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for the Environment**



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January 5, 2011

Old Saybrook Planning Commission  
302 Main Street  
Old Saybrook, CT 06475

**Re: Application for Modification of Special Exception for Preliminary Open Space  
Subdivision Plan by River Sound Development, LLC**

Dear Commissioners,

Connecticut Fund for the Environment (CFE) appreciates the opportunity to present to you this evening. Our presentation will focus broadly on two themes. The first is a discussion of why the action of the Inland Wetlands and Watercourses Commission in denying a permit with respect to the original Special Exception is relevant to your review this evening. The second is a discussion of the reasonably likely adverse impacts to natural resources that will result from the activities specifically associated with proposed development of the three so called 'pods' as part of the current application to modify the Special Exception.

**CENTRAL CORE**

First, it is important to explain the point of bringing up the Wetlands Denial. The importance of that denial is not to use that as a reason to revoke the previously the previously approved Special Exception. That Special Exception was approved and remains valid. The purpose is to underscore the fact that the plan you see on maps RS-1 and RS-2 will have to change -- it can not be built as represented. That means moving pieces around the chess board in an effort to satisfy subsequent review by the Wetlands Commission and other agencies. CFE's concern is that by locking in development in the three pods, as proposed by the applicant, it limits the options for the applicant to meet the concerns raised by the prior wetlands permit denial as well as subsequent reviews.

This concern is not ours alone. Indeed, similar concerns have been raised by municipal consultants. And this concern goes to the very essence of the purpose of the Conservation C District. It underscores the fact that designing an environmentally sound Open Space subdivision is made easier as the parcel gets larger.

CFE doesn't know what will happen with the central core of approximately 815 acres. We certainly hope that it can be preserved in its entirety. However, we have to be prepared for the eventuality that it will be developed. If development does go forward, it is critical to ensure that

it meet the goals of the Conservation C District, including protection of natural resources. This means proceeding in the most environmentally responsible manner possible.

CFE does not think that it is unreasonable to require, even in a preliminary plan, that the applicant provide some assurance that development of the pods as currently proposed does not lock the development of the rest of the site into an ecologically disastrous pattern. We agree with the applicant, in its response to Attorney Branse's comments, that if development of the central core moves forward it will need to be as an Open Space development (absent any waiver of that requirement by the Planning Commission). However, as we have seen with this Special Exception that a preliminary Open Space design is no guarantee of ecological sensitivity; indeed it can produce quite significant adverse environmental impacts.

All we are asking for is that the Planning Commission require a good faith effort on the part of the applicant to show that their current proposal will not preclude them from at least attempting to meet the objections raised by the Wetlands Commission. We recognize that any site plan will have to go before the Wetlands Commission for review and meet the critical scrutiny of that body. However, it is conceivable that prior development of these pods will limit the prudent and feasible alternatives open to the applicant to meet concerns at that stage and that such a situation could result in an approval of a design that might otherwise have been rejected.

Viewed in this light, CFE believes that any application to modify the Special Exception and permit development of the three pods without any attempt to address necessary changes to the physical location of proposed development elements within the central core should be deemed incomplete because it does not provide the Commission with the information necessary to make an informed decision regarding approval of development within the pods themselves.

Moreover, the ability of the applicant to meet the condition of the previous Special Exception, providing three access points to the property (including from Route 153 in Westbrook and from Bokum Road), remains very much in doubt. After more than six years, River Sound has failed to make any progress on securing permission to cross the state-owned Valley Railroad, which is essential to providing access from Bokum Road. Additionally, the Town of Westbrook, in its letter dated December 13, 2010, reiterates the concerns raised earlier with respect to the development of the Preserve site and the unlikely prospect of Westbrook approving access to the site from Route 153

## **NEW POD PROPOSALS**

Our experts will provide the majority of the testimony regarding adverse impacts to the natural resources on the site. I would like, however, to generally note several areas of concern.

## **BOKUM ROAD/PIANTA**

With respect to the Bokum Road/Pianta Parcel, we have concerns about the potential impacts to two wetlands on the site. The Southwest corner of lot # 8 infringes on the Upland Review Area of what was identified as Vernal Pool #29 during the hearings on the original application. We note that while Vernal Pool #29 was relegated as a low priority pool by the applicant, such ranking was done on the basis of a comparative analysis among all the pools on the site and, by the applicant's own admission, was not based on the criteria established by Calhoun and Klemens (2002). Under the Calhoun and Klemens methodology, Tier One Pools "are

the pools of the highest quality with several obligate species breeding in them, with intact vernal pool envelopes and with more than 50% of the associated critical upland habitat preserved.” According to the survey done by Michael Klemens (dated October 26, 2004), “almost all of the Vernal Pools on the site can be classified as Tier One pools based on [that] criteria.” Vernal Pool #29 would appear to be one that does indeed satisfy that criteria. However, because the applicant did not feel that it could preserve all of the Tier One vernal pools while also meeting its development goals, the applicant decided to essentially “triage” the vernal pools by imposing a secondary screening criteria on the Tier One pools. As a result of this triage, vernal pool #29 was designated by the applicant as a “low priority” pool, notwithstanding the fact that it qualified as a Tier One pool under objective criteria.

As was noted by the Wetlands Commission, significant portions of housing lots 1, 2, 3 and 9 and the proposed roadway are also within the Upland Review Areas of several wetlands. We share the Wetland Commission’s specific concerns about the significant amount of disturbance in the Upland Review Area of what has been labeled Vernal Pool #37 on Maps RS-2 and RS-6, particularly in light of the steep grades adjacent to the Vernal Pool where the proposed roadway would run. The Wetlands Commission suggested that alternative road alignments be required in order to reduce potential adverse impacts. CFE echoes this suggestion.

## INGHAM HILL ROAD

With respect to the Ingham Hill Road parcel, we have concerns about the potential impacts to Vernal Pools 16 and 31 and the wetland that had been identified as wetland # 9 in plans previously submitted by the applicant to the Planning Commission as part of its original application (this wetland lies to the southwest of Vernal Pool #16). The Upland Review Areas of these wetlands are encroached upon by lots 1, 2, 3, 11 and 12. While in several instances, the level of intrusion is slight, in each case it appears that the development activity takes place in areas with grades greater than 20 percent, raising the risk of adverse sedimentation and erosion impacts to the wetlands. Our concern is heightened by the fact that this area was originally designated as Open Space on the Preliminary Plan and that both Vernal Pool 16 and 31 have been categorized by the applicant as among the highest priority pools on the site. To quote from the Herpetological Survey and Vernal Pool Analysis prepared by Michael Klemens (dated October 26, 2004):

Vernal Pool 16: Contains robust populations of all three obligate vernal pool amphibians, including more than 230 spotted salamander egg masses and large rafts of wood frog eggs. Marbled salamander larvae were dip netted in this pool in 2003 and spotted turtles, a vernal pool facultative species were live trapped in this pool in 2003. Marbled salamanders were found on land surrounding this pool in 2003.

Vernal Pool 31: Contains populations of all three vernal pool obligate species. **A single eastern box turtle (State-listed Special Concern Species) was found twice within the vernal pool envelope of Vernal Pool 31.** (emphasis added).

The presence of those two Vernal Pools was the primary reason why that area was proposed as Open Space by the applicant in its original proposal.<sup>1</sup> That may be taken as an admission on the

<sup>1</sup> See discussion on pages 15-16 of the Herpetological Survey and Vernal Pool Analysis prepared by Michael Klemens (dated October 26, 2004).

part of the applicant that development within this area is reasonably likely to cause an unreasonable impairment of natural resources in violation of Connecticut General Statutes § 22a-19 and that a reasonable, prudent alternative exists. Indeed, that alternative is one that the applicant has previously embraced, namely preserving the area around these highly productive Vernal Pools as Open Space.

## **CONCLUSION**

In summation, CFE believes that the Commission should require the applicant to present a good faith representation of how it could meet the concerns previously expressed by the Wetlands Commission if the three "pods" were developed as proposed, and that the proposed development of these three pods is itself reasonably likely to cause an unreasonable impairment of natural resources in violation of Connecticut General Statutes § 22a-19.

Very Truly Yours,

Charles J. Rothenberger  
Staff Attorney