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EXHIBIT #18

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October 12, 2004

Robert McIntyre, Chairman
Old Saybrook Planning Commission
302 Main Street
Old Saybrook, CT 06475

and

Madeleine B. Fish, Chairwoman
Old Saybrook Zoning Commission
302 Main Street
Old Saybrook, CT 06475

RE: Old Saybrook Planning Commission - Open Space Subdivision
Special Exception; Old Saybrook Zoning Commission - The
Preserve, Future PRD Application
FILE NO: 3029/04-207 and 3030/04-066

Dear Chairman McIntyre and Chairwoman Fish:

As requested, I have done a preliminary review of the plans submitted by River Sound Development, LLC ("RS") for the purpose of identifying threshold issues affecting the application and the processing thereof. I have also received a copy of a Memorandum from Attorney David M. Royston dated August 30, 2004, which presents Attorney Royston's planned sequence of filing of applications, and a copy of the actual application materials. Lastly, I have reviewed my own letter to you of June 2, 2004, in which I outlined the options for presenting The Preserve PRD application. This letter is not intended as a final review, but merely to raise issues that are evident upon a preliminary review of the plans so that the applicant can address them.

Page Two
Chairman McIntyre and Chairwoman Fish
October 12, 2004

I am aware that no application has been filed for a PRD and that the only pending application is for the Special Exception for Open Space Subdivision before the Planning Commission. However, the road, lot, and open space patterns which are approved by the Planning Commission in this first stage of application will bind the design of subsequent applications. Therefore, it is critical that PRD-related issues be raised at this stage in order to avoid unexpected consequences for both the applicant and the Commission. My preliminary responses are as follows:

1. Structure of the Application: In my June 2, 2004, letter, I essentially outlined two possible approaches for the application to proceed: a PRD located on one or more lots in an Open Space Subdivision, or an Open Space Subdivision one component of a "master" PRD. Although I recognized that the option was the Applicant's, I concluded (for their sake and ours) as follows: "I would urge RS to focus its efforts on seeking a master PRD approval followed by approval of an Open Space Subdivision." Attorney Royston's Memorandum appears to accept this recommendation, since in Item #3 thereof, he speaks of "a formal application to the Old Saybrook Zoning Commission for approval of a PRD *consisting of our entire property, exclusive of the Pianta piece (except for the entry road)*". (Emphasis added). I concur with this approach, except for the exclusion of the Pianta property, which is addressed below.

Attorney Royston foresees certain applications occurring prior to the submission of the "master" PRD application, such as the *Preliminary* review and approval by the Planning Commission of Open Space Subdivision and the filing of Inland Wetlands and Watercourses applications. The latter is required by the Regulations and the former is prudent since the Preliminary Approval sets the lot count for the overall development.

Contrary to Attorney Royston's Memorandum, the plans depict two separate "PRD" lots, rather than designating the entire parcel as a PRD. The problem may be purely one of labeling or semantics, but it should be clarified to avoid confusion. The purpose of the PRD is to achieve comprehensive, unified planning for architectural design of buildings, integrated open space and recreational opportunities, and common amenities and services. This means that the PRD standards must apply to the entire parcel. Labeling one parcel as "PRD" implies that the rest of the development is a subdivision and a golf course development which are not subject to the PRD standards or level of review. I believe the intent was for the plans to label the entire property as a "PRD" with

Page Three
Chairman McIntyre and Chairwoman Fish
October 12, 2004

the so-called "PRD parcels" being designated for multi-family development. Atty. Royston has confirmed that this was the intent. (Please recall that a PRD may include both single- and multi-family dwellings, as well as recreational uses, such as a golf course). I would recommend that the "PRD" lots be designated as "multi-family lots."

Attorney Royston's Memorandum proposes to process the golf course as a separate Special Exception application. I have no objection to that procedure, but would simply note (as stated above) that I consider it unnecessary. Section 55.6.8 envisions golf courses as one component of a PRD, and this is also addressed in Section 55.6.9 which allows "recreational facilities and open spaces." I believe that the standards of Section 52.7.16 (Private Country Club) would still apply, in addition to those of the PRD Regulations. While including the golf course as a component of the PRD makes for a more extensive review process, it also eliminates one proceeding, with separate hearings and appeal opportunities. I leave this matter to the Applicant's discretion.

2. Exclusion of the Pianta Parcel: As the Commission knows, it has been my practice to never recommend approval or denial of applications involving a legislative level of discretion, such as zoning map or text changes. However, it is also my job to protect the Commission and the Town from potential hidden dangers. The exclusion of the Pianta parcel from the planning, application, and design process of the pending Special Exception and future PRD applications presents such a danger. Therefore, I must reluctantly advise the Planning Commission to deny the Special Exception, and Zoning Commission to deny any future PRD application, unless and until the Pianta parcel is included. This is particularly the case in light of Attorney Royston's statement that his clients are proposing "its potential development as a PRD." There is no conceivable explanation for two separate PRD applications for adjoining parcels that share the same road system, access points, and utilities.

I would also point out that the new "Road A" will divide the Pianta parcel into two (2) separate parcels. Unless this is the first "free cut," such a division will trigger subdivision review whether or not any development is proposed for the Pianta parcel at this time. As with all subdivisions, the Applicant will have to demonstrate that each of these two parcels meet all zoning and subdivision requirements for a "lot." If the Applicant believes that this would be the "first cut," I will need to see a Parcel History Map to establish that.

Page Four
Chairman McIntyre and Chairwoman Fish
October 12, 2004

The Applicant has spent more than the past year performing extensive site investigation, design work, and utility planning. Presumably, they have (or at least should have) considered the traffic impacts of the development; the on-site effluent disposal demands; the water requirements in terms of both domestic needs and fire suppression; the stormwater management system and wetlands impacts thereof; the pattern of pedestrian walkways and/or bikeways; the pattern and use of open space; the architectural guidelines for all buildings and sites; the wildlife now using the site and the existence or location of species of special concern; the grading of the site, including the balancing of cuts and fills; and the structure of the overall management of the site, including the structure of homeowners associations, the designation of public versus private roads, and the allocation of votes in the master association. All this investigation would have covered a site containing 893.2 acres. It is simply not plausible for the applicant to have performed all this work and ignored a 31-acre parcel at the very doorstep of the development. This is especially the case if they anticipate a future PRD on the parcel: They would have to consider the utility and other requirement for a future PRD development at this stage. Why, then, would they withhold this one parcel for a future application and provide no information about it whatsoever at this time?

Some might speculate that this 31-acre parcel holds some secret that the applicant seeks to conceal, such an endangered species that is found there, a hazardous waste problem, or some other "hot button." In fact, there may be no such concealment occurring at all, but a project this large is bound to attract a certain amount of suspicion. The road to approval is open communication. Whatever issues are raised by the Pianta parcel can be resolved by all participants working together in good faith. The comprehensive nature of a PRD is undermined, if not destroyed, when an applicant seeks to hold back--for no apparent reason--a small but essential parcel of land from the overall application review process.

As an alternative to denying the application, the Commission could require that the entire Pianta parcel be dedicated as open space. The Commission has the authority to do this because Section 55.6.8 provides that "*not less than fifty percent (50%) of the PRD lot area will be set aside as open space . . .*" (Emphasis added). The applicant cannot contend that the Pianta parcel is not

Page Five
Chairman McIntyre and Chairwoman Fish
October 12, 2004

part of the PRD application because the sole Old Saybrook access is proposed through that parcel. If the Pianta parcel is not "part of the application," then there is no access to Bokum Road.

This point is not new to RS. I have raised this issue each and every time that the application has been presented and yet the Applicant persists in not disclosing development plans for the Pianta parcel. I find such a pattern of resistance unsettling. I hope the Commissions concur.

3. Calculation of PRD Density: Section 55.6.2 sets a maximum density of 8 bedrooms per acre, excluding inland wetlands and watercourses. The plans indicate that Lot #46 (see the point below about this numbering system) will contain 179 units at 3 bedrooms per unit, or 537 bedrooms. This produces (per the plans) a minimum requirement of 67.13 acres of land. Lot #46 is represented to contain exactly 67.13 acres of land but that parcel includes wetlands. Therefore, the PRD maximum density must be exceeded. Without knowing the number of acres of wetlands on Lot #46, it is not possible to determine by what factor the density has been exceeded. This is a serious error. The Lot area must be increased to meet the non-wetlands requirement or the bedroom count must be reduced.

4. Golf Course as a Component of the Open Space Subdivision and Density Calculation. A question is created by the way in which the plans have been drawn. The calculation of "total lots" in Section 56.4 is by reference "the land proposed for open space subdivision." The golf course lot is *not proposed* for open space subdivision development (nor need it be). It is not proposed for any type of residential development, nor it is proposed as "open space" (and cannot be, per Section 56.6.4). It is proposed as a separate use of land which is permitted in the C Conservation District.

However, if the golf course land is being dedicated to a separate, permitted use, then how can that acreage be included in the conventional subdivision layout and hence used in the calculation of "total lots?" Basically, these plans seek to count land toward the "total lots" calculation which is not proposed to be available for either residential development or open space in the ultimate subdivision. It would be as if the Applicant were proposing a private school, cemetery, house of worship, or other use of its land: However beneficial such uses might be, they

Page Six
Chairman McIntyre and Chairwoman Fish
October 12, 2004

are not part of a residential subdivision. Can such acreage be counted toward the density determination?

I am not rendering any decision on this issue at this time, but merely raising it for the Applicant's consideration and to elicit their response. Also, since the entire parcel is apparently to be a PRD, it may be that the eight bedrooms per non-wetlands acre formula will allow the proposed densities even if the golf course acreage is removed. This should be explored.

5. Lot Numbering: The Plans label the two PRD parcels as "Lot #46," and the golf course parcel as "Lot #47." First, there is already a "Lot #46" and a "Lot #47" on Road E, creating two of each. This should be corrected. Second, the two PRD parcels both bear the same lot number (#46) even though they are not contiguous. The same is true for the numerous golf course parcels. While I realize that both the multi-family use parcels and the golf course parcels need not be contiguous, giving them the same lot number is going to make it very hard to reference them in review memoranda and public hearings. Note also, as stated above, that the "PRD" label is confusing since the entire parcel is to be a PRD. A better system is needed, such as labeling the multi-family parcels "MF-A" and "MF-B" and the golf course parcels "GC-A," "GC-B," etc.; or some other designation that avoids confusion with the single family lots and allows for easy reference.
6. Size of "PRD" Parcels: Per Section 55.6.1, a "PRD" lot in the C Conservation District must contain 15 acres. Assuming that the whole parcel is one PRD, as indicated in Attorney Royston's Memorandum, the minimum is obviously met. If, however, the two "Lot #46" parcels are to be separate PRD parcels, then their area must be specified separately and each must comply with the 15 acre minimum. Note that they are not separated merely by "open space" or roads, per Section 55.6.1.
7. Ownership of Roads: The table on Sheet GN-1 is not totally clear about which roads are public and which are private. For example, Road D is shown as "part public and part private, but I don't see which is which. Also, note that the only access to Ingham Hill Road is via Road H, a private road. This means that the public—including school buses, emergency vehicles, and other government vehicles—will have no legal right to travel over Road H, making Ingham Hill Road a permanent dead end, legally. If the Ingham Hill Road access is to be used for

Page Seven
Chairman McIntyre and Chairwoman Fish
October 12, 2004

emergency access (as stated previously), then it must connect to some other public road within the development, or an easement to the Town provided over Road H. There is also the traffic and policy question of whether the Ingham Hill Road connection should be full or only emergency (addressed below), but note that having Ingham Hill Road connect only to a private road precludes, forever, any possibility of a full connection.

8. Access to Route 153: I know that RS has made a proposal to Town officials in Westbrook concerning the proposed access to Route 153 and that they have not yet received a response, apparently due to the number of agencies which the decision involves. My understanding is that a response from the Town Attorney will be forthcoming shortly. It is obviously a critical component of the project.
9. Sewage Disposal: Section 56.6.3 contains certain requirements for community sewage systems, specifically including a report from the WPCA. While Section 56.6.3 does not indicate at what stage this information must be provided, it seems logical that it would be submitted at the time of final Open Space Subdivision, not at the time of the pending Special Exception application. Note that the Special Exception application, alone, would not permit the division of the parcel or the sale of any lot(s). Any approval of the Special Exception should clearly indicate that no lots may be sold, and should be conditioned on the availability of water and sewer for the "total lots" number approved.
10. Sidewalks and Bike Paths: I am confused as to where bike paths and sidewalks are located. While they are labeled on many sheets, they seem at times to blend one into the other. It is possible that some streets have both a bike path and a sidewalk (which is fine), but I can't tell. Sheet SB-4 indicates that sidewalks will stop at the edge of the high-density "village" area. It is possible that the plans show this only because the extension of these sidewalks will be part of the future PRD application. Sidewalks in the village areas are essential.

The plans depict the bike path as going out to Bokum Road, but not the trails. This is another example of why planning for the Pianta parcel must be done at the same time as that for the balance of the property.

I did not see any cross section or other specification for the bike path construction, but that could be part of the Open Space Subdivision application, not this Special Exception application.

Page Eight
Chairman McIntyre and Chairwoman Fish
October 12, 2004

11. Bokum Road Improvements: The plans do not address the Bokum Road intersection or improvements to Bokum Road. In order for this development to become a part of the Old Saybrook community, and for its residents to be encouraged to shop, work, volunteer, and otherwise participate in Old Saybrook, Bokum Road must provide a safe and inviting route to the commercial center of Town. I would certainly ask the Commission's consulting traffic engineer to address the impact of this number of new dwellings, plus the golf course and associated facilities, to determine if there is a nexus between the burden created by this development and the adequacy of Bokum Hill Road. If the response is yes, the Applicant can be legally required to make improvements commensurate with the additional burdens imposed. It is not up to the Applicant to address deficiencies in the roadway attributable to *existing* traffic flows, but only to address the additional burdens created by this development.
12. Ingham Hill Road Connection: Improvements to Ingham Hill Road: Consistent with the Applicant's past statements, the connection to Ingham Hill Road is proposed as a gated emergency-only access. This presents a policy issue that I leave to the Town Planner and our traffic and civil engineering consultants. Note, however, that if the Commission concludes that this should be a full connection (upon which I make no recommendation), then improvements to Ingham Hill Road need to be addressed, as stated in the preceding paragraph.
13. Open Space: I assume that the designated "open space" and conservation easements will be conveyed to the Town. The plans do not so indicate, but the application booklet does. Similarly, I assume that the various paths, bike paths, and sidewalks will be available for public use, but this should be made clear. More detail is needed on the "nature center," since it proposed as part of the open space package for the Open Space Subdivision application. See Section 56.6.6(E).

The above reflects only a first review of the documents. I have been reviewing the plans over the past several weeks and continue to find new questions or topics to add to this letter. I think that, in fairness to the Applicant, I should transmit this letter now

Page Nine
Chairman McIntyre and Chairwoman Fish
October 12, 2004

rather than continue to augment it with items that are likely to be of lower importance than the ones set forth above. I will complete a more detailed review by the October 27 deadline set by Town Planner Christine Nelson.

Very truly yours,

Mark K. Branse

MKB:das

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