

May 22, 2024

## INTRODUCTION

In response to recent developments impacting Ledyard's land use determinations, numerous citizens wish to convey our concerns to the Town Council and to emphasize the necessity for the Council to promptly exercise your oversight responsibilities as provided by our Charter. We are proud residents of Ledyard. We all made the conscious decision to live here, to invest in our homes, to raise our families here, and enjoy this tranquil, historic community with our neighbors. All of us had the expectation that this lifestyle would remain and be the significant core value by which all town decisions are made. We continue to believe this to be true.

We are apparently witnessing an annual effort by Cashman, Inc., and others, to turn Gales Ferry into little more than a company town. All other commercial applicants obtain zoning approval for their plans prior to purchasing a property. That process has been reversed here in an attempt to conduct an end run around our regulations. If the 2022 proposal was bad, the 2023-2024 proposal demonstrates a total lack of concern for our community, if not outright hostility. The objective is to make as much money as possible, in any way possible, regardless of the effect on those of us who choose to live here.

The latest proposal is diametrically opposed to our concerns and has no place in our community. We ask our elected and appointed representatives to ensure all land use applicants are telling the truth. The whole truth. And not to assume anything they say is the truth, unshaded by omissions. All submissions must be verified and no stone left unturned in our efforts to protect our town and all our residents.

Our concerns are not confined to a single pending application in Gales Ferry, but to a **pattern of abuse extending across Ledyard**. Developers have for too long been bending the rules and negatively impacting neighborhoods and our residents.

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Our areas of concern, as they relate to both long-standing issues and the ongoing Special Use Permit application (PZ#24-3 SUP) now before the Planning and Zoning Commission, are itemized below, in no particular order. This application is arguably the most complex one in the town's history (having already accumulated a paper trail extending across thousands of pages of exhibits, prior to commencement of the second set of hearings), with the potential to substantially alter both the regional landscape, and to exert a profoundly negative impact on property values across both Ledyard and Montville.

As our Plan of Conservation and Development declares:

### **Section 7 - Economic Development**

. . . development that does not alter the character of the town and which **improves the quality of life** for residents should be encouraged. The challenge will continue to be to encourage commercial and mixed-use development where appropriate, while **protecting the quality of life, property values, and the environment of the existing residents**.

The Zoning Regulations exist to protect us all. Unless the citizens and their representatives maintain constant vigilance, a parade of actors will attempt to subvert them for financial gain. For too long, a handful of individuals have abused Ledyard's land use system to line their pockets at the expense of the rest of us.

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## NECESSITY OF A COUNCIL INVESTIGATION

Under the Charter, the Council is tasked with **initiating investigations** and is empowered to obtain the necessary evidence to determine the truth:

**Chapter III, Section 9; Investigation:**

The Town Council shall have power to investigate **all offices** and agencies of and for such purposes shall have the power to call witnesses to appear before the Town Council to testify on any matter under investigation. The Chairman, or chairman pro-tempore, upon authorization of the Town Council, shall have the power, for such investigation, to **issue subpoenas**, and, at his request, any judge of the Superior Court may compel the appearance of witnesses and the production of books, records, and papers.

It is incumbent upon the Council to provide the public with transparency regarding the recent termination of the Town Planner, an incident which has thrown a wrench into the town's land use regime and which was conducted secretly, cowardly, and arbitrarily. It was also conducted in violation of the Charter which requires that the head of the Land Use Department can only be retained or dismissed in consultation with the Planning & Zoning Commission:

**Chapter IV, Section 3; PLANNING & ZONING COMMISSION**

The Planning & Zoning Commission **shall** advise the Mayor, regarding the **appointment and removal** of a Zoning Official, who shall be charged with the implementation and enforcement of the policies and regulations of the Planning & Zoning Commission.

Why do we have a Planning & Zoning Commission if the Mayor can arbitrarily usurp their authority under the Charter? (And as we recently learned, why do we have a Town Council if the Mayor can play budget games to embarrass the Council?) The termination of the Town Planner was obviously done strategically, to occur after said Special Use Permit application was received, so as to force town officials to go silent to avoid negatively impacting the almost certain litigation to follow. Town officials — including yourselves — have undoubtedly been instructed by counsel to avoid public discussion of this matter because of the potential for litigation. Allowing this essentially financial approach to control matters at this point could prove a **false economy** — on a grand scale. Because of the magnitude of the proposal at issue, the potential for a massive class action against the Town — from property owners on both sides of the Thames River — could prove ruinous and lead to de facto bankruptcy. Rather than a short-term focus on a comparatively minor financial cost, town leadership needs to consider the long-term impact on Ledyard's land use culture and the resulting impact of quality of life issues for our residents.

A failure to openly address this issue now — no matter how uncomfortable this might be — could potentially be disastrous. We are entering the realm of a banana republic, the antithesis of representative democracy. The political situation in Ledyard will continue to deteriorate until the public receives a full and prompt accounting of recent events. It was no coincidence that a Planner intent upon enforcing the regulations — produced through a democratic process — lost her position on the eve of the adjudication of an application with the potential to permanently alter the complexion of the town, and the process by which she was removed was the antithesis of an open, democratic one. Again, our concerns are not with a single land use application, but with a pattern impacting multiple Ledyard neighborhoods now and in the future being preyed upon by developers.

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**CONFLICTS OF INTEREST**

Under the Charter **all** town officials (employed, elected, or appointed) must disclose any financial interest or other conflict they might possess.

## **SECTION 6. CONFLICTS OF INTEREST**

**Any elected or appointed officer** or any employee of the Town who has a financial interest or personal benefit, direct or **indirect**, in any contract, transaction, or decision of any board or commission to which the Town is a party, shall disclose publicly that interest to the appropriate board or commission **and the Town Council in advance of discussion or action on the matter**, which shall record such disclosure upon the official record of its meetings. The Town Council may by ordinance specify what is, or what is not a conflict of interest for officials and employees of the Town.

**Willful violation by any such officer or employee of the provisions of this section shall be grounds for his removal.** Violation of this section with the knowledge, express or implied, of any person or corporation participating in such **contract**, transaction, or **decision** shall render the same **voidable by the Town Council, or by a court of competent jurisdiction.**

It should be noted that **any** town official is at risk of removal due to a failure to adhere to the above policy. As part of its investigation into the secret termination of the Planner, it is necessary for the Council to explore any professional conflict held by the Mayor. A failure of the Council to remove any offender of this policy would invite subsequent violations. Public officials who mix their business interests with their official responsibilities destroy trust in our government.

In the context of council investigations, it should be noted that the Charter states:

### **Chapter VI, Section 1, TOWN ATTORNEY:**

If in **special circumstances or for any investigation** under Chapter III, Section 9, the Town Council deems it advisable, it may provide by resolution for the temporary employment of counsel **other** than the Town Attorney.

Under the Charter's **Chapter IV, Section 9; APPOINTMENTS AND REMOVALS**, the Town Council has the ability to remove any officer that fails to adhere to the conflict of interest protocols:

Except as otherwise provided in this Charter, the Town Council may remove for improper performance of his duties, **for malfeasance or misfeasance in office**, or for other proper cause, **any officer**, any member of any board, commission, committee, or any employee appointed by it, provided the officer, member, or employee shall have been served with a written notice of intention of the Town Council to remove him, containing a clear statement of the grounds for such removal, and of the time and place not less than ten (10) days nor more than thirty (30) days after the service of such notice at which he shall be given an opportunity to be heard thereon.

## **STATE STATUTE**

Under Connecticut statute, no town planning commission member with any conflict of interest, direct or indirect, may participate in any decision. If this were done it would render that decision void. We are proactively alerting the Council to this potential should it develop in the near future and there is a need for the Council to play a role.

**Sec. 8-21. Disqualification of members in matters before planning or zoning commissions or zoning board of appeals.**

No member of any planning commission shall participate in the hearing or decision of the commission of which he is a member upon any matter in which he is directly or **indirectly** interested in a personal or financial sense. In the event of such disqualification, such fact shall be entered on the records of the commission and, unless otherwise provided by special act, replacement shall be made from alternate members pursuant to the provisions of section 8-19a, of an alternate to act as a member of such commission in the hearing and determination of the particular matter or matters in which the disqualification arose.

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### GROTON UTILITIES' & WPCA's CONCERNS

In the January 31, 2024 submission from the Water Pollution Control Authority (attached) to the Planning and Zoning Commission, relaying the concerns of Groton Utilities, a request was made through the WPCA to retain blasting expertise (which Groton Utilities lacks) on the potential impacts to their water mains and subsidiary lines adjacent to the proposed blasting zone. Leak testing of water mains within a half-mile radius of the proposed blasting zone was also requested. It does not need stating that the water supply to thousands, on both sides of the Thames River, hangs in the balance. It is incumbent upon the Council to address this existential matter, **before** the Planning and Zoning Commission takes it under review. The relevant text from the letter reads (emphasis added):

As a third party interested in protecting Ledyard's investment in the water system, the following four conditions **need to be met**:

1. Blasting specialist expertise needed: Both the WPCA and GU do not have on staff a specialist to determine what impact, if any, blasting near underground pipe may have, particularly when the route 12 16-inch iron ductile main is **only 50 feet away**. The commissioners and GU would like to **request that an expert in blasting near underground utilities be employed** to outline the risks and precautions that need to be taken to minimize blasting damage risks.
2. Before any blasting takes place, that we conduct a leak test, at Cashman's expense, on the main 16-inch line on route 12 extended from the center point of the blasting activity to at least ½ mile in either direction. In addition to route 12, the line under the road in the south of the blasting area (Chapman St) including all service lines for each resident on that road also be leak tested.
3. That blasting vibration instrumentation be deployed, at Cashman's expense (based on the above expert's suggestion) covering the route 12 16 inch main before and during blasting activity.
4. Because the state of Connecticut requires the local water service authority (that is the WPCA) to bring water to residents that have failed wells, that Cashman - at their expense, provide the cost to deploy water service (called water main extensions) to the resident that has a failed well if all parties agree it was due to blasting - up to the meter pit which is on the resident's property line.

In addition, a question of bonding and or insurance be posted in the event of a failure to any of the water services as outlined above has been raised. As we are not familiar with the mechanism for such insurance, we will leave this up to Planning and Zoning for further discussion.

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### EXISTENTIAL CONCERNS

There has been no response from town officials to this WPCA letter since it was issued, and the issue is being studiously ignored by the applicant. Is it not long overdue for the Town Council (and others) to have a discussion regarding this matter? The water supply of many citizens in two towns — for homes on both wells and city water — hangs in the balance. The financial repercussions could be ruinous. WPCA and

Groton Utilities have spoken, but who is listening? Montville officials are concerned, as their water supply is potentially at risk. We have reason to believe Montville officials will come out strongly opposed to blasting hundreds of feet from their citizens and in the close vicinity of a water main serving them.

It hardly needs pointing out that the potential for financial ruin of the town needs to be taken into consideration. And there does not appear to be any viable means of imposing sufficient bonding or insurance on the applicant. We have seen no evidence that anyone in the rest of town government has any intention of ensuring Groton Utilities' and WPCA's four conditions are met, or has any idea of how to go about doing so given the scale of the potential risk. It is not optional for the Council to remain detached from this existential concern.

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### **A NEW IWWC PERMIT IS MANDATORY**

The resubmission of the referenced Special Use Permit requires starting afresh, with a new Inland Wetlands and Watercourses permit. The permit previously issued last year has been rendered void because at that time no mention was made of the intent, stated after the IWWC permit approval, to use copious (yet unquantified) quantities of sprayed water for dust suppression during the blasting, excavation, and crushing activities proposed. It apparently now falls to the part-time Planner we have been assigned — in collaboration with the town attorney — to make the determination as to whether an IWWC resubmission is called for.

**The Council needs to weigh in on this essential point**, as the previous Planner was apparently fired, in part, for advocating the necessity of a new IWWC permit. The City of Groton has filed for intervenor status for a pending application because they assert the need for IWWC review and the necessity of enforcing the federal Clean Water Act. Allowing applicants and staff to arbitrarily adjudicate the necessity of IWWC review is unacceptable. The Council must step in to allow IWWC to make such determinations.

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### **RETAINING OUTSIDE EXPERTS TO ADVISE THE TOWN**

Town ordinances provide for retaining **outside experts** to provide consultation when complex applications come before town boards. This is to ensure applicants are telling us the truth. While we have retained a stormwater expert to examine the application, and IWWC requires their own experts to properly vet the proposal, as the previous Planner advocated. The Council needs to weigh in on this essential point, another apparent reason for the recent firing.

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### **THE GREAT PRETENSION**

The Zoning Regulations declare that uses not specifically allowed are prohibited:

**3.6.D. Prohibited if not permitted:**

Any use of land, buildings or structures not expressly permitted by these Regulations as a **principal use** in a particular Zoning District, or allowable as an accessory use to such a principal use, is prohibited in that District.

**Pretending** that blasting, quarrying, and rock crushing are allowed in a tranquil neighborhood does not make this so. Just because a property is zoned industrial does not open the door to wholesale uses and destruction of the equity and health of adjacent neighborhoods. All that our Regulations allow is excavation. It is time that the Council weighed in on this important point and put an end to the pretending that a rock quarry somehow equates to a simple excavation. The Planning and Zoning Commission should rule on this point and avoid the expense and imposition on the citizens of an extended series of public hearings. The Town Council should make it clear that it will stand behind the Planning and Zoning Commission and would

be glad to defend this important point in court.

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### **AVOIDING LITIGATION CAN EVENTUALLY LEAD TO MORE LITIGATION**

Fear of lawsuits is no way to run a town because it eventually (which has now arrived) opens the door to wholesale abuses. Some litigation is worthwhile to engage in to preempt litigation of greater magnitude. Any attorney who advises against litigation when it is appropriate is an attorney without confidence in his ability to prevail in court. The result of such advice is we are now confronted with the farce of an alleged "excavation application" when it is something far different.

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The volunteers serving on town boards, including yourselves, have been caught in the middle between the public which looks to you for protection, and what can only be described as a series of abusive proposals which treat Ledyard residents as cattle. Based on the experience with this application to date, we have no confidence that if approval was granted, voluntary compliance with any conditions imposed by the Planning and Zoning Commission could be anticipated. Approval of an inherently flawed application would almost certainly guarantee the impossibility of enforcing its provisions.

**All neighborhoods matter**, regardless of where they might be. The problem of abusive development is not confined to Gales Ferry, it has metastasized across the rest of town. We look to you to fulfill your responsibilities to preserve the Ledyard we all call home and to ensure our Charter, Ordinances, and Regulations are upheld, as well as relevant State statutes. Ledyard is also obligated to ensure enforcement of the provisions of the federal Clean Water Act, delegated to us through the State, to ensure the Waters of the United States on our western border remain protected. Inaction by the Council would allow bad actors to quickly turn the Ledyard we know and enjoy into something far different, while leaving the rest of us behind to clean up the mess.

#### **Attachments:**

- January 31, 2024 WPCA letter
- January 11, 2024 Planner memorandum for the record (conclusions on final page)