

**RIVER SOUND DEVELOPMENT, LLC
MODIFICATION TO SPECIAL EXCEPTION APPLICATION
SECOND SUPPLEMENT TO RESPONSE
TO REVIEW COMMENTS**

To: Old Saybrook Planning Commission
From: River Sound Development, LLC ("River Sound" or "Applicant" herein)
Date: January 19, 2011

River Sound is hereby supplementing its Response to Review Comments dated December 29, 2010 and its Supplement dated January 5, 2011.

The Plans have been revised through January 13, 2011, but were not available for review by Bruce Hillson, Mark Branse or the Land Use Department at the time of their review of the materials submitted by the Applicant through the Public Hearing dated January 5, 2011.

The Applicant filed its Proposed Conditions dated January 13, 2011 on that date. The Applicant is unaware to what extent the Proposed Conditions were able to be reviewed.

I. Land Use Department Report – January 14, 2011.

In its preamble, the Land Use Department questions the reasonable yield at the Bokum Road parcel, notes that revisions to the Plans make great effort to accommodate many of the concerns, but that the concern continues with respect to the Applicant's treatment of the three identified areas ("pods") as "stand-alone development".

Finally, the preamble notes that the second report is offered in the hope of refining the proposed Modification so that the development better fulfills the purposes of the Residence C Conservation District as originally proposed and approved.

The Applicant will address the "phased areas" issue first, since it is fundamental to the Land Use Department Report.

The Land Use Department has rejected the Applicant's interpretation of the term "phase" in the Zoning Regulations. In support of its interpretation of Section 56.6.8 of the Zoning Regulations, the Land Use Department reviewed the history of this regulation. The Applicant does not dispute the history of the regulation, but simply the interpretation applied to Section 56.6.8 now. The ultimate conclusion of the Land Use Department is that:

"We reiterate that a consequence of phasing development is that the land reserved for open space by the Preliminary Open Space Plan must be dedicated, whether in fee or in easement, as a condition of approval at the time of approval of the first phase of the Open Space Plan for Subdivision of Land." (Page 3).

Attorney Branse in his letter to the Commission dated January 13, 2011 goes into a lengthy rebuttal of the undersigned's interpretation Section 56.6.8 as set forth in the Applicant's Response dated December 29, 2010 (Exhibit #43). His ultimate conclusion is contained on Page 4 where Attorney Branse states "allowing the interior 'stand alone development of each of the three pods' is allowing a phased development and no amount of linguistic acrobatics can change that fact. This triggers the requirements of Section 56.6.8 that all open space be conveyed in the first phase."

I take no offense at his characterization of my argument. He has stated his opinion, which concurs with that of the Land Use Department, and so be it.

The Applicant will proceed with the balance of this Supplement Response to Review Comments without further debating the interpretation of "phasing" and with the expectation that the Commission will concur with the interpretation of its staff and its attorney.

The Applicant responds to the remainder of the comments in the January 14, 2011 Land Use Report as follows:

Bokum Road.

The Land Use Department questions the reasonable likelihood of a conventional subdivision of the Pianta parcel off Bokum Road into 9 lots. The Applicant believes the Revised Plans dated January 13, 2011 RS-5 addresses the comments:

- An access to the Piontkowski property is provided southerly of Lot No. 4 and does not require its elimination.
- Lots 2, 8 and 9. All activity on Lot 2, 8 and Lot 9 required for the development of those lots conventionally is located outside of the 100' wetlands Regulated Area. The Applicant's submits that it would be inappropriate to assume that a lot would not be approved which has no activity within a 100' Regulated Area.
- One of the purposes of the Residence C Conservation District is to avoid the need to include such areas within a lot. As has been clearly expressed by staff, there is a strong preference for fee ownership of Open Space rather than Conservation Restrictions. It thus should be noted that on the Revised Plans dated January 13, 2011, RS-6, all the wetlands areas are removed from any lot, the regulated areas removed from Lots 2 and 3 and most of the regulated area is removed from Lot 9.

Street Layout.

- The issue of Ingham Hill Road improvements becomes moot for this Modification, since the interpretation staff/attorney interpretation of "phasing" requires not only the dedication of the Open Space at the time of approval of the

first phase, but that there be access to it. Thus, any Ingham Hill roadway improvements would have to be made in the first phase of any development. Again, if that is a condition, so be it.

- The Land Use Department notes that “The Applicant wishes the Commission to approve reserved strips to bridge the gap between maximum length of a dead end street and the requirement to carry proposed dead end streets to the proposed lot line with adjoining undeveloped land although the Subdivision Regulations indicate, “no reserve strips will be permitted”. The Applicant in the Revised Plans dated January 13, 2011 has consistently labeled each future access roadways as land to be conveyed to the Town. This is so that reserve strips are avoided.

In other words, the abutting property owner would be able to apply to the Planning Commission to include such land within a future subdivision by constructing a roadway in the area conveyed to the Town for highway purposes. As examples, the Applicant is providing for the Record a copy of the deeds for Kitteridge Hill and Brenda Lane, both of which show similarly labeled land on the subdivision map and have the land included in the deeds to the roadways once constructed. This is accepted practice in Old Saybrook.

Lot Configuration.

The Applicant is prepared to apply for an amendment to the Zoning Regulations in order to allow reduction in lot sizes in an open space subdivision in the Residence C Conservation District to the same extent as allowed in the AAA District.

- The reference to preservation of stone walls has been corrected on the Revised Plans January 13, 2011.
- Calculation of wetlands/uplands/steep slopes has been provided.

Bokum Road Phase.

- The location of the cul-de-sac is shown on the Revised Plans revised through January 13, 2011, RS-5 and RS-6 and the roadway is extended to the adjacent vacant properties.

Ingham Hill Road Phase.

- Provide lot line adjustment for improving line of sight of Ingham Hill Road. Again, since open space and access to it must be a provided in the first phase, the Applicant anticipates that there will be no agreement by the Commission to defer this improvement and its Decision shall so state.. However, the Applicant suggests that as an additional condition, The Commission allow the final subdivision plans for this section of Ingham Hill Road to provide for a “T” intersection at the location of the roadway serving Lots 1 through 9, with a

relocation of the extension of Ingham Hill Road to the interior of the property, subject to engineering review.

Essex Road (Route 153) Phase.

- Provide recreational open space and access to trails. A suggestion for recreational open space at this location was discussed, but was not a condition of the original 2005 Special Exception. A trailhead, parking and a connecting easement to historic Ingham Hill Road is identified as a Note on Revised Plan January 13, 2011. This would be available with, or without a roadway extension.

II. Mark Branse Letter dated January 13, 2011.

Valuation of Assets of River Sound Development, LLC.

Attorney Branse points out that the undersigned identified the subject property as being the sole asset of River Sound Development, LLC, which was owned by a subsidiary of Lehman Bros. Holdings, Inc., which filed for bankruptcy in 2008. On Page 2 of his letter, Attorney Branse states

“The subtle suggestion was that River Sound’s financial future, and in part that of Lehman Bros., hinged on the value of this asset of River Sound”.

The Commission, as well as Attorney Branse, should be aware that I would not make such a suggestion, subtle or otherwise, in representation of this or any other client.

What I have asked is that this client be treated fairly and equally, like any other property owner, in the imposition of conditions and regulatory requirements, particularly those of a discretionary nature.

Scope of Wetlands Evidence.

- I concur with Attorney Branse that the environmental impacts evidence should relate to the proposed modification areas only.

Open Space Dedication.

- I have previously commented on Attorney Branse’ opinion with respect to the “phasing” requirement of Section 56.6.8 of the Zoning Regulations and access to the open space. Again, the Applicant is proceeding on the basis that the Commission is likely to follow the opinion of Attorney Branse and the Land Use Department.

Nature of the Application.

- Attorney Branse indicates that he is disappointed in that we have not clarified for him the actual character of this Application. I regret that.

However, the intention of the Applicant was clearly stated in the written statement from Robert Levine, the Owner's representative. The Applicant wished to make some use of its property without affecting the interior 811 acres, leaving its options open. Full development, partial development (which would require another Modification Application) or no development.

That remains the Applicant's purpose.

Type of Open Space.

- Simply stated, the Applicant has reduced the lot areas to 60,000 square feet wherever possible in order to provide the maximum amount of fee open space allowed under the Regulations. Still, 60,000 square feet minimum lot size is required. The Applicant is not complaining, the Applicant is merely pointing out an anomaly in the Regulations. The Applicant concurs with the comment of Attorney Branse on Page 9 that "perhaps the Regulation should change, too."

Traffic Circulation.

- Attorney Branse states that "Mr. Royston's statement that traffic issues can be addressed at the subdivision or PRD review stage is just wrong." If that were what I had said, that would be correct. However, the Commission and Attorney Branse should look at what the Applicant has specifically agreed to do in its proposed condition dated January 13, 2011. What it has agreed to as part of the Modification to the Special Exception is that off-site improvement consideration is a condition of the Special Exception.

The CEPA Intervention.

- The Applicant will provide testimony with respect to the Intervention.

Conclusion.

- Attorney Branse expresses the opinion that the Applicant is seeking to retain the benefits of the Special Exception, but is not willing to live up to the obligations. Such is not the case. The applicant proposes that all of the improvements needed for the designated areas be provided, plus the athletic fields, and the other acceptable conditions proposed by the Applicant in its January 13, 2011 filing.


III. Bruce Hillson Memorandum dated January 7, 2011

The Applicant appreciates Mr. Hillson's concern regarding not deferring Ingham Hill Road improvements and the need for a secondary access. The first concern is moot if the Commission follows the advise of its staff and attorney.

The second concern of course remains. The Applicant will submit for the Record materials indicating that a secondary access is reasonably available to the Town from the end of Dwayne Road to the end of Kitteridge Hill.

Respectfully submitted,

RIVER SOUND DEVELOPMENT, LLC

By 
David M. Royston, Its Attorney