

EAST LYME PLANNING COMMISSION

Regular Meeting

**Tuesday, November 19, 2013**

PRESENT: Brian Schuch, Chairman, Rita Palazzo, Frank Balantic, Secretary, Joan Bengtson, Francine Schwartz, Sarni Yousuf, Alternate \*\*(Sat as Regular Member)

ALSO PRESENT: Gary Goeschel, Planning Director

ABSENT: Ernie Covino, Ex-Officio, Rose Ann Hardy

FILED IN EAST LYME  
CONNECTICUT  
Nov 22 2013 AT 11:05 AM PM  
EAST LYME TOWN CLERK

Chairman Schuch called this Regular Meeting of the Planning Commission to order at 7:02PM.

**Pledge of Allegiance**

The Pledge was observed.

**Additions to the Agenda- Requires a 2/3 Vote of Members present.**

**Item VII, New Business #5, Budget FY 2014/2015**

**Item VIII, Reports, F, Town Clerk's Memo of 11/11/2013**

• **\*\*Motion (1)**

**Mr. Balantic moved to add these items to the Planning Commission Agenda of November 19, 2013.**

**Ms. Bengtson seconded the motion.**

**Vote: 6-0-0. Motion passed.**

**II Public Delegations**

*Public Delegations is the time when members of the public are invited to speak to the Commission about certain matters. Issues or concerns related to approved subdivisions under construction (Item VI) and in-house proposals or general topics Of discussion (Item VII/) are open to comment. Items, referrals, or applications subject to a decision by the Commission, a public hearing, or in litigation may not be discussed. The members of the Commission will not directly answer questions or make comment during delegations.*

There were none.

### III Approval of Minutes-

#### A. Regular Meeting Minutes of October 1, 2013

There were no corrections.

- **\*\*Motion (2)**

Mr. Palazzo moved to approve the Planning Commission Regular Meeting Minutes of October 1, 2013.

Ms. Schwartz seconded the motion.

Vote: 5-0-1. Motion passed.

Ms. Bengtson abstained from the vote due to her absence from the Meeting.

### IV Public Hearing

There were no public hearings scheduled.

### V Zoning Referral

A. Application of Theodore A. Harris, Esq., to modify Section 11.A.9.2.2 C by deleting the number 275 and replacing it with the number 280. (Zoning Public Hearing November 21, 2013.)

Mr. Goeschel explained that the request is for a small increase in the number of units. After the buildings were configured, the developer realized they could fit an additional five units. This is a request to change the Regulations and Mr. Goeschel noted that it would not increase the overall density of the zone. Mr. Goeschel and Mr. Schuch clarified that any change to the Zoning Regulations requires a Referral.

Mr. Schuch stated that the Application is a subtle change.

Ms. Schwartz questioned the reasoning behind the change and Mr. Goeschel stated that he included a letter from Attorney Harris (Exhibit 1) dated September 26, 2013, which indicates that approval would allow them to use the excess space within the buildings.

Ms. Schwartz observed that the actual number of buildings would not change.

Mr. Balantic added that it would also not change the parking ratios.

- **\*\*Motion (3)**

Mr. Balantic moved to approve the Application of Theodore A. Harris, Esq., to modify Section 11.A.9.2.2 C by deleting the number 275 and replacing it with the number 280 as consistent in the spirit of cluster development with the East Lyme POCD.

Mr. Yousuf seconded the motion.

Ms. Bengtson stated that she finds it problematic that the Application does not say that the change is specific to Gateway. Ms. Palazzo stated that it does say that the change is specific in Attorney Harris' letter. Ms. Bengtson stated that she would like the Motion to read that the change is specific to the Gateway district.

**Mr. Balantic withdrew his Motion.**

- **\*\*Motion (4)**

**Mr. Balantic moved to approve Application of Theodore A. Harris, Esq., to modify Section 11.A.9.2.2 C specific to the Gateway district, by deleting the number 275 and replacing it with the number 280 as consistent in the spirit of cluster development with the East Lyme POCD.**

**Mr. Yousuf seconded the motion.**

**Vote: 6-0-0. Motion passed.**

B. Application of Cynthia Stevens, to amend the East Lyme Zoning Regulations Section 1.45a, Section 9.2.9 and Section 25.5 regarding pet daycare and boarding facilities. (Zoning Public Hearing January 2, 2014.)

Mr. Goeschel recommended that the Commission give the staff additional time to review the text and language being proposed. Mr. Schuch stated that the Commission would table this discussion until their next meeting.

#### **VI 8-24 Referrals (Municipal Improvements)**

There are none.

#### **VII NEW BUSINESS**

##### **1. Proposed 2014 Meeting Schedule (Exhibit 2)**

- **\*\*Motion (S)**

**Ms. Palazzo moved to approve the Proposed 2014 Meeting Schedule.**

**Ms. Bengtson seconded the motion.**

**Vote: 6-0-0. Motion passed.**

##### **2 Expiration of Darrow Pond Phase I Approval**

Mr. Goeschel stated that as of October 19, 2013 the Phase I Public Improvements of the Darrow's Ridge Subdivision has elapsed. Of the fifteen items that are identified on the Darrow's Ridge construction punch list from Bill Scheer dated 1/26/2010, with the exception of the streetlights all the items associated with Phase I and Phase III remain incomplete. Under State Statute 8-26C the Commission has

Planning Commission Meeting Minutes November 19, 2013

a responsibility to expire the subdivision as necessary. Mr. Goeschel included a proposed Resolution for handling the matter (Exhibit 3.)

Mr. Schuch asked if the Resolution was drafted with the aid of council and Mr. Goeschel stated that it was, and that Attorney Bill Sweeney was present in the audience.

**\*\*Motion (6)**

Mr. Balantic moved to approve the Resolution stating: Whereas, Section 8-26C of the Connecticut General Statutes requires that all work in connection with a subdivision approved prior to July 1, 2011, and which had not expired prior to May 9, 2011, be complete within a period of nine (9) years from the date of approval; and

Whereas, pursuant to Section 8-26C (b) the Connecticut General Statutes, a municipal planning commission shall take action to expire any subdivision approval where the work in connection with the approval is not completed within the applicable time period; and

Whereas, the Darrow's Ridge Phase I Subdivision (the "Subdivision") was approved by the Town of East Lyme Planning Commission (the "Commission") on October 19, 2004 and did not expire prior to May 9, 2011; and

Whereas, the work associated with the Subdivision, consisting of various public improvements, was not complete as of October 19, 2013; and

Whereas, no request for an extension of the time period to complete the work has been received by the Commission; and

Whereas, the failure to complete the work associated with the Subdivision has created a variety of public safety concerns.

Now Therefore, Be It Resolved, pursuant to Section 8-26C of the Connecticut General Statutes, that the Subdivision is hereby declared expired due to a failure to complete the required public improvement work within the applicable nine (9) year period.

Be It Further Resolved, that notice of such expiration shall be filed on the Land Records of the Town of East Lyme and evidence of this expiration shall be marked on the recorded subdivision plan.

Be It Further Resolved, that the cash bond for the Subdivision shall be called to the extent necessary to complete the work required to serve the sold lots.

Ms. Bengtson seconded the motion.

Vote: 6-0-0. Motion passed.

### **3. Subdivision Regulations Section 9 Bonding- Discussion**

Mr. Goeschel stated that he included some literature on Bonding in the Member packet (Exhibit 4), and recommended that a subcommittee of two Members and himself be formed, to meet on this matter.

Mr. Schuch and Ms. Bengtson volunteered to be on the Bonding Subcommittee.

### **4. Plan of Conservation and Development-Discussion**

Mr. Goeschel stated that he and Mr. Schuch have been discussing how to lay out the POCD in a more digital friendly and eye catching form. The idea is to make a map serve as the POCD as opposed to having a large amount of text that people from town would have to sift through, for a better understanding of the POCD.

Ms. Palazzo stated that she likes the idea of maps- having a visual to help clarify locations. Mr. Schuch added that there are various levels of familiarity with the town and a document that emphasizes districts and locations would be a great tool to have. Ms. Schwartz stated that she thinks the idea could be very useful.

### **5. Budget FY 2014/2015**

Mr. Goeschel stated that he has begun to work on the Planning Budget and that Finance Director would like them completed by the 5th of December. Mr. Goeschel reminded the Commission about line items for the budget and that supplies, printing and so forth would have to be factored in.

## **VIII OLD BUSINESS**

There was none.

## **IV REPORTS**

### **1. Chairman**

Mr. Schuch stated that he and Ms. Palazzo had attended an Advanced Land Use Seminar in Haddam, Connecticut. Ms. Palazzo stated that everyone should try at some point to attend a future seminar, that it was very valuable. The seminar consisted of three power point presentations which he located online, if anyone was interested in viewing them. Ms. Schwartz asked that Mr. Schuch email the details to the Members.

Mr. Schuch stated that he also attended a Freedom of Information Meeting with Ms. Bengtson and Ms. Palazzo. Mr. Schuch stated that some helpful information was supplied.

**2. Ex-Officio- Rose Ann Hardy**

Ms. Hardy was not in attendance

**3. Zoning Representative**

- a. 11/7/2013- Frank Balantic
- b. 11/21/2013- Joan Bengtson
- c. 12/5/2013- Ernie Covino

Mr. Balantic stated that he attended the Zoning Commission Meeting of October 17, 2013. The Meeting consisted of a public hearing regarding the keeping of animals on Giant's Neck Road and a Cam hearing in support of the restoration of a coastal bluff at Crescent Beach, both of which were continued. They approved their calendar for 2014 and established a subcommittee to review regulations. A discussion of how effective parking overlays have been also occurred.

**4. Regional Planning Commission Representative- Brian Schuch, Luane Lange**

Mr. Schuch stated that he had nothing new to report.

**5. Subcommittees**

- **Sustainable Development and Climate Adaptation- (Gary Goeschel, Francine Schwartz)**

Nothing new to report.

**6. Staff Communications**

Mr. Goeschel stated that he did not have much to report. He drew the Commission's attention to the Town Clerk Memo of November 11, 2013 (Exhibit 5) included in the Member packet. Mr. Goeschel also added that the Commission has Alternate vacancies which can be appointed by the Board of Selectmen in January.

**ADJOURNMENT**

**\*\*Motion (7)**

**Ms. Palazzo moved to adjourn this Regular Meeting of the East Lyme Planning Commission at 7:45 PM.**

**Ms. Bengtson seconded the motion.**

**Vote: 6 -0-0. Motion passed.**

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Brooke D. Stevens". The signature is written in dark ink and is positioned above the printed name.

Brooke Stevens,

Recording Secretary

Exhibit 1

STEVENS, HARRIS, GUERNSEY & QUILLIAM, P.C.

ATTORNEYS AND COUNSELORS AT LAW

351 MAIN STREET

P. O. DRAWER 660

NANTIC, CONNECTICUT 06357

RONALD F. STEVENS  
THEODORE A. HARRIS  
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PAIGE STEVENS QUILLIAM

TEL (860) 739-6906  
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E-MAIL shg-realestate@snet.net

September 26, 2013

Mr. William Mulholland  
Zoning Enforcement Officer  
Town of East Lyme  
P.O. Box 519  
Niantic, CT 06357

Re: Gateway Development

Dear Bill:

Please consider this letter as a request for text amendment as described in the attachment to this letter. The purpose of this request is to increase the maximum number of residential units allowed on the westerly portion of the Gateway District from its current two hundred seventy-five (275) to two hundred eighty (280). This would allow the use of existing excess space in buildings on the approval on the approved site plan for residential purposes.

Would you kindly place this matter on your upcoming agenda. I thank you in advance for your cooperation.

Yours very truly,



Theodore A. Harris

TAH:jpl  
Enclosure



**Town of East Lyme  
Planning Commission  
Regular Meeting Schedule  
2014 Proposed**

Meetings are held at the Town Hall, on the following listed Tuesdays at 7:00 PM unless otherwise noted.

**2014 Calendar**

**January 7, 2014**

**February 4, 2014  
February 18, 2014**

**March 4, 2014  
March 18, 2014**

**April 1, 2014  
April 15, 2014**

**May 6, 2014  
May 20, 2014**

**June 3, 2014**

**July 1, 2014**

**August 5, 2014**

**September 2, 2014  
September 16, 2014**

**October 7, 2014  
October 21, 2014**

**November 18, 2014  
(Third Tuesday)**

**December 2, 2014**

**RESOLUTION**

WHEREAS, Section 8-26c(e) of the Connecticut General Statutes requires that all work in connection with a subdivision approved prior to July 1, 2011, and which had not expired prior to May 9, 2011, be complete within a period of nine (9) years from the date of approval; and

WHEREAS, pursuant to Section 8-26c(b) the Connecticut General Statutes, a municipal planning commission shall take action to expire any subdivision approval where the work in connection with the approval is not completed within the applicable time period; and

WHEREAS, the Darrow's Ridge Phase I Subdivision (the "Subdivision") was approved by the Town of East Lyme Planning Commission (the "Commission") on October 19, 2004 and did not expire prior to May 9, 2011; and

WHEREAS, the work associated with the Subdivision, consisting of various public improvements, was not complete as of October 19, 2013; and

WHEREAS, no request for an extension of the time period to complete the work has been received by the Commission; and

WHEREAS, the failure to complete the work associated with the Subdivision has created a variety of public safety concerns.

NOW THEREFORE, BE IT RESOLVED, pursuant to Section 8-26c of the Connecticut General Statutes, that the Subdivision is hereby declared expired due to a failure to complete the required public improvement work within the applicable nine (9) year period.

BE IT FURTHER RESOLVED, that notice of such expiration shall be filed on the Land Records of the Town of East Lyme and evidence of this expiration shall be marked on the recorded subdivision plan.

BE IT FURTHER RESOLVED, that the cash bond for the Subdivision shall be called to the extent necessary to complete the work required to serve the sold lots.

State of Connecticut- Office of Legislative Research Summary

PA 11-79—sSB 860

*Planning and Development Committee*

**AN ACT CONCERNING BONDS AND OTHER SURETY FOR APPROVED SITE PLANS AND SUBDIVISIONS**

**SUMMARY:** This act expands the types of bonds or surety that a person may use to fulfill a bond requirement which a municipal land use commission may require for modified site plan or subdivision approval. Under prior law, a commission could require a bond in an amount and with surety and conditions it set. The act specifies that other bond or surety forms may be used, including, for example, letters of credit, as long as the commission finds acceptable (1) the bond or surety form and (2) the financial institution or other entity issuing any letter of credit.

The act changes the timing of the surety process and provides additional options for the person posting the bond or surety (with certain limitations).

The act also:

1. caps the bond amount a zoning commission may require for site plan modifications;
2. establishes that, for phased development, the surety requirements apply as if each phase is approved as a separate site plan or subdivision; and
3. prohibits any land use commission from requiring a bond or other surety to secure the maintenance of roads, streets, or other maintenance associated with a site plan or subdivision for maintenance occurring after a municipality has accepted the improvements.

The act requires a commission to (1) release all or part of a site plan or subdivision related bond within 65 days of a request by the person who posted the bond, if the commission is reasonably satisfied required work has been completed, or (2) explain in writing what work is still required for release, if it is not reasonably satisfied.

The act also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2011

SURETY FOR SITE PLAN MODIFICATION AND SUBDIVISION FINAL APPROVAL

*Modified Site Plans*

Under prior law, a municipal land use commission could (1) require a bond in an amount and with surety and conditions it set as a condition for approving any modified site plan or (2) grant an extension for completing work on the modified site plan with approval conditioned on whether the bond or other surety amount was adequate. Prior law was silent on what constitutes "other surety." The act (1) caps the bond amount on a modified site plan at no more than the cost of performing the modifications plus an additional 10% of the bond amount and (2) eliminates the option to condition extension approval on an unspecified amount of bond or other surety. It also specifies the type of surety that may be used to meet the law's bond requirement (see below).

### *Subdivisions*

By law, a land use commission can, for subdivision plan approval, accept a bond in an amount and with surety and conditions it finds satisfactory for securing the actual construction, maintenance, and installation of the subdivision's streets and utilities, as specified in the bond, instead of the work being completed before the final plan is approved. A commission can authorize a developer to file a plan with a conditional approval based on (1) the actual construction, maintenance, and installation of any improvements or utilities the commission sets or (2) a bond. (By law, if work is completed or a bond furnished, the commission must endorse final plan approval.) The act authorizes other surety.

### *Other Surety for Site Plan Modification and Subdivision Approval*

To satisfy a bond requirement for modified site plan or subdivision plan approval, the act requires municipal land use commissions to accept:

1. surety bonds;
2. cash bonds;
3. passbook or statement savings; and
4. other surety, including letters of credit, provided the commission finds the bond or surety and the financial institution or other entity issuing any letter of credit acceptable.

### *Timing*

The act authorizes the person posting the required site or subdivision plan bond to post it at any time before completing all site plan modifications or subdivision public improvements or utilities. But the commission may require a bond or surety for erosion control before work can start.

The act prohibits issuing certificates of occupancy for site plans and transferring lots to buyers for subdivision plans before the required bond or surety is posted.

BOND RELEASE

Under the act, the commission must release a bond or part of it when reasonably satisfied that the modifications the bond covered have been completed. Prior law was silent on bond release.

If the commission is not satisfied, the act requires it to provide the person posting the bond or surety a written explanation describing the additional modifications that must be completed for release. In the case of a site plan, the act also authorizes a commission's agent to release all or part of a bond or surety.

## BACKGROUND

### *Planning and Zoning Commissions*

By law, a municipality may have a planning (CGS § 8-18), zoning (CGS § 8-1), or combined planning and zoning commission (CGS § 8-4a). A combined commission has all the powers and duties of both a planning commission and zoning commission.

OLR Tracking: JRH: KM: PF: ro

**Sec. 8-25. Subdivision of land.** (a) No subdivision of land shall be made until a plan for such subdivision has been approved by the commission. Any person, firm or corporation making any subdivision of land without the approval of the commission shall be fined not more than five hundred dollars for each lot sold or offered for sale or so subdivided. Any plan for subdivision shall, upon approval, or when taken as approved by reason of the failure of the commission to act, be filed or recorded by the applicant in the office of the town clerk not later than ninety days after the expiration of the appeal period under section 8-8, or in the case of an appeal, not later than ninety days after the termination of such appeal by dismissal, withdrawal or judgment in favor of the applicant but, if it is a plan for subdivision wholly or partially within a district, it shall be filed in the offices of both the district clerk and the town clerk, and any plan not so filed or recorded within the prescribed time shall become null and void, except that the commission may extend the time for such filing for two additional periods of ninety days and the plan shall remain valid until the expiration of such extended time. All such plans shall be delivered to the applicant for filing or recording not more than thirty days after the time for taking an appeal from the action of the commission has elapsed or not more than thirty days after the date that plans modified in accordance with the commission's approval and that comply with section 7-31 are delivered to the commission, whichever is later, and in the event of an appeal, not more than thirty days after the termination of such appeal by dismissal, withdrawal or judgment in favor of the applicant or not more than thirty days after the date that plans modified in accordance with the commission's approval and that comply with section 7-31 are delivered to the commission, whichever is later. No such plan shall be recorded or filed by the town clerk or district clerk or other officer authorized to record or file plans until its approval has been endorsed thereon by the chairman or secretary of the commission, and the filing or recording of a subdivision plan without such approval shall be void. Before exercising the powers granted in this section, the commission shall adopt regulations covering the subdivision of land. No such regulations shall become effective until after a public hearing held in accordance with the provisions of section 8-7d. Such regulations shall provide that the land to be subdivided shall be of such character that it can be used for building purposes without danger to health or the public safety, that proper provision shall be made for water, sewerage and drainage, including the upgrading of any downstream ditch, culvert or other drainage structure which, through the introduction of additional drainage due to such subdivision, becomes undersized and creates the potential for flooding on a state highway, and, in areas contiguous to brooks, rivers or other bodies of water subject to flooding, including tidal flooding, that proper provision shall be made for protective flood control measures and that the proposed streets are in harmony with existing or proposed principal thoroughfares shown in the plan of conservation and development as described in section 8-23, especially in regard to safe intersections with such thoroughfares, and so arranged and of such width, as to provide an adequate and convenient system for present and prospective traffic needs. Such regulations shall also provide that the commission may require the provision of open spaces, parks and playgrounds when, and in places, deemed proper by the planning commission, which open spaces, parks and playgrounds shall be shown on the subdivision plan. Such regulations may, with the approval of the commission, authorize the applicant to pay a fee to the municipality or pay a fee to the municipality and transfer land to the municipality in lieu of any requirement to provide open spaces. Such payment or combination of payment and the fair market value of land transferred shall be equal to not more than ten per cent of the fair market value of the land to be subdivided prior to the approval of the subdivision. The fair market value shall be determined by an appraiser jointly selected by the commission and the applicant. A fraction of such payment the numerator of which is one and the denominator of which is the number of approved parcels in the subdivision shall be made at the time of the sale of each approved parcel of land in the subdivision and placed in a fund in accordance with the provisions of section 8-25b. The open space requirements of this section shall not apply if the transfer of all land in a subdivision of less than five parcels is to a parent, child, brother, sister, grandparent, grandchild, aunt, uncle or first cousin for no consideration, or if the subdivision is to contain affordable housing, as defined in section 8-39a, equal to twenty per cent or more of the total housing to be constructed in such subdivision. Such regulations, on and after July 1, 1985, shall provide that proper provision be made for soil erosion and sediment control pursuant to section 22a-

329. Such regulations shall not impose conditions and requirements on manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards or on lots containing such manufactured homes which are substantially different from conditions and requirements imposed on single-family dwellings and lots containing single-family dwellings. Such regulations shall not impose conditions and requirements on developments to be occupied by manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards which are substantially different from conditions and requirements imposed on multifamily dwellings, lots containing multifamily dwellings, cluster developments or planned unit developments. The commission may also prescribe the extent to which and the manner in which streets shall be graded and improved and public utilities and services provided and, in lieu of the completion of such work and installations previous to the final approval of a plan, the commission may accept a financial guarantee of such work and installations in an amount and with surety and conditions satisfactory to it securing to the municipality the actual construction, maintenance and installation of such public improvements and utilities within a period specified in the financial guarantee. Such regulations may provide, in lieu of the completion of the work and installations above referred to, previous to the final approval of a plan, for an assessment or other method whereby the municipality is put in an assured position to do such work and make such installations at the expense of the owners of the property within the subdivision. Such regulations may provide that in lieu of either the completion of the work or the furnishing of a financial guarantee as provided in this section, the commission may authorize the filing of a plan with a conditional approval endorsed thereon. Such approval shall be conditioned on (1) the actual construction, maintenance and installation of any improvements or utilities prescribed by the commission, or (2) the provision of a financial guarantee as provided in this section. Upon the occurrence of either of such events, the commission shall cause a final approval to be endorsed thereon in the manner provided by this section. Any such conditional approval shall lapse five years from the date it is granted, provided the applicant may apply for and the commission may, in its discretion, grant a renewal of such conditional approval for an additional period of five years at the end of any five-year period, except that the commission may, by regulation, provide for a shorter period of conditional approval or renewal of such approval. Any person who enters into a contract for the purchase of any lot subdivided pursuant to a conditional approval may rescind such contract by delivering a written notice of rescission to the seller not later than three days after receipt of written notice of final approval if such final approval has additional amendments or any conditions that were not included in the conditional approval and are unacceptable to the buyer. Any person, firm or corporation who, prior to such final approval, transfers title to any lot subdivided pursuant to a conditional approval shall be fined not more than one thousand dollars for each lot transferred. Nothing in this subsection shall be construed to authorize the marketing of any lot prior to the granting of conditional approval or renewal of such conditional approval.

(b) The regulations adopted under subsection (a) of this section shall also encourage energy-efficient patterns of development and land use, the use of solar and other renewable forms of energy, and energy conservation. The regulations shall require any person submitting a plan for a subdivision to the commission under subsection (a) of this section to demonstrate to the commission that such person has considered, in developing the plan, using passive solar energy techniques which would not significantly increase the cost of the housing to the buyer, after tax credits, subsidies and exemptions. As used in this subsection and section 8-2, "passive solar energy techniques" means site design techniques which maximize solar heat gain, minimize heat loss and provide thermal storage within a building during the heating season and minimize heat gain and provide for natural ventilation during the cooling season. The site design techniques shall include, but not be limited to: (1) House orientation; (2) street and lot layout; (3) vegetation; (4) natural and man-made topographical features; and (5) protection of solar access within the development.

(c) The regulations adopted under subsection (a) of this section, may, to the extent consistent with soil types,

terrain, infrastructure capacity and the plan of development for the community, provide for cluster development, and may provide for incentives for cluster development such as density bonuses, or may require cluster development.

(d) (1) To satisfy any financial guarantee requirement in this section, the commission may accept surety bonds and shall accept cash bonds, passbook or statement savings accounts and other financial guarantees other than surety bonds including, but not limited to, letters of credit, provided such financial guarantee is in a form acceptable to the commission and the financial institution or other entity issuing any letter of credit is acceptable to the commission. Such financial guarantee may, at the discretion of the person posting such financial guarantee, be posted at any time before all approved public improvements and utilities are completed, except that the commission may require a financial guarantee for erosion and sediment controls prior to the commencement of any improvements. No lot shall be transferred to a buyer before any required financial guarantee is posted or before the approved public improvements and utilities are completed to the reasonable satisfaction of the commission or its agent. For any subdivision that is approved for development in phases, the financial guarantee provisions of this section shall apply as if each phase was approved as a separate subdivision. Notwithstanding the provisions of any special act, municipal charter or ordinance, no commission shall (A) require a financial guarantee or payment to finance the maintenance of roads, streets, retention or detention basins or other improvements approved with such subdivision for more than one year after the date on which such improvements have been completed to the reasonable satisfaction of the commission or its agent or accepted by the municipality, or (B) require the establishment of a homeowners association or the placement of a deed restriction, easement or similar burden on property for the maintenance of approved public site improvements to be owned, operated or maintained by the municipality, except that the prohibition of this subparagraph shall not apply to the placement of a deed restriction, easement or similar burden necessary to grant a municipality access to such approved site improvements.

(2) If the person posting a financial guarantee under this section requests a release of all or a portion of such financial guarantee, the commission or its agent shall, not later than sixty-five days after receiving such request, (A) release or authorize the release of any such financial guarantee or portion thereof, provided the commission or its agent is reasonably satisfied that the improvements for which such financial guarantee or portion thereof was posted have been completed, or (B) provide the person posting such financial guarantee with a written explanation as to the additional improvements that must be completed before such financial guarantee or portion thereof may be released.



## MEMORANDUM

TO: Parties Interested in Public Act 11-79, Amending Standards and Procedures for Performance Bonding for Site Plans and Subdivision Plans

FROM: Tim Hollister and Chris Smith,  
Shipman & Goodwin LLP, Hartford

DATE: September 7, 2011

RE: Summary of August 23, 2011 Discussion

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During the summer of 2011, Public Act 11-79 generated considerable discussion among municipal planners, municipal attorneys, and the development community. On August 23, 2011, several stakeholders convened informally in Hartford to discuss the Act, which takes effect October 1, 2011. Attached to this memo is a list of participants in the meeting and the minutes of the discussion, along with a copy of the Public Act.

The group considered preparing a summary of advice about this new legislation, but decided that the better course of action was simply to circulate the attached, detailed minutes, and then allow participants, if they wish, to pass along their own thoughts to interested parties, stakeholders, and constituents.

The consensus was that the meeting was helpful in sorting out the issues. We thank the participants for their time.

## DISCUSSION OF PUBLIC ACT 11-79

August 23, 2011  
2:00 p.m. to 5:00 p.m.

### Participants:

Bill Ethier, HBA of Connecticut  
Greg Ugalde, T&M Builders, Torrington  
Bob Weidemann, Sunwood Construction, Wallingford  
George LaCava, Trilacon Development, Cromwell  
Johnny Carrier, By Carrier, Plainville  
Bill Ferrigno, Sunlight Development, Avon  
Chris Wood, Wood Planning Associates, Woodbury  
Eric Barz, Town Planner, Windsor  
Mary Savage-Dunham, Town Planner, Southington  
Rob Phillips, Town Planner, Ellington  
Ron Thomas, Connecticut Conference of Municipalities  
Richard Roberts, Attorney, Halloran & Sage, Hartford  
Gail McTaggart, Attorney, Secor, Cassidy & McPartland, Waterbury  
Eric Knapp, Attorney, Branse, Willis & Knapp, Glastonbury  
Tim Hollister, Attorney, Shipman & Goodwin, Hartford  
Joe Williams, Attorney, Shipman & Goodwin, Hartford  
Chris Smith, Attorney, Shipman & Goodwin, Hartford  
Beth Critton, Attorney, Shipman & Goodwin, Hartford

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**MINUTES OF MEETING  
OF AUGUST 23, 2011  
REGARDING PUBLIC ACT 11-79**

**Prepared by Chris Smith and Tim Hollister**

Meeting commenced at approximately 2:00 p.m. A list of the participants is attached hereto as Exhibit A.

Tim Hollister of Shipman & Goodwin, commenced the meeting with an overview of the purpose of the meeting and its goals. The first goal is to identify points of consensus, disagreement, and possible future legislative work concerning Public Act 11-79 ("Act"). T. Hollister noted that the meeting's participants comprise representatives of most groups affected by the Act, including municipal officials, municipal planners, municipal attorneys, homebuilders and developers. He stated that the ultimate goal is, if possible, to produce and circulate a statewide guidance document for use by the aforementioned groups in implementing the provisions of the Act.

Bill Ethier of the Homebuilders Association of Connecticut, provided an overview of the Act from the HBA's perspective. B. Ethier discussed the fact that the HBA was the initial "sponsor" of the Act, which was prompted by what the HBA perceives as a historic problem with the municipal land use bonding process. Specifically, B. Ethier indicated that until the current legislature and economic environment, the HBA did not have a favorable climate to initiate statutory change concerning land use bonding requirements. The HBA's primary concerns include: (a) creating the ability for a builder or developer to offer alternative forms of bonding and other performance guarantees; (b) providing for the ability to build-down the amount of a bond as construction is completed pre-issuance of a certificate of occupancy; (c) having a designated time for a municipality to release a bond once construction is completed and the bond release is requested (B. Ethier noted that the 65 day time period as provided by the Act was initially proposed to be 30 days); and (d) eliminating lifetime maintenance bonds for public improvements (as used by Ellington and Burlington). B. Ethier concluded by noting that the legislative process is comparable to creating a sausage and that the Act, as passed, is not exactly what was proposed by HBA.

Ron Thomas of the Connecticut Conference of Municipalities ("CCM"), indicated that he has had numerous discussions with representatives of the Connecticut Chapter of the American Planning Association ("CCAPA") in an effort to determine the best approach to address issues raised by the Act. R. Thomas also indicated that he is working with, and reporting to, the Board of Directors of the Connecticut Association of Municipal Attorneys ("CAMA") concerning the Act.

Chris Wood of the Connecticut Chapter of the American Planning Association and as a private planning consultant, indicated that the "buy-in" with the municipal planners and municipalities

concerning legislative efforts with the Act came late in the process. C. Wood noted the need to promote development in the state, and to address problems associated with the municipal bonding process.

Eric Knapp of Branse, Willis & Knapp, referred to a Memo, prepared for his firm's municipal clients, outlining concerns with the Act. E. Knapp indicated that some of the towns that his firm represents are considering modifying their regulations to address the Act. Specifically, E. Knapp mentioned Willington is considering eliminating bonding, and Westbrook is considering modifying its subdivision regulations. E. Knapp noted that surety bonds are a real problem, especially when smaller amounts are involved where a company may refuse to pay out and "play the litigation card" with a town knowing that the town may not pursue the bond in an effort to avoid generating additional legal costs. E. Knapp indicated that some towns are considering how best to delay acceptance of improvements to see if problems with the associated improvements manifest themselves to permit time for the town to call the bond monies for repairs. E. Knapp noted that most smaller towns don't have on-staff engineers, and that the 65 day rule for releasing bonds needs more flexibility – at least for the smaller towns. Finally, E. Knapp stated that the best approach for all participants at this juncture is to agree on new legislation going forward, as opposed to addressing what was passed.

T. Hollister stated that performance bonding is not required by statute – it is optional. Also, there is a statutory distinction between "bonds" and "surety". Finally, the statutory language distinguishes between "surety" and "surety bond," the latter being a third-party's obligation when the party posting the bond does not perform. T. Hollister inquired as to whether the Act's new release provisions (65 day time frame, written statement of reasons) are straightforward.

C. Wood responded that the Act's release provisions is pretty much what the towns do now – they provide a punch list.

B. Ethier stated that some towns provide multiple punch lists.

T. Hollister noted that the crux of the concern about Public Act 11-79 appears to be whether municipalities, going forward, may categorically refuse to accept certain types of bonds, or must evaluate each on a case-by-case basis. He noted that the Act provides that a municipality cannot categorically deny a bond, and that any review of a bond by a municipality must be performed on a case by case basis.

Mary Savage-Dunham, Town Planner, Southington, stated that passbooks present problems because they expire often without the knowledge of, or notice to, the town. There are problems with collecting on surety bonds, especially those involving smaller amounts. M. Savage-Dunham indicated that Southington prefers to do security agreements. M. Savage-Dunham further commented that there are problems associated with partially reducing bond amounts when using passbooks.

E. Knapp stated that all of the seventeen towns represented by his firm do not accept surety bonds.

B. Ethier noted the language of the Act, Section 1 addressing General Statutes § 8-3(g)(2) provides that the commission "shall accept . . ." all of the listed items that follow, provided that the form of a listed instrument is acceptable to the commission. B. Ethier noted that the intent of the language pertaining to the acceptability of the financial institution applies only to letters of credit ("L/Cs").

Eric Barz, Town Planner, Windsor, stated that he has experienced problems with surety bonds. He noted that L/Cs were the first things thrown into the trash when the FDIC took over banks in the 1980s. E. Barz noted that we need better securitized and generic L/Cs.

T. Hollister stated that that there were recent concerns with Bank of America, with processing its L/Cs at four regional locations, none in Connecticut.

T. Hollister, C. Wood, and Richard Roberts of Halloran & Sage, then discussed how the laws that apply to surety bonds and letters of credit are governed by the international Uniform Commercial Code, and not by individual state law. Therefore, whether an instrument references "Connecticut law" as applying to the instrument is not really relevant since the UCC will be applied.

T. Hollister suggested that the group move on to what form of bonding is practical today.

George LaCava of Trilacon Development, indicated that most developers don't use a surety bond since they usually have to pay 110 percent to 120 percent of the value. He indicated that the towns he does business with prefer cash or a L/C. On one occasion, he pledged "lots" in an approved subdivision. Typically, developers go with L/Cs today. However, some towns are saying "no" to L/Cs. Irrevocable L/Cs are best because they are securitized by the property, and the bank has an interest to get things done.

T. Hollister inquired as to whether the group has recommendations for a standard rider or conditions to be imposed on performance bonds in light of the new Act.

E. Knapp indicated that he would like commissions to prepare a "uniform document" for developers in their respective town.

Joe Williams of Shipman & Goodwin, stated that any requirements should be provided for in the respective commission's or town's regulations or ordinances.

B. Ethier stated that there should be a standard form with criteria. He also noted that the criteria should not be placed in the statutes, and that it may be more appropriate to have such criteria in a municipality's regulations.

E. Knapp said that any criteria should not be in statute, but a more appropriate place would be as a regulatory guideline.

J. Williams reiterated that it may be appropriate to have a statutory amendment to incorporate some of the basic, uniform requirements of performance bonds.

B. Ethier noted that the term "performance guaranty requirement" would be appropriate language for any statutory amendment.

Bill Ferrigno of Sunlight Development, noted that a surety costs 1 percent or 2 percent above the 110 percent value, based upon zero payouts.

T. Hollister and M. Savage-Dunham discussed how commercial and industrial developments use surety bonds more often than residential developments.

E. Barz questioned the need to have bonds for commercial developments. One only needs to wait until the developer goes to pull a certificate of occupancy, and then outstanding improvement issues can be addressed.

T. Hollister noted the historic confusion with the term "modification to site plan" as used in § 8-3(g), and that this term means "work involved with modifying the land in accordance with the approved plan . . .," as opposed to modification of a previously approved site plan. B. Ethier and others agreed with this comment, and that remedying this longstanding confusion would be helpful.

C. Wood noted that public improvements include where a roadway is expanded and ties into the town's stormwater system – that the tie in is included. M. Savage-Dunham agreed.

E. Barz stated that perhaps a workable form of bond would be a hybrid. He suggested, as an example: 75 percent L/C and 25 percent cash where the cash is "on hand" if needed at the completion of the development.

Greg Ugalde of T&M Builders, stated that his company uses different forms. He noted that surety bonding companies have become very competitive and very responsive. G. Ugalde stated that he generally uses L/Cs.

T. Hollister asked for comments on E. Knapp's firm's recommendation that references the Act's 10 percent cap on contingency over and above actual cost of improvements, and the firm's recommendation to "load up" when computing construction cost, especially since approvals may now be extended out to fourteen years. T. Hollister inquired, "Is padding or bumping up the numbers legal?"

E. Knapp responded, "No, but you [the town] really need to do your homework up front."

B. Ethier indicated that the 10 percent cap was a number that simply was arrived at "out of the air" but was thought to be reasonable in most cases. He recognized that the number may not be practical in some cases. B. Ethier indicated that a potential fix may be to tie any bond increase to future plan modifications, or possibly add reference to the CPI index.

E. Knapp commented that B. Ethier's suggested fixes on this issue would make the towns happier.

C. Wood noted that consideration could be made to provide 10 percent for a contingency plan, and 10 percent for CPI.

M. Savage-Dunham suggested a flat 20 percent for contingency.

B. Ethier asked what is a reasonable number that everyone can agree on? He noted that Public Act 11-5 does provide for "automatic" extensions.

T. Hollister noted the sentence taken out of § 8-3(g) [providing "[t]he commission may condition the approval of such [site plan] extension on a determination of the adequacy of the amount of the bond or other surety furnished under this section."]. This seems to say that permit extensions may not be based on bonding issues.

E. Barz suggested that a solution could be to have a residual bond to be kept at costs or values determined at the time of reduction.

G. Ugalde stated that this occurs now. However, he noted that it is difficult for the smaller towns to monitor these situations.

C. Wood stated that this is exactly the problem – especially with municipal budget constraints.

M. Savage-Dunham noted that Southington permits one bond reduction per bond per project or phase.

T. Hollister inquired as to whether towns charge for the costs of inspection.

Gail McTaggart of Secor, Cassidy & McPartland, stated that smaller towns often pass the consultants' inspection fees onto the developer.

E. Knapp indicated that nobody really wants to call a bond and that such is done as a last resort. He noted that by that time, bad things have occurred.

B. Ethier noted that the 10 percent cap only applies to site plans, not subdivisions. One possible option is to have a new "performance guarantee statute" similar to § 8-7d that would be referenced by both site plan and subdivision statutes.

T. Hollister suggested that the timing of the posting of a bond may determine the bond form.

B. Ferrigno stated that you may have one number for pre-lot conveyance, then when someone approaches to purchase a lot, the numbers may need to change.

M. Savage-Dunham stated that the issue of transferring lots prior to completion of all improvements is the real problem.

B. Ethier noted that the Act requires a bond to be in place, or improvements completed, before the conveyance of a lot can occur.

C. Wood asked do you negotiate a percentage of work vs. percentage of bond prior to posting?

G. Ugalde responded, "Yes. You need to get a knockdown of the bond amount when work is completed." G. Ugalde noted that one can use a restrictive covenant approach when you need to record the mylar and convey, but don't want to post bonds.

E. Knapp indicated that the Act permits you to record the mylar, but you just can't convey a lot, which is something that he is okay with.

Johnny Carrier of By Carrier, indicated that he prefers a L/C that is premised on phasing. Farmington provides for this in its regulations and he believes that this is a good approach. J. Carrier prefers this approach as opposed to having to post cash bonds prior to recording a subdivision mylar.

General quick, out of turn, discussion with a split as to whether L/C or cash bond is preferable prior to recording a subdivision mylar.

B. Ethier noted that it makes sense to standardize this process.

M. Savage-Dunham responded that it may work, but need to consider smaller towns with limited staff.

E. Barz stated that in standardizing the process, it must be based upon the "buyer's protection." The process is necessary for public protection. It is both for fiscal protection and to protect the buyer.

T. Hollister then inquired about the new Act's prohibition on long-term maintenance bonds after public acceptance.

B. Ethier stated that a maintenance bond shouldn't be longer than one year. Some towns have them go "in perpetuity" where you never get your monies back, and that this is a real problem. This needs to be clarified.

G. McTaggart stated that the biggest problem is how to securitize a maintenance bond.

B. Ferrigno stated that the bonding process involves three aspects: construction, performance and maintenance.

T. Hollister inquired as to whether a town may place a moratorium on bonds while working on new regulations to address the Act.

There was a general, out of turn, discussion where the consensus was that you could probably have a moratorium on site plans and subdivisions, but not on bonding.

C. Wood asked whether the Act applies to approved subdivisions where the bond has yet to be posted, and how does the Act apply to a maintenance bond that has yet to be posted?



There was a general consensus that the Act would not apply to an approved subdivision (approved prior to the Act's effective date of October 1, 2011) where the bond has not been posted. However, there was disagreement as to whether the Act would apply to a maintenance bond that has not been posted. B. Ethier indicated that the Act would apply to a maintenance bond not yet posted. C. Smith and G. McTaggart indicated that if the Act does not apply to an approved subdivision where the performance bond has not been posted, then the Act would similarly not apply to a maintenance bond not yet posted for the same approved subdivision.

E. Barz noted that "maintenance bonds" is a misnomer, since they are in essence a warranty against faulty construction.

T. Hollister suggested that the meeting generated great discussion, and that he would arrange to have the minutes prepared and sent to all participants. T. Hollister asked about the advisability of attempting to draft a uniform performance guaranty statute.

C. Wood indicated that CCAPA is considering improvements and streamlining for all land use regulations and statutes.

E. Barz suggested that any legislative effort needs to include a review of § 8-25 relative to the distinction between public improvements and private roadways. Homeowners on a private road are no less deserving of protection than buyers on public streets.

B. Ethier responded that a town can't require bonding for private roadways because such are not public improvements.

G. McTaggart and R. Roberts noted that the issue of bonding for private roadways would need to be addressed in any proposed new legislation.

B. Ethier responded that he didn't have a problem with the providing for the ability to bond for work that is really "public."

T. Hollister adjourned the meeting at this point, thanking everyone for attending and for their contributions. It was approximately 4:00 p.m.



**Substitute Senate Bill No. 860**

**Public Act No. 11-79**

**AN ACT CONCERNING BONDS AND OTHER SURETY FOR APPROVED SITE PLANS AND SUBDIVISIONS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (g) of section 8-3 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2011*):

(g) (1) The zoning regulations may require that a site plan be filed with the commission or other municipal agency or official to aid in determining the conformity of a proposed building, use or structure with specific provisions of such regulations. If a site plan application involves an activity regulated pursuant to sections 22a-36 to 22a-45, inclusive, the applicant shall submit an application for a permit to the agency responsible for administration of the inland wetlands regulations not later than the day such application is filed with the zoning commission. The commission shall, within the period of time established in section 8-7d, accept the filing of and shall process, pursuant to section 8-7d, any site plan application involving land regulated as an inland wetland or watercourse under chapter 440. The decision of the zoning commission shall not be rendered on the site plan application until the inland wetlands agency has submitted a report with its final decision. In making its decision, the commission shall give due consideration to the report of the inland wetlands agency and if the commission establishes terms and conditions for approval that are not consistent with the final decision of the inland wetlands agency, the commission shall state on the record the reason for such terms and conditions. A site plan may be modified or denied only if it fails to comply with requirements already set forth in the zoning or inland wetlands regulations. Approval of a site plan shall be presumed unless a decision to deny or modify it is rendered within the period specified in section 8-7d. A certificate of approval of any plan for which the period for approval has expired and on which no action has been taken shall be sent to the applicant within fifteen days of the date on which the period for approval has expired. A decision to deny or modify a site plan shall set forth the reasons for such denial or modification. A copy of any decision shall be sent by certified mail to the person who submitted such plan within fifteen days after such decision is rendered. The zoning commission may, as a condition of approval of any modified site plan, require a bond in an amount not to exceed the cost to perform any modifications required by such modified site plan plus an additional amount of up to ten per cent of the amount of the bond and with surety and conditions satisfactory to it, securing that any modifications of such site plan are made or may grant an extension of the time to complete work in connection with such modified site plan. [The commission may condition the approval of such extension on a determination of the adequacy of the amount of the bond or other surety furnished under this section.] The commission shall publish notice of the approval or denial of site plans in a newspaper having a general circulation in the municipality. In any case in which such

notice is not published within the fifteen-day period after a decision has been rendered, the person who submitted such plan may provide for the publication of such notice within ten days thereafter. The provisions of this subsection shall apply to all zoning commissions or other final zoning authority of each municipality whether or not such municipality has adopted the provisions of this chapter or the charter of such municipality or special act establishing zoning in the municipality contains similar provisions.

(2) To satisfy any bond or surety requirement, the commission shall accept surety bonds, cash bonds, passbook or statement savings accounts and other surety including, but not limited to, letters of credit, provided such bond or surety is in a form acceptable to the commission and the financial institution or other entity issuing any letter of credit is acceptable to the commission. Such bond or surety may, at the discretion of the person posting such bond or surety, be posted at any time before all modifications of the site plan are complete, except that the commission may require a bond or surety for erosion control prior to the commencement of any such modifications. No certificate of occupancy shall be issued before a required bond or surety is posted. For any site plan that is approved for development in phases, the surety provisions of this section shall apply as if each phase was approved as a separate site plan. Notwithstanding the provisions of any special act, municipal charter or ordinance, no commission shall require a bond or other surety to securitize the maintenance of roads, streets or other improvements associated with such site plan for maintenance occurring after such improvements have been accepted by the municipality.

(3) If the person posting a bond or surety under this section requests a release of all or a portion of such bond or surety, the commission or its agent shall, not later than sixty-five days after receiving such request, (A) release any such bond or surety or portion thereof, provided the commission or its agent is reasonably satisfied that the modifications for which such bond or surety or portion thereof was posted have been completed, or (B) provide the person posting such bond or surety with a written explanation as to the additional modifications that must be completed before such bond or surety or portion thereof may be released.

Sec. 2. Section 8-25 of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2011):

(a) No subdivision of land shall be made until a plan for such subdivision has been approved by the commission. Any person, firm or corporation making any subdivision of land without the approval of the commission shall be fined not more than five hundred dollars for each lot sold or offered for sale or so subdivided. Any plan for subdivision shall, upon approval, or when taken as approved by reason of the failure of the commission to act, be filed or recorded by the applicant in the office of the town clerk not later than ninety days after the expiration of the appeal period under section 8-8, or in the case of an appeal, not later than ninety days after the termination of such appeal by dismissal, withdrawal or judgment in favor of the applicant but, if it is a plan for subdivision wholly or partially within a district, it shall be filed in the offices of both the district clerk and the town clerk, and any plan not so filed or recorded within the prescribed time shall become null and void, except that the commission may extend the time for such filing for two additional periods of ninety days and the plan shall remain valid until the expiration of such extended time. All such plans shall be delivered to the applicant for filing or recording not more than thirty days after the time for taking an appeal from the action of the commission has elapsed or not more than thirty days after the date that plans modified in accordance with the commission's approval and that comply with section 7-31 are delivered to the commission, whichever is later, and in the event of an appeal, not more than thirty days after the termination of such appeal by dismissal, withdrawal or judgment in favor of the applicant or not more than thirty days after the date that plans modified in accordance with the commission's approval and that comply with section 7-31 are

delivered to the commission, whichever is later. No such plan shall be recorded or filed by the town clerk or district clerk or other officer authorized to record or file plans until its approval has been endorsed thereon by the chairman or secretary of the commission, and the filing or recording of a subdivision plan without such approval shall be void. Before exercising the powers granted in this section, the commission shall adopt regulations covering the subdivision of land. No such regulations shall become effective until after a public hearing held in accordance with the provisions of section 8-7d. Such regulations shall provide that the land to be subdivided shall be of such character that it can be used for building purposes without danger to health or the public safety, that proper provision shall be made for water, sewerage and drainage, including the upgrading of any downstream ditch, culvert or other drainage structure which, through the introduction of additional drainage due to such subdivision, becomes undersized and creates the potential for flooding on a state highway, and, in areas contiguous to brooks, rivers or other bodies of water subject to flooding, including tidal flooding, that proper provision shall be made for protective flood control measures and that the proposed streets are in harmony with existing or proposed principal thoroughfares shown in the plan of conservation and development as described in section 8-23, especially in regard to safe intersections with such thoroughfares, and so arranged and of such width, as to provide an adequate and convenient system for present and prospective traffic needs. Such regulations shall also provide that the commission may require the provision of open spaces, parks and playgrounds when, and in places, deemed proper by the planning commission, which open spaces, parks and playgrounds shall be shown on the subdivision plan. Such regulations may, with the approval of the commission, authorize the applicant to pay a fee to the municipality or pay a fee to the municipality and transfer land to the municipality in lieu of any requirement to provide open spaces. Such payment or combination of payment and the fair market value of land transferred shall be equal to not more than ten per cent of the fair market value of the land to be subdivided prior to the approval of the subdivision. The fair market value shall be determined by an appraiser jointly selected by the commission and the applicant. A fraction of such payment the numerator of which is one and the denominator of which is the number of approved parcels in the subdivision shall be made at the time of the sale of each approved parcel of land in the subdivision and placed in a fund in accordance with the provisions of section 8-25b. The open space requirements of this section shall not apply if the transfer of all land in a subdivision of less than five parcels is to a parent, child, brother, sister, grandparent, grandchild, aunt, uncle or first cousin for no consideration, or if the subdivision is to contain affordable housing, as defined in section 8-39a, equal to twenty per cent or more of the total housing to be constructed in such subdivision. Such regulations, on and after July 1, 1985, shall provide that proper provision be made for soil erosion and sediment control pursuant to section 22a-329. Such regulations shall not impose conditions and requirements on manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards or on lots containing such manufactured homes which are substantially different from conditions and requirements imposed on single-family dwellings and lots containing single-family dwellings. Such regulations shall not impose conditions and requirements on developments to be occupied by manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards which are substantially different from conditions and requirements imposed on multifamily dwellings, lots containing multifamily dwellings, cluster developments or planned unit developments. The commission may also prescribe the extent to which and the manner in which streets shall be graded and improved and public utilities and services provided and, in lieu of the completion of such work and installations previous to the final approval of a plan, the commission may accept a bond in an amount and with surety and conditions satisfactory to it securing to the municipality the actual construction, maintenance and installation of such public improvements and utilities within a period specified in the bond. Such regulations may provide, in lieu of the completion of the work and installations above referred to, previous to the final approval of a plan, for an assessment or other method whereby the municipality is

put in an assured position to do such work and make such installations at the expense of the owners of the property within the subdivision. Such regulations may provide that in lieu of either the completion of the work or the furnishing of a bond or other surety as provided in this section, the commission may authorize the filing of a plan with a conditional approval endorsed thereon. Such approval shall be conditioned on (1) the actual construction, maintenance and installation of any improvements or utilities prescribed by the commission, or (2) the provision of a bond or other surety as provided in this section. Upon the occurrence of either of such events, the commission shall cause a final approval to be endorsed thereon in the manner provided by this section. Any such conditional approval shall lapse five years from the date it is granted, provided the applicant may apply for and the commission may, in its discretion, grant a renewal of such conditional approval for an additional period of five years at the end of any five-year period, except that the commission may, by regulation, provide for a shorter period of conditional approval or renewal of such approval. Any person who enters into a contract for the purchase of any lot subdivided pursuant to a conditional approval may rescind such contract by delivering a written notice of rescission to the seller not later than three days after receipt of written notice of final approval if such final approval has additional amendments or any conditions that were not included in the conditional approval and are unacceptable to the buyer. Any person, firm or corporation who, prior to such final approval, transfers title to any lot subdivided pursuant to a conditional approval shall be fined not more than one thousand dollars for each lot transferred. Nothing in this subsection shall be construed to authorize the marketing of any lot prior to the granting of conditional approval or renewal of such conditional approval.

(b) The regulations adopted under subsection (a) of this section shall also encourage energy-efficient patterns of development and land use, the use of solar and other renewable forms of energy, and energy conservation. The regulations shall require any person submitting a plan for a subdivision to the commission under subsection (a) of this section to demonstrate to the commission that such person has considered, in developing the plan, using passive solar energy techniques which would not significantly increase the cost of the housing to the buyer, after tax credits, subsidies and exemptions. As used in this subsection and section 8-2, passive solar energy techniques mean site design techniques which maximize solar heat gain, minimize heat loss and provide thermal storage within a building during the heating season and minimize heat gain and provide for natural ventilation during the cooling season. The site design techniques shall include, but not be limited to: (1) House orientation; (2) street and lot layout; (3) vegetation; (4) natural and man-made topographical features; and (5) protection of solar access within the development.

(c) The regulations adopted under subsection (a) of this section, may, to the extent consistent with soil types, terrain, infrastructure capacity and the plan of development for the community, provide for cluster development, and may provide for incentives for cluster development such as density bonuses, or may require cluster development.

(d) (1) To satisfy any bond or surety requirement in this section, the commission shall accept surety bonds, cash bonds, passbook or statement savings accounts and other surety including, but not limited to, letters of credit, provided such bond or surety is in a form acceptable to the commission and the financial institution or other entity issuing any letter of credit is acceptable to the commission. Such bond or surety may, at the discretion of the person posting such bond or surety, be posted at any time before all public improvements and utilities are constructed and installed, except that the commission may require a bond or surety for erosion control prior to the commencement of any such construction or installation. No lot shall be transferred to a buyer before any required bond or surety is posted. For any subdivision that is approved for development in phases, the surety provisions of this section shall apply as if each phase was

# Town of

108 Pennsylvania Ave.  
P.O. Box 519  
Lesley A. Blais  
Office of the Town Clerk



# East Lyme

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Exhibit 5

**To:** All Boards and Commissions  
**From:** Lesley A. Blais, Town Clerk  
**Date:** November 11, 2013

According to Connecticut General Statutes, Section 1-225, the Chairman of each Board and Commission is required to file a schedule of Regular Meetings for the ensuing year with the Town Clerk's Office. Schedules should be filed no later than January 31<sup>st</sup> of each year. However, no meeting of any Board or Commission shall be held sooner than thirty days after such schedule has been filed. **Therefore, it is recommended that schedules be filed no later than December 31<sup>st</sup>.**

Each Board and Commission is required to file with the Town Clerk its Agenda for each Regular Meeting at least twenty four hours before the meeting to which it refers.

Minutes for each meeting are required to be filed in the Town Clerk's Office within seven days, excluding weekends and holidays.

The vote of each member upon any Motion is required to be put down in writing and filed with the Town Clerk's Office within forty eight hours, excluding weekends and holidays.

Failure to comply with any of these procedures could mean action taken at the meeting would be invalid.

**\*\*Please note the following important information:**

- When a Member resigns from a Board, Commission, Agency, or Committee they must provide a letter of resignation to the Town Clerk, with an effective date of resignation stated in that letter.
- When a New Member is appointed to a Board, Commission, Agency, or Committee the Town Clerk's Office must be notified. The new members must also be advised to come into the Town Clerk's Office to be sworn in. A Member cannot vote at any meeting until they have been sworn in. We need to know about the new appointment prior to that member coming to us for swearing in. Often times the new members come in the following day and we have not been notified that they have been appointed. We need confirmation of their appointment prior to swearing them in.
- If a meeting is scheduled by a Board, Commission, Agency, or Committee and that meeting is not on the Schedule of Meetings that was provided to the Town Clerk's Office at the beginning of the year the newly scheduled meeting is called a Special Meeting. No other business may be undertaken at a Special Meeting except that stated on the Agenda.
- If you are scheduling a Special Meeting in the Town Hall please check with the Town Clerk's Office prior to preparing the Agenda so we can reserve a room for you. Do not assume the room that you usually use for your meetings is available.