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January 6, 2005

Mr. Robert McIntyre, Chair,
and Members
Planning and Zoning Commission
Town of Old Saybrook
302 Main Street
Old Saybrook, CT 06475

Re: River Sound Development, LLC; The Preserve; Application No.3029/04-207;
Failure of Applicant to Get Consent or Permission of Landowner to Use State
Property Abutting Subject Parcel

Dear Chairman McIntyre and Commission Members:

On behalf of the Town of Essex, I am writing in response to the December 22, 2004 materials provided to the Commission by River Sound Development, LLC ("River Sound"). The Town of Essex and others have previously identified substantial concerns with the environmental impacts of River Sound's proposed plan in relation to the stated purpose of the Open Space Subdivision District contained in § 56.2 of the Old Saybrook Zoning Regulations and in the interest of brevity will not repeat those concerns here.

Notwithstanding the fact that the applicant, River Sound, has had over two months to correct shortcomings in its application, at least three fundamental flaws remain. River Sound has (1) failed to provide a conceptual standard plan that is comparable to the uses proposed in its open space subdivision plan; (2) failed to obtain the State's permission to use the Valley Railroad State Park Trail for a proposed bridge or at least permission to pursue an application involving such use; and (3) failed to satisfy Old Saybrook's road grade requirements.

Conceptual Standard Plan- River Sound has overstated its total residential "yield" by omitting the proposed country club and 18-hole golf course from its conceptual standard plan. Instead, River Sound added the country club and golf course use into the open space subdivision plan after it estimated the residential yield. This "apples-to-oranges" comparison is not

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consistent with Old Saybrook's Open Space Subdivision regulation. Allowing an applicant to tack on additional non-residential uses that are not contained in the conceptual standard plan is bad policy and clearly results in higher development intensity with a negative impact on the open space values identified in the Open Space Subdivision regulations (§ 56.2 and § 56.6.6). The Commission has jurisdiction to interpret its own regulations and should do so prudently here. The Commission should either deny River Sound's application or modify it by (1) eliminating the proposed golf course or (2) reducing the yield analysis by the number of units shown in the conceptual site plan which are within the proposed boundary of the golf course.

No Permission To Use The Valley Railroad State Park Trail Property- The applicant failed to obtain or even request the State's permission to use (or pursue an application for the use of) the Valley Railroad State Park Trail for a roadway. River Sound concedes it has no authority or right to use the State property and the record evidence shows that the State has previously denied permission to cross its property requested by River Sound's predecessor. The Commission should not allow this applicant to proceed without the consent of one of the subject property owners anymore than it would allow a homeowner to pursue an application on his or her neighbor's property without consent.

Notwithstanding the claims in River Sound's December 22, 2004 memorandum, the applicant's circumstance here is not analogous to the need for an administrative permit approval, such as a State Traffic Commission ("STC") Certificate of Operation, and cannot be cured by a conditional approval from the Commission. While an applicant for an STC permit may have some expectation of receiving a permit if it satisfies the regulatory requirements, no such expectation exists here. The permission needed is a matter of pure negotiation between property owners and there would be simply no obligation for the State, acting as a property owner, to consent to River Sound's request. The case law cited by River Sound is all plainly distinguished on this basis. Similarly, the applicant's summary of a conversation with its alleged expert, Curtis Proud, does not change the analysis because it studiously avoids the site specific facts of this application and focuses on railroad "rights-of way" not instances where the land is held in fee. Also, unlike an STC permit there is no law or regulation which prohibits River Sound from seeking permission to use the State's property before seeking local approvals for such a use.

In short, River Sound made a strategic decision not to obtain or even seek the State's permission to use the Valley Railroad State Park Trail; the resulting flaw in its application is of River Sound's own making the Commission should not "bail out" the applicant's poor decision by creating an unfavorable precedent or struggling to act with a lack of fundamental information. Further, the Commission, local residents, and other interested parties like the Town of Essex should not be put to the time, effort and expense of further proceedings and applications before

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River Sound is even required to expend its effort to provide the most basic element of such applications -- permission of the land owner. For these reasons, among others, the Commission should deny River Sound's application without prejudice until such time as it has the State's consent to pursue an application involving the use of the Valley Railroad State Park Trail.

Non-Compliance With Road Grade Requirements- River Sound has failed to demonstrate its compliance with Old Saybrook's road grade requirements. Section 56.3.1 of the Old Saybrook Zoning Regulations requires that the applicant provide maps containing street layout information for the express purpose of demonstrating "compliance with road grade requirements." The applicant's maps and accompanying tables demonstrate that the proposed roads fail to meet those grade requirements in several areas (despite the severe cutting already proposed). While it is true, as River Sound has noted, that it may seek approval to meet alternative standards, it has not obtained such approvals and it is not clear that such an approval is likely given the potential for heavy traffic on days that the country club and golf course hold events. Thus, at this time, River Sound has not satisfied § 56.3.1.

Thank you in advance for your attention to the issues discussed above and careful consideration of the negative inter-municipal impacts which would result from River Sound's proposed plan as previously raised. River Sound has proposed an intensive use of a unique and environmentally sensitive parcel which sits at the head of three important watersheds that extend into Essex, Westbrook and Old Saybrook. The proposed plan is presented as an open space subdivision plan, however, River Sound has made several planning choices which unnecessarily diminish, rather than enhance, the quality of open space that will remain. As such, the application does not maximize or even meaningfully advance the open space goals embodied in the Open Space Subdivision regulations and ignores the serious concerns of Old Saybrook's neighboring towns. The Town of Essex respectfully requests the Commission reject the proposed plan and deny River Sound's application.

Sincerely,



Matthew Ranelli