

✓ x e : Bob McIntyre
P.C.

BRANSE & WILLIS, LLC
41-C NEW LONDON TURNPIKE
GLEN LOCHEN EAST
GLASTONBURY, CONNECTICUT 06033-2038
TELEPHONE: (860) 659-3735
FAX: (860) 659-9368

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MARK K. BRANSE
MATTHEW J. WILLIS *
ERIC KNAPP

*ADMITTED IN MASSACHUSETTS

RONALD F. OCHSNER
OF COUNSEL

E-MAILS: MBranse@bransewillis.com
Mwillis@bransewillis.com
Eknapp@bransewillis.com

ROchsner@bransewillis.com

November 22, 2004

Charles J. Rothenberger, Legal Fellow
Connecticut Fund for the Environment
205 Whitney Avenue
First Floor
New Haven, CT 06511

**RE: Old Saybrook Planning Commission - The Preserve RS Open Space
Subdivision Special Exception Application**
FILE NO: 3029/04-207

Dear Attorney Rothenberger:

Thank you for providing me with a copy of the Fiscal Impact Study commissioned by the Connecticut Fund for the Environment and the Alliance for Sound Area Planning. Because River Sound Development raised the topic of fiscal impact in their presentation, I have no doubt that you have the legal right to respond with contrary information. I trust that a copy of this report has been provided directly to the Commission so that it can be included in the record of the public hearing. Unlike judicial proceedings, administrative proceedings can include all kinds of information in the record, regardless of its relevance, the hearsay rule, or other evidentiary rules that apply in court.

Nevertheless, I do not want you to be misled: The fiscal impact of an application is not a standard of review for a Special Exception use, including an Open Space Subdivision under Section 56. The Planning Commission can receive this information but cannot use it to reach a decision on The Preserve. Your arguments might be more effectively made to the Board of Selectmen, which prepares the Town's budget. The Board has a role in, for example, reviewing alternative road specifications and other aspects of The Preserve, and, they, unlike the Commission, can and do consider the fiscal impacts of their decisions.

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Charles J. Rothenberger, Legal Fellow
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I hope this guidance is of help to you and your clients.

As always, if you have any questions, please do not hesitate to contact me.

Very truly yours,



Mark K. Branse

MKB:das

cc: Robert McIntyre, Chairman, Old Saybrook Planning Commission
Dwight Merriam, Esq.
Christine Nelson, Town Planner, Town of Old Saybrook
Michael Pace, First Selectman, Town of Old Saybrook
David Royston, Esq.