



TOWN OF LEDYARD

Planning & Zoning Commission

Meeting Minutes - Draft Minutes

741 Colonel Ledyard Highway
Ledyard, Connecticut 06339

Chairman
Tony Capon

Special Meeting

Thursday, August 22, 2024

6:00 PM

Council Chambers - Hybrid Format

REMOTE MEETING INFORMATION

Join Zoom Meeting

<https://us06web.zoom.us/j/81068676640?pwd=ORHec2l0CQ9OhV7yaPYbaVpNNP11bK.1>

Meeting ID: 810 6867 6640 Passcode: 549888

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I. CALL TO ORDER

Chairman Capon called the meeting to order at 6:00 p.m. at the Council Chambers, Town Hall Annex Building.

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL APPOINTMENT OF ALTERNATES

Present Commissioner Marcelle Wood
 Chairman Tony Capon
 Vice Chair Paul Whitescarver
 Commissioner Howard Craig
 Commissioner Jessica Cobb

Absent Alternate Member Matthew Miello

Non-voting Alternate Member Beth E. Ribe

In addition, the following were present:

Director of Land Use and Planning, Elizabeth Burdick
Zoning Enforcement Official, Alex Samalot
Land Use Assistant, Anna Wynn
Town Attorney, Robert Avena

Chairman Capon stated that the agenda will be reordered so that the item under Old Business, application PZ#24-8SUP & PZ#24-9CAM, will be moved to the beginning of the agenda for the

purpose of housekeeping.

Chairman Capon stated that the second public hearing items C. and D. will be moved to the first items under Public Hearings.

Chairman Capon stated that without objection the agenda as reordered is approved and all attachments and exhibits contained therein are incorporated into the record.

These changes are reflected in the minutes.

VIII. OLD BUSINESS

- A. **PZ#24-8SUP & PZ#24-9CAM** - 1737 and 1761 Connecticut Route 12 (Parcel IDs: 76-2120-1737 & 61-2120-1761), Gales Ferry, CT - Agent, Harry Heller, Esq., Heller, Heller & McCoy - Applicant/Owner, Gales Ferry, Intermodal, LLC for a Special Use Permit (SUP) and Coastal Area Management Review to modify an existing SUP/Coastal Site Plan for Mixed-Use (Commercial/Industrial) Development for addition of Excavation Operation, Major. *(Submitted 07-09-24, Date of Receipt 07-11-24, PH set for 9-12-24, PH must close by 10-16-24, DRD 65-days from close PH).*

Director Burdick summarized information contained in exhibit #32.

Chairman Capon stated that without objection the request to retain experts is approved.

RESULT: APPROVED AND SO DECLARED

AYE: 5 Wood, Capon, Whitescarver, Craig, and Cobb

ABSENT: 1 Miello

IV. PUBLIC COMMENT

VII. PUBLIC HEARINGS/APPLICATIONS

- C. **PZ#24-7ZRA - Applicant, Eric Treaster for proposed amendments to various sections of the Ledyard Zoning Regulations**, inc. Table of Contents, Section 2.2 (Definitions), Pg 5-3 (Uses Res Districts), Pg. 6-7 (Uses Non-Res Districts), Pg 8-14, Sec 8.16 (Excavation), Pg. 5-1 Sec. 5.2 (Dim Reqs. Res Zones), Pg 5-2, Sec. 5.3 (Uses Res Districts), Pg 6-2 Table 6.2.1 General Guidelines: All Development, Cluster & Transition Districts), Pg 6-4 Sec. 6.4 (Permitted/Special Permits Uses Non-Res Zones), Pg. 8-25, Sec. 8.28 (Residence, Multi-Family), Pg 8-26, Sec 8.28.E (Off-Street Parking), Pg 8-26, Sec. 8.28.F (Max Bldng. Height Multi-Fam), Page ii Table of Content (Reserved) & Sec8.3 (Reserved) to add “Affordable Housing Developments (R.I.G.L. §8-30g Applications).” *(Submitted 6/5/24, Date of Receipt 6/13/24, PH must open by 8/17/24).*

Chairman Capon reopened the public hearing.

Director Burdick stated that exhibit #16 of the application contains an extension of time granted by the applicant, Eric Treaster, continuing the hearing until September 12, 2024. She read Exhibit #17 into the record.

Chairman Capon stated that without objection the public hearing deadline is extended for one day and is continued to a Special Meeting on September 12, 2024 at the Ledyard Middle School and on Zoom.

RESULT: CONTINUE

- D. Discussion & Decision: PZ#24-7ZRA - Applicant, Eric Treaster for proposed amendments to various sections of the Ledyard Zoning Regulations, inc.** Table of Contents, Section 2.2 (Definitions), Pg 5-3 (Uses Res Districts), Pg. 6-7 (Uses Non-Res Districts), Pg 8-14, Sec 8.16 (Excavation), Pg. 5-1 Sec. 5.2 (Dim Reqs. Res Zones), Pg 5-2, Sec. 5.3 (Uses Res Districts), Pg 6-2 Table 6.2.1 General Guidelines: All Development, Cluster & Transition Districts), Pg 6-4 Sec. 6.4 (Permitted/Special Permits Uses Non-Res Zones), Pg. 8-25, Sec. 8.28 (Residence, Multi-Family), Pg 8-26, Sec 8.28.E (Off-Street Parking), Pg 8-26, Sec. 8.28.F (Max Bldng. Height Multi-Fam), Page ii Table of Content (Reserved) & Sec8.3 (Reserved) to add “Affordable Housing Developments (R.I.G.L. §8-30g Applications).” *(Submitted 6/5/24, Date of Receipt 6/13/24, PH Set for 8/8/24, PH must close by 9/11/24, DRD 65-days from close PH).*

RESULT: NO ACTION

- A. Public Hearing: PZ#24-2RESUB - 96, 98, and 100 Stoddards Wharf Rd., Ledyard, CT Agent: Harry Heller, Esq. Heller, Heller & McCoy - Applicant/Owner: Avery Brook Homes, LLC, for an 18-Lot Resubdivision/Affordable Housing Development pursuant to CGS §8-30g.** *(Submitted 3/28/24, Date of Receipt 4/11/24, PH originally set for 5/9/24, PH Opening Postponed to 5/30/24, PH Opened 5/30/24 (PH must close by 7/3/24), PH Cont. to 6/13/24, PH Cont.to 7/11/24 with 35-day extension, PH Cont. to 8/8/24. PH Must Close By 8/8/24, DRD 65 days from Close PH).*

Chairman Capon reopened the public hearing.

Chairman Capon introduced the representatives of the Town of Ledyard, the applicant and the intervener. He outlined the structure of the hearing.

Director Burdick stated that the Town’s consultant Mark Lancor of DyMar is attending by Zoom is present at the meeting. She read from and summarized exhibit #66 of the application.

Director Burdick addressed her email to CT Department of Health regarding their comments on the application. She read exhibit #62 into the record. She explained details regarding the delay in the Department's response.

Director Burdick read into the record the legal requirements of the public hearing timeline

included on the agenda. She stated she has no recommendations at this time because there have been no presentations yet.

Attorney Harry Heller, Heller Heller & McCoy, 736 Norwich-New London Turnpike, Uncasville, stated that he represents the applicant Avery Brook Homes, LLC. He introduced application PZ#24-2RESUB to the Commission.

Attorney Heller addressed a jurisdictional concern raised by Eric Treaster in exhibit #15 regarding legal requirements of zone changes for 8-30g applications. He referenced case law *Wisniowski v. Planning Commission of Berlin, CT of 1995*.

Director Burdick asked for a copy of the referenced document to add to the record as exhibit #67.

Attorney Heller stated he submits that the Applicant's Affordability Plan complies with Connecticut State Statue and is substantially the same as the Affordability Plan used in many other approved affordable housing developments in CT.

Attorney Heller explained the acronym CEPA which stands for the Connecticut Environmental Protection Act, which will be referenced hereafter as CEPA. He stated that CEPA is the Connecticut State Statue in which Groton Public Utilities intervened on this proceeding which gives the right to intervene on applications that are can unreasonably impair natural resources of the state.

Attorney Heller stated that 8-30g applications do not fall under regular subdivision and zoning regulations. He stated that if a commission denies an Affordable Housing Application there is a four part test that must be sustained by the Commission.

Attorney Heller stated that:

1. There is sufficient evidence in the record to support each reason for denial.
2. That the Commission's decision for denial is necessary to protect substantial public interest in health, safety and other matters that the Commission may consider. He concurred that potential harm to the reservoir and water supply is a legitimate concern that the Commission can consider. He stated that based on the proceedings the Commission will have to determine if there is sufficient evidence of a negative impact. He stated that substantial evidence is defined as more than a theoretical possibility but less than a preponderance of the evidence.
3. The public interest must clearly out way the need for affordable housing in the state of Connecticut.
4. The public interest cannot be protected by reasonable changes to the affordable housing development.

Attorney Heller moved to his presentation plan sheets and described the Re-subdivision Plan. He noted that the current plan is the third iteration of the re-subdivision that has been submitted to the Commission and referenced past application history.

Attorney Heller described the first iteration of the site plan, for a 36-lot formulation, dated July 2022. He noted that this iteration of the site plan had been determined to meet the minimum requirements of suitability by the Ledge Light Health District.

Attorney Heller described the second iteration of the re-subdivision plan, for a 26-lot formulation, dated October 31, 2022. He noted that the application to conduct regulated activities in conjunction with the re-subdivision application was denied by the IWWC and is currently on appeal in Superior Court.

Attorney Heller described the third iteration of the re-subdivision plan, for an 18-lot formulation, that is currently before the Planning and Zoning Commission for consideration. He referenced a Stormwater report prepared by L.B.M. Engineering that described technicalities related to the proposed development. He referenced town staff that have reviewed and commented on the calculation prepared by the design engineer.

Attorney Heller defined the difference between guidance and regulation in legal terms.

Attorney Heller referenced several issues of the application regarding guidance and regulation requirements. He stated that the proposed re-subdivision has been designed within the parameters of the Connecticut Public Health Code which is listed as an exhibit in the application. He referenced specific definitions located in the Public Health Code and sheets 5 and 6 of his presentation.

Attorney Heller referenced claims made in the intervention petition and stated that professionals representing the applicant will address those claims. He offered opposing arguments to the intervenor's claims.

Attorney Heller stated that the applicant has encumbered the project with restrictive covenants, agreements and restrictions for future residents to help protect the water supply which are located in the exhibits.

Attorney Heller referenced several other measures to protect the watershed that have been imbedded into the design of the housing development.

Attorney Heller referenced parameters for septic systems designs in the proposed housing development. He compared calculations of water usages per bedroom. He restated the specific

issues the Commission is required to make a determination on.

Stuart Fairbank of Angus McDonald/Gary Sharpe & Associates, 245 Boston Post Rd, Old Saybrook, introduced himself and described the company's work with sewage disposal systems. He referenced part of his presentation exhibit #68-1 and #68-2 and spoke about the housing development regarding Public Health Code requirements and specific expert technicalities.

Commissioner Wood and Stuart Fairbank discussed and clarified calculations used in the proposed housing development as well as the impact of vegetation removal on groundwater.

Commissioner Wood, Stuart Fairbank and Peter Gardiner of Dieter & gardiner clarified information about the perk tests that were used for the proposed housing development and other technicalities.

Commissioner Wood, Stuart Fairbank and Peter Gardiner of Dieter & Gardiner clarified technicalities about the design of wells in the proposed housing development.

Attorney Heller stated that he would comment on the above-mentioned technicalities in the Write Pierce report later in the hearing. He referenced exhibit #35 and past applications that have been within watershed areas. He referenced litigation under CEPA and passed out documents to staff and the Commission.

Director Burdick stated for the record that the handouts will be entered into the record as exhibit #69.

Chairman Capon asked who will police the covenants in the housing deeds such as fertilizing lawns.

Attorney Heller responded that any property owner of the subdivision has enforcement rights which is typical of any restrictive covenant.

Chairman Capon asked how it will be known if they are fertilizing with a chemical or organic fertilizer and who do you call if a resident is concerned that the neighbor is fertilizing their lawn.

Attorney Heller responded that the resident would contact Groton Public Utilities because it is their watershed area, and they would also contact the Ledyard Land Use Office in accordance with their reporting requirements.

Chairman Capon asked in the real world how likely is that to occur and what's the motivation for the neighbor to report the activity.

Attorney Heller responded that is it obvious when someone is fertilizing their lawn.

Commissioner Ribe and Attorney Heller spoke about the distinction between guidance and regulation.

Commissioner Ribe and Attorney Heller spoke about the lifespan of septic systems and standards of failure.

Chairman Capon and Attorney Heller spoke about the distinction between guidance and regulation.

Commissioner Ribe and Stuart Fairbank spoke about septic system failures.

Attorney Heller referenced the plan of the original subdivision and stated that two homes were already approved to be that close to the reservoir. He referenced the Source Water Protection Plan.

Commissioner Cobb and Stuart Fairbank clarified the factors and calculations used for infiltration rates.

Director Burdick and Attorney Heller discussed the procedures for building out the site plan so that everything is in compliance.

Director Burdick asked Attorney Heller to briefly list the restrictive covenants related to public health and safety.

Director Burdick, Attorney Heller, Commissioner Ribe and Attorney Avena discussed what authority the Town of Ledyard has to enforce the restrictive covenants.

Attorney Gelderman of Berchem & Moses, P.C., introduced himself and commented to the Commission about the requirements for determination and outlined the procedures regarding 8-30g applications. He commented on the difference between theoretical enforcement and actual enforcement of restrictive covenants.

Mike Giggy of Wright Pierce Engineers introduced himself and his credentials and stated his expertise in watershed planning and management. Director Burdick marked his presentation slides as exhibit #70.

Mike Giggy gave his presentation on behalf of Groton Public Utilities' intervention petition speaking on a vast array of technicalities.

Commissioner Wood and Mike Giggy discussed the effectiveness of grey water systems. They discussed the standard of failing for septic system failures.

Commissioner Ribe and Mike Giggy discussed soil limitations.

Commissioner Cobb, Mike Giggy and Karl Acimovic, representative of Groton Public Utilities, discussed surface water, groundwater, bedrock and wells.

Director Burdick and Karl Acimovic discussed how Groton Public Utilities monitors and handles adverse impacts with existing properties adjacent to the watershed property.

Commissioner Ribe and Karl Acimovic discussed enforcement procedures for properties with adverse impacts to watershed areas.

Attorney Avena and Mike Giggy discussed safe housing density per acre on the proposed housing development lot. They discussed who is responsible if the well should become contaminated.

Commissioner Cobb and Mike Giggy discussed remediation for failed septic tanks and contaminated wells and financial aspects.

Director Burdick marked Karl Acimovic's letter as exhibit #71.

Mark Lancor of DyMar Inc, on behalf of the Town of Ledyard, gave his presentation and addressed the renovation analysis and any potential adverse impacts to the Billings Avery Reservoir.

Commissioner Cobb and Mark Lancor spoke about monitoring wells.

James McCarthy, 95 Stoddard's Wharf Rd, Gales Ferry, read into the record exhibit #73.

Anne Roberts Pierson, 4 Anderson Drive, Gales Ferry, stated that the application should be denied.

Eric Treaster, 10 Huntington Way, noted discrepancies with numbers and sums shown in the application.

10 MINUTE RECESS

Attorney Steven Studer of Berchem Moses, representative of the intervenor Groton Public Utilities, made several comments on previous presentations and statements that were made during the meeting. He submitted his letter to the record. He summarized concerns and arguments contained in his letter.

Director Burdick stated that for the record the letter would be marked as exhibit #72

Attorney Heller, representative of the applicant Avery Brook homes restated the distinction between guidance and regulation. He restated requirements to deny an 8-30g application. He referenced Mark Lancor’s presentation and report. He made comments on the Wright’s Pierce Report.

Attorney Heller referenced a map and commented on the watercourses that are being discussed.

MOTION to close the public hearing on PZ#24-2RESUB

RESULT: APPROVED AND SO DECLARED

MOVER: Tony Capon

SECONDER: Marcelle Wood

AYE: 5 Wood, Capon, Whitescarver, Craig, and Cobb

ABSENT: 1 Miello

- B. Discussion & Decision: PZ#24-2RESUB** - 96, 98, and 100 Stoddards Wharf Rd., Ledyard, CT Agent: Harry Heller, Esq. Heller, Heller & McCoy - Applicant/Owner: Avery Brook Homes, LLC, for an 18-Lot Resubdivision/Affordable Housing Development pursuant to CGS §8-30g. *(Submitted 3/28/24, Date of Receipt 4/11/24, PH originally set for 5/9/24, PH Opening Postponed to 5/30/24, PH Opened 5/30/24 (PH must close by 7/3/24), PH Cont. to 6/13/24, PH Cont.to 7/11/24 with 35-day extension, PH Cont. to 8/8/24. PH Must Close By 8/8/24, DRD 65 days from Close PH).*

RESULT: NO ACTION

IX. ADJOURNMENT

Chairman Capon stated that without objection the meeting is adjourned.

The meeting adjourned at 11:00p.m.
VOTE: 5-0 Approved and so declared

Respectively Submitted,

Secretary, Marty Wood
Planning and Zoning Commission