

Planning Commission Special Meeting Minutes

Tuesday July 21, 2015

FILED IN EAST LYME
CONNECTICUT
7/27, 2015 AT 11:00 AM/PM
Ceslynn Blair
EAST LYME TOWN CLERK

Present: Ernie Covino, Rita Palazzo, Brian Schuch, Chairman, Joan Bengtson, Francine Schwartz

Also Present: Ed O'Connell, Town Attorney, Victor Benni, Town Engineer, Michael Hess, Alternate (Sat as Regular Member), John Birmingham, Alternate

Absent: Gary Goeschel, Planning Director, Frank Balantic, Secretary, Anne Thurlow, Alternate, Rose Ann Hardy, Ex-Officio

Mr. Schuch called this Special Meeting of the Planning Commission to order at 7:01 pm.

Pledge of Allegiance

The Pledge was observed.

I. 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.

II. Approval of Minutes

A. July 7, 2015 Meeting Minutes

Ms. Bengtson stated that she would like a statement removed from Page 6 of the Meeting Minutes:

"Ms. Bengtson said that the world of building and bonding has changed. Nowadays the developer chooses what kind of bond he wants. She said that she feels the Developers have produced vast evidence that illustrates that they are protecting the Town."

She said the statement was paraphrased and is not what she said.

• ****Motion (1)**

Ms. Palazzo moved to approve the Meeting Minutes of July 7, 2015 as revised.

Mr. Covino seconded the motion.

Vote: 6-0-0. Motion passed.

Mr. Hess stated that he was absent from the July 7, 2015 Meeting, but he familiarized himself with the meeting minutes.

III. Subdivisions and Resubdivisions

A. Orchards Subdivision Status and Review

Attorney O'Connell reviewed with the Commission what they had discussed at the previous meeting; this is a change of the Public Improvements Collateral.

Traditionally most subdivisions opt to utilize a Public Improvement Bond to complete the public improvement work. This is merely an administrative decision; in lieu of the Covenants and Restrictions a Letter of Credit will be utilized to ensure public improvement completion.

Attorney O'Connell stated that Field Engineer, Don Gerwick, Engineer, Victor Benni, Deputy Director of Public Works, Bill Scheer, Director of Planning, Gary Goeschel, and Brad Karl of the Water Department all spent a great deal of time calculating the figures for the line of credit.

The statutes regarding bonds have changed in the last few years and we have been working on preparing revisions to our regulations to reflect these changes. Previously the Planning Commission of any given town could determine what type of bond a subdivision should use. Legislation has since changed; as long as a developer posts one of the particular bonds specified in the statute and is the proper monetary amount and form, the Planning Commission has to agree with it.

The Orchard's is suggesting a letter of credit, which is along the statutory defined proper type of bonds. Mr. O'Connell said that he recalled that the Commission was confident in the procedure but wanted confirmation from Mr. Benni regarding the dollar amount.

Mr. Benni explained that the Applicant's Engineer, Don Gerwick, submitted a bond estimate which the Town reviewed in great detail. They worked back and forth with the Applicant and in terms of the bond itself, cost was broken down by Individual Street. The amount of work to complete each street was determined and further broken down to include road preparation, road construction, water utilities, sewer utilities, sidewalks and other miscellaneous work. Also included in the estimate was a 15% contingency which is done to cover any unforeseen work that might be needed; this coverage includes the possibility of a construction supervisor that the Town would engage if they were ever to take over the project.

Mr. Benni said that the cost value was based on the current going rates and our Engineer Inspector verified these rates and worked with the current DOT cost estimating numbers. We feel confident in the numbers we used. Mr. Benni called attention to Mr. Goeschel's memorandum dated July 17, 2015 (attached.) With a Letter of Credit in the amount of \$1,830,000 dollars the Planning Commission would hold well over the **\$2,274,364** dollars suggested by the Town Engineer:

- Erosion & Sedimentation Bond (cash)- \$340,000
- Public Improvement Bond (cash)- \$370,000
- Erosion & Remediation Bond (cash)- \$100,000
- Letter of Credit- \$1, 830,000

Total- \$2,640,000 (all bonds & letter of credit)

Mr. Schuch asked if the time to complete the subdivision was factored in. Mr. Benni said that would be based upon information that the Applicant is providing and we can check with them. He believes that completion would be at the end of the next construction season and that they are diligently working as we speak.

Attorney Ziegler confirmed Mr. Benni's estimated completion date and described the diligent work being completed. The figures provide more than enough to cover any potential that might come up, including a delay in construction. We would like the flexibility to release the covenants and replace it with a letter of credit. The letter of credit has been approved by the Bank of Simsbury.

Mr. Schuch asked what the level of risk is to the Town and Mr. Benni detailed how the level of risk is very low. Mr. Benni noted that the Carrier's do such good work that the Town does not have to check in with them as often as they would have to, if this project was being completed by another developer.

Mr. Schuch asked if there is an example of the Town engaging a construction manager and Mr. Benni cited the Boardwalk, explaining how the Town checks in and supervises progress.

Ms. Palazzo stated that in terms of the time frame of the Boardwalk as well as Town Staff working with a Construction Manager we have already heard four different dates, so she doesn't understand where this is going. First we heard April, then June, then October and now, possibly December. She asked how it works in terms of the Town taking over.

Mr. Benni explained in detail how pulling a Bond would work and how the subdivision would be completed.

Mr. Covino suggested that perhaps the Boardwalk is not the best example. Mr. Benni replied that in terms of construction and the Town having to take over, it is a perfect example. You put contingencies into projects because they can go over budget and unforeseen things like weather do occur. It is easier to calculate the cost, quantity and type of needed materials for projects like the Orchard's.

Mr. Benni said that he compared the Boardwalk to the level of the Town overseeing a project, because the Town is overseeing the Boardwalk and just because it is the Town; it doesn't mean that we are not doing our due diligence to the taxpayer in overseeing the project and getting the highest quality of materials and work. Timing is a difficult thing to estimate in the construction industry. You have to remember that we've over 2,000 feet of shoreline that we are battling every day to complete the project.

Attorney O'Connell stated that a more apt example of where a construction manager was used is the interconnected water system between East Lyme and New London. The type of work done is more similar to the work done at the Orchards. This is garden variety construction work while the Boardwalk is more specialized.

Ms. Bengtson asked if the Town has ever gone to this extent on estimates for a subdivision. Why are we putting so much man power in coming up with figures? Mr. Benni responded that it's because of the size of the subdivision and added that the public improvements are significant. Calculation performed this way provides security to the Town, the taxpayer and the subdivision residents.

Attorney O'Connell stated that with a line of credit the Town has all the money in its hands and doesn't have to worry about going through insurance companies and haggling over work and responsibility.

He explained that in a very real sense the bond money grows because the developer is continuing to work, and every day the amount of work the Town would have to do if they took over becomes less and less.

Mr. Gerwin reviewed the progress of the road work as well as the history of the development and the previous owners.

Mr. Schuch asked Mr. Gerwin what the expectation of time is and how it might affect the budget. Mr. Gerwin used the example of the past winter and how construction shut down. Time was halted but very little money was being spent; it's not going to materially affect the budget. The contingency factored into the bond is a great buffer in terms of time delays. The estimate is late 2016/ early 2017.

Ms. Schwartz said her concern is in regards to the subdivision expiring. Mr. Gerwin said that is why you always want an adequate bond to cover worst case scenarios.

Attorney Ziegler said in terms of expiration you would not be talking about a resubdivision. All the open space has been deeded over. You would have to take affirmative action to terminate a subdivision and I submit to you, that's not going to happen.

Attorney Ziegler and Mr. Gerwin gave the Commission several examples of quality work within the subdivision noting that the Carrier's completed this work with an eye to the regulations.

Attorney O'Connell said that tonight is for administrative purposes and that we have gotten off track. We can hear from the developer in a free, easy manner but we should not be getting ahead of ourselves and exploring issues that would be the topic of a public hearing.

Mr. Schuch asked Attorney O'Connell if the Commission is legally bound because of the statute to accept the letter of credit and Attorney O'Connell said yes. The statutory changes prevent us from dictating the type of bond.

Ms. Bengtson stated that the Subdivision Regulations Bonding Review Subcommittee has not finished and this Commission has not seen it (the statute) and asked how we can accept it. Attorney O'Connell stated that the statute has been in effect for four years and we've yet to address it. We have to be guided by statute rather than our regulations. The line of credit is actually better and more powerful; it's the best type of collateral we can get.

Mr. Schuch asked if we are obligated to accept it or if we have discretion. Attorney O'Connell said if we went to court the judge would tell us we have to accept it.

Ms. Bengtson said we are going to have two standards that the Commission goes by and added that she is uncomfortable with this.

Attorney O'Connell said that we have been working on addressing our regulations and that several statutory changes continued to occur quickly before we could catch up. He said that he would be very uncomfortable going into court and telling a judge that we are refusing to accept a letter of credit as collateral for the developer's obligation when the present statute lists the letter of credit as an acceptable method.

Mr. Schuch asked what the diligence is that this Commission should be performing before they make their decision. Attorney Ziegler said that the statutes preempt local regulations.

Attorney Ziegler said that the relevant statute is Section 8-25 which is amended through PA 12-182. He read it into the record.

Attorney O'Connell pointed out the quoted language of the statute; *"the Commission **may** accept surety bonds but it **shall** accept collateral such as letters of credit..."*

Mr. Hess asked for clarification regarding how the phases of the development are completed and Mr. Gerwick detailed how various tasks from different phases are completed at once.

Mr. Benni explained what would happen if the Town had to take over, and what the bid process entails.

Mr. Schuch asked if there was any further diligence this Commission should perform and Attorney O'Connell replied that they have explored this in the most thorough, relevant and pertinent manner that any Commission would be expected to do; and you have gone above and beyond that.

- **Motion (2)**

Mr. Covino moved that upon submission of a properly executed Letter of Credit in the amount of \$1,830,000 in a form satisfactory to the Town Attorney, the Declaration of Covenants and Restrictions recorded in Volume 674, Page 286 of the East Lyme Land Records shall be released.

Ms. Palazzo seconded the motion.

Ms. Bengtson stated that she is very uncomfortable and she thinks the Commission should have seen the State ruling. We don't even know if that is the latest version and it is not in our Regulations.

Mr. Covino said he has confidence in the Town Attorney, his advice and that all of his questions have been vetted. Cash supersedes anything the Town would have to come up with to complete the project.

The Commission and Attorney O'Connell discussed how the expiration will have to be addressed in the fall.

Ms. Bengtson asked how long it would take to get the Letter of Credit and Mr. O'Connell said a few weeks.

Mr. Schuch asked Ms. Bengtson if she would feel better if they revisited this topic in two weeks and she said that she thought so. She said that we make our decisions through our Regulations and that we need to be consistent. The Commission needs to review the State law.

Ms. Palazzo said that she needs all the Commission Members to be comfortable and that they need to agree.

Attorney O'Connell said that the Commission would be acting in a legal manner if they accept the letter of credit. He said he would rather stand before a judge having accepted the letter of credit rather than not having accepted it.

Attorney O'Connell stated that the compilation of statutes provided tonight came right off the State website which is very up to date. He asked Ms. Bengtson if she was concerned if the words "may" and "shall" have somehow been changed since the last Legislative Session. She said that she would like more time to digest it again.

Attorney O'Connell stated that the Legislator has not met since Attorney Ziegler printed the hard copy of the statute.

Ms. Bengtson said the Commission should have time to review it.

- **Motion (3)**

Mr. Covino moved that his previous motion and the second be tabled until such time as the Planning Commission has time to read and review this Statute.

Ms. Palazzo seconded the motion.

Vote: 6-0-0. Motion passed.

The next Planning Commission meeting will be on August 4, 2015.

IV. Zoning Referrals (CGS 8-3a)

Proposed changes in zoning regulations or boundaries shall be referred to the Planning Commission for a report that shall contain the findings of the planning commission on consistency of a proposed regulation or boundary changes with the Plan of Development and any other recommendations the Planning Commission deems relevant. Failure of the Planning Commission to report prior to or at the hearing shall be taken as approval of such proposals. The report of the Planning Commission regarding such proposal shall include the reasons for the commission's vote and shall be incorporated into the records of any public hearing held thereon by the Zoning Commission. A proposal disapproved by the Planning Commission may be adopted by the Zoning Commission by a vote of not less than two-thirds of all the members of Zoning Commission.

- A. Application of Theodore A. Harris for GDEL Residential B, LLC; Application for a text amendment to the East Lyme Zoning Regulations Section 11.A.9.2.2 (C) to increase the number of units from 280 to 400.**

- **Motion (4)**

Mr. Schuch moved that this matter be tabled until the Commission receives a memo from Mr. Goeschel on this topic.

Mr. Covino seconded the motion.

Vote: 6-0-0. Motion passed.

- **Motion (5)**

Mr. Covino moved to adjourn this Planning Commission meeting at 8:40 pm.

Mr. Hess seconded the motion.

Vote: 6-0-0. Motion passed.

Respectfully Submitted,

Brooke D. Stevens

Brooke D. Stevens
Recording Secretary

Town of

P.O. Drawer 519

**Department of Planning &
Inland Wetlands**

*Gary A. Goeschel II, Director of Planning /
Inland Wetlands Agent*



East Lyme

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MEMORANDUM

To: East Lyme Planning Commission

From: Gary A. Goeschel II, Director of Planning 

Date: July 17, 2015

RE: Orchards Subdivision – Request of Attorney Robert Ziegler on behalf of Orchards of East Lyme Development, Inc.; Letter of Credit for Specific Improvements and Release of the Declaration of Restrictions and Covenants regarding Sale or Transfer of Lots

As you know, Attorney Ziegler has requested to provide a Letter of Credit to insure the completion of the public improvements in the amount of \$1,339,364.00 and the Commission execute a Release of the Declaration of Restrictions and Covenants regarding the Sale or Transfer of Subdivision Lots recorded in Volume 674 Page 286 of the East Lyme Land Records.

The Town of East Lyme Planning Commission currently holds three cash bonds totaling \$885,000.00 for the following:

Erosion & Sedimentation Bond	\$340,000.00
Public Improvement Bond	\$370,000.00
Erosion and Remediation Bond	\$175,000.00
TOTAL	\$885,000.00

The Town Engineer, Victor Benni, PE has reviewed the proposed plan of development for the above referenced subdivision. In correspondence from Mr. Benni to myself dated May 9, 2015, Mr. Benni indicates a Public Improvement bond in the amount of \$2,274,364 dollars would be sufficient to cover the public improvements that still remain to be completed by the applicant/developer. In addition, the developer proposes to reduce the Remediation Bond to \$100,000.00 dollars.

With a Letter of Credit in the amount of \$1,830,000.00 dollars the Planning commission would hold well over the \$2,274, 364.00 dollars suggested by the Town Engineer.

Erosion & Sedimentation Bond (cash)	\$340,000.00
Public Improvement Bond (cash)	\$370,000.00
Erosion and Remediation Bond (cash)	\$100,000.00
Letter of Credit	\$1,830,000.00
TOTAL	\$2,640,000.00

As such, in addition to continuing to hold the above referenced cash bonds, with the exception of reducing the Remediation bond to \$100,000.00 dollars, I would recommend the Planning Commission accept a Letter of Credit in the amount of \$1,830,000.00 dollars.

PROPOSED MOTION/RESOLUTION:

Upon submission of a properly executed Letter of Credit in the amount of \$1,830,000.00 in a form satisfactory to the Town Attorney, the Declaration of Covenants and Restrictions recorded in Volume 674, Page 286 of the East Lyme Land Records shall be released.

Cc: Victor Benni, PE, Town Engineer
Ed O'Connell, Esq.
Don Gerwick, PE