determination that the streets are adequate to handle traffic from a permitted land use in the first town, therefore adjoining town's claim that it had no choice but to close adjoining road has no merit. 295 C. 802.

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