

East Hampton Planning and Zoning Commission  
Regular Meeting  
March 4, 2009  
Town Hall Meeting Room

Unapproved Minutes

1. **Call to Order and Seating of Alternates:** Chairman Zatorski called the meeting to order at 7:00 p.m.

**Present:** Chairman Ray Zatorski, Vice-Chairman Rowland Rux, Members Peter Aarrestad, Richard Gosselin, Roy Gauthier, Mark Philhower, James Sennett, Alternate Member Michael Brogan, and Darin Hurne were present. Planning, Zoning, and Building Administrator, James Carey was also present.

**Absent:** None.

2. **Approval of Minutes:**
  - A. **February 4, 2009 Regular Meeting.**

*Mr. Rux moved, and Mr. Philhower seconded, to approve the minutes of the February 4, 2009 regular meeting as written. The motion carried unanimously.*

3. **Communications, Liaison Reports, and Public Comments:**

**Communications:** Mr. Carey reported that the next Mother Board Meeting will be held Thursday, March 31, 2009 at 6:30 p.m. The Chairmen of all landuse boards are to be present. All others, who wish to attend, are welcome.

Mr. Carey also explained that the Conservation Commission has created a Development Review Checklist, which they would like the PZC to review and provide feedback. The Chairman requested that Mr. Carey have this added to the Agenda for the next regularly scheduled meeting under Old Business. He also asked the Commissioners to review the document and prepare to comment on the Checklist at the next regularly scheduled meeting.

Mr. Carey reported that the recent revision of the Plan of Conservation and Development (POCD) was scheduled to have been distributed at this meeting; however, the actual printing of the document has been delayed due to technical difficulties. It will be available well before the next meeting. Mr. Gosselin explained the savings that the Town has recognized by printing the document in-house. This most recent version is now available on the Town website in a more useable format. It will also be possible to buy the document on a thumb drive for \$5. In the past it was available in print for \$25. It will now be available in print for \$10.00. Mr. Carey thanked Mr. Gosselin for all his help in producing this revised POCD.

Mr. Carey reported that he will be meeting with Planimetrics this afternoon to discuss and finalize plans for implementing the Incentive Housing Zone Grant that the Town has received. There will be workshops scheduled as needed to proceed with this project.

**Liaison Report:** Mr. Zatorski reported that there was nothing to report from the last IWWA meeting.

Mr. Sennett reported that he attended the meeting of the ZBA on February 9<sup>th</sup>. The Agency heard on item regarding an appeal of the Zoning Enforcement Officer allowing a commercial business in a residential zone. The ZBA upheld the Zoning Enforcement Officers decision. The minutes of this meeting are available online and in the Town Clerk's Office.

Mr. Gauthier reported that he had been unable to attend the recent meeting of the EDC; however, those minutes may be viewed online and in the Town Clerk's Office.

Mr. Aarrestad reported that there have not been any recent meetings of the Water Development Task. He did report on the recent meeting of the Salmon River Watershed Partnership Steering Committee. They are making plans to move forward with the land use audit. The Partnership is looking to all the basin towns to contribute financially toward the overall effort.

Mr. Brogan reported that he had not attended the last Conservation Commission meeting. The minutes are available for viewing online or in the Town Clerk's Office. He also encouraged the Commissioners to look seriously at the Development Checklist presented to them this evening.

**Public Comments:** The Chairman opened the meeting to the public for comments at this time.

Kyle Dostaler, 56 William Drive, discussed his concerns regarding the need for a regulation for home based businesses. He distributed a handout to the Commissioners.

Chairman Zatorski discussed that he has received a number of complaints at his residence regarding the need for a home based business regulation and the road work being done on Flanders Road between Summit Street and Smith Street. Mr. Zatorski explained that he had discussed the complaints he has received with Mr. Carey, who advised him that his office had not received those complaints and requested that all complaints be directed to the Planning and Zoning Office.

Mr. Carey explained that the work being done at this location on Flanders Road is related to a sewer installation and has nothing to do with planning or zoning. There is some concern regarding a temporary sign that has been posted on the subject property. The sign is not legal and Mr. Carey's office will have the sign removed.

Chairman Zatorski also reported that he has received complaints about businesses conducted in a storage facility on Sinco Place. Mr. Carey stated that he has received no complaints about this. He explained that his office has issued a building permit to the owner of Global Self Storage to create office space as an accessory use to that facility.

Mr. Gauthier expressed concern that anonymous complaints were not allowed by the Planning and Zoning Office. To which Mr. Carey responded that anonymous complaints were received and accepted regularly.

Mr. Gauthier discussed his concern that the Town has not used oversight in planning the road work that is being conducted at this time.

Mr. Brogan discussed his concerns about the complaint process.

Mr. Carey discussed the complaint process.

Tim Fury, Attorney for Global Self Storage, discussed his concern that a regulation for home based businesses be adopted by the PZC.

Cindy Rooth, 70 Viola Drive, discussed her support for a home based business regulation.

There being no further comments the Chairman closed this portion of the meeting.

**4. Set Public Hearing for April 1, 2009:**

**A. Application of Melissa H. Engel, Markham Meadows Campground, 2-Lot Resubdivision – M 27/B 91/L 2-2A;**

**B. Application of Hubert E. Butler Construction Co., LLC, Excavation Plan – Butler Construction Co., LLC, Special Permit, Section 26, Excavation Permit Renewal – M 12/B 33/L 7A.**

*Mr. Rux moved to set the public hearing for the Applications of Melissa H. Engel, Markham Meadows Campground, 2-Lot Resubdivision, M 27/B 91/L 2-2A, and Hubert E. Butler Construction Co., LLC, Excavation Plan, Butler Construction Co., LLC, Special Permit, Section 26, Excavation Permit Renewal, M 12/B 33/L 7A for the next regularly scheduled meeting on April 1, 2009. Mr. Philhower seconded the motion.*

Mr. Carey explained that the Markham Meadows Campground application is to clarify boundary lines to the parcel for the caretaker's residence which was approved under special permit years ago. He also explained for the newer members that the Hubert E. Butler Construction Co. excavation plan application is an ongoing excavation plan for the property located at the corner of Route 196 and Route 16. It has been going on for about 20 years. It is reviewed on an annual basis. There will be complete presentations on both of these applications at the next meeting.

*There being no further discussion, the Chairman called for a vote on the motion on the floor. The motion carried unanimously.*

**5. Old Business:**

**A. Discussion - Skyline Estates Alternate Plan for Intersection out to Midwood Farm Road: Messrs. Gauthier, Philhower, and Rux recused themselves from the meeting at this point. The Chairman seated Messrs. Brogan and Hurne.**

Tim Fury, Bristol, Connecticut, was present to discuss with the Commission the possibility of redesigning the intersection of Highland Terrace and Midwood Farm Road. He explained that after working on the project they have become increasingly aware that the current plans call for either large amounts of fill, a substantial cut, or both. The neighbors are concerned about blasting. The developer has been exploring with the Town Staff different ideas to remedy this

situation. The developer would like the Commission's position on revising the plan to include a cul-de-sac for turnaround purposes, a breakaway gate for emergency vehicles, and an access way that will serve both as access to two potential homes and ingress and egress for emergency vehicles. The association will be responsible for maintaining this roadway. He explained that there are other alternatives. They require re-subdividing of the area and re-aligning roads.

The applicant explained that there will be no change in the number of lots. The Commission discussed various things with Mr. Fury including, the number of lots on the cul-de-sac, the grade, emergency access, and road width.

Dave Erlandson, Professional Engineer and Project Engineer, was present and discussed the requirements of the Town Street Standards. He explained that by using a driveway standard there would not be a requirement for a 300' vertical curve to connect one grade to the next. He also pointed out that the two lots west of the emergency gate, Lots 32 and 33, may not even use this intersection. They may use direct access to Midwood Farms Road. The temporary emergency access would be blocked off most of the time.

Chairman Zatorski discussed the site walk that took place years ago when the application was being heard by the Commission.

Wayne Rand, Project Manager of Skyline Estates, reminded the Commission of the original design of this area. He explained the intersection was at least 8' higher. The amount of fill necessary is at least 20'. One of the reasons that the IWWA denied the application originally was because they were not happy with the amount of fill. To satisfy the IWWA's concern they redesigned the intersection by bringing it down and that is what caused the problem they have now. Mr. Rand explained the only other option is to re-subdivide ten lots that currently exist and move the roadway around and come back out through a different area on Midwood Farm Road. They are concerned about the impact on the neighbors on Midwood Farm Road.

Mr. Aarrestad questioned if open space would be impacted by this and would like to see a site plan to be clear on all the implications to making any changes. He also does not believe the break-away gate is the solution to this problem.

Mr. Fury stated that they have explored redesigning the roadway, which would require a minor waiver from the current Street Standards. The developer's engineers do not believe that there is any reason to be concerned that safety would be affected. The Town Engineer, however, has been reluctant to consider any waiver from the Town's current Street Standards.

Mr. Carey discussed the Town's Engineer and the Public Works Director's hesitance to agree to the waivers requested. He discussed the alternatives. He further explained that Staff has not advocated for either option but indicated that it would be a good time for a preliminary discussion.

The Commission discussed other alternatives with the applicant.

**6. Read Legal Notice: None.**

**7. Public Hearing for March 4, 2009:**

**A. Application of Skyline Estates, LLC., Skyline Estates Phase I & III,  
Modification of Subdivision Approval for a Road Width Waiver - Continued:**

Attorney Tim Fury, Bristol, Connecticut, was present for the applicant. He discussed the maps of the project which had been distributed. He explained that the areas outlined in pink are the areas that are either constructed or proposed to be constructed as 26' roads with a 4' sidewalk. The areas depicted in blue are what the applicant proposes to be constructed as a 24' road with a sidewalk. The remainder of Highland Terrace is approximately 1500' in length. Starview Way is approximately 1000'. Since the last meeting the applicant has had several meetings with both Messrs. Carey and Hayden, Director of Public Works. They have arrived at an agreement for 24' roads with sidewalks that will be the responsibility of the homeowners to maintain. This will be approximately a 5000 square foot area reduction to impervious surfaces. This will produce a positive impact on the overall number of total suspended solids. There will also be long-term benefit to the Town in reduced square footage of the total amount of area to be maintained by the Public Works Department. The current permit for this development is for 26' roads with 4' sidewalks.

Mr. Sennett discussed his concern that a waiver had already been granted to this applicant for these same roads and now he is coming back to the Commission to ask for more waivers from the Town's accepted Street Standards.

Mr. Carey explained that when the Commission granted the original waiver there was no discussion of who would maintain those sidewalks. He and Mr. Hayden view this request as the opportune time to relieve the Town of that responsibility. He further discussed the Town's experience with subdivisions without sidewalks and explained that the applicant, the Director of Public Works, and he have arrived at the agreement that Mr. Fury had referred to as stated in Mr. Hayden's memo of March 4, 2009. Mr. Carey concurs with this position. He believes it is the solution not only from a planning perspective, but also a public works perspective and an environmental perspective. \*Attachment 1\*

Mr. Gosselin stated his concern that waivers have already been granted for this project. Mr. Sennett discussed his belief that the waivers granted previously were as they should be. Mr. Brogan questioned the benefit to having wider roads as opposed to the applicant's current request.

Mr. Carey reported that the responsibility for the remainder of the project's sidewalks was addressed at the time of the project's approval. Those sidewalks are the responsibility of the homeowners. He also reminded the Commission that initially at the time of review Highland Terrace was designed to connect to a neighboring property. That connection would necessitate the road width to be 28'. In answer to Mr. Brogan's question, there is no benefit to require this road to be 28' at this point. He further explained that many communities today would never require at 28' road. They are reducing the required width to 22'.

Mr. Rand discussed the original approval of this project and explained that all three cul-de-sacs in Phase 1 were approved at 26' without sidewalks, which met

the code for a local street. When the project came back for Phase 2 approvals and the road was extended to include more lots that it became a 28' road. He then came in for a waiver to eliminate the sidewalk on the one 28' road and to drop the required width down to 26' on all three cul-de-sacs. The waiver was granted but the requirement for sidewalks to be added to all three streets was also added. He would have preferred to stay at 28' and forget about the sidewalks. This is the reason he has returned for a new waiver.

The Chairman explained that the Commission needs three quarters of the Commission, not just those in attendance, to vote affirmatively to grant a waiver. Therefore for any waiver request to pass there must be six affirmative votes no matter how many commissioners are seated at the time.

The Chairman opened the hearing to the public at this time.

Cindy Rooth, 70 Viola Drive, expressed her concern about the sidewalks being waived.

Mary Ann Dostaler, 56 William Drive, questioned whose purview the Street Standards fell under and suggested that the existing Street Standards be updated.

The Commission and staff discussed the need to update the Street Standards. Input from the PZC and Public Works is appropriate but the final document is to be accepted by the Town Council.

Wayne Rand, applicant, discussed previous subdivisions, requirements for sidewalks, and their maintenance. He stated that being required to have sidewalks and maintain them, which had never been required by the Town is punitive.

Mr. Arrestad commended Town Staff for developing this application to the point where the recommended course of action is a win, win situation and he fully supports this waiver with the conditions set out by Town Staff and agreed to by the applicant.

Mr. Rand, applicant, added that the Fire Marshall has also reviewed this application and indicated that 24' widths were adequate.

Ms. Rooth, 70 Viola Drive, pointed out that both roads and sidewalks are impervious.

*Mr. Arrestad moved, and Mr. Brogan seconded, to close the public hearing. The motion carried unanimously.*

*Mr. Zatorski moved that the Application of Skyline Estates, LLC., Skyline Estates Phase I & III, Modification of Subdivision Approval for a Road Width Waiver of 24' with 4' sidewalks on the eastern portion of Highland Terrace from Skyline Drive east for 1500' and on all of Starview Way (1000'), be a granted with the following conditions:*

- *Sidewalk snow removal is the responsibility of the homeowner, or the homeowners association;*
- *The cul-de-sac diameter shall remain at 80'; and*

- *Town Staff must be notified prior to commencement of construction.*

*This decision has been made for the reasons, among others, that Town Staff's has made favorable recommendations. Mr. Aarrestad seconded the motion. The motion failed 5-1-0. (Yes votes: Aarrestad, Brogan, Gosselin, Hurne, Zatorski. No votes: Sennett. Abstentions: None.)*

The Chairman recessed the meeting at 8:43 p.m. The meeting was reconvened at 8:47 p.m.

Commissioners Gauthier, Philhower, and Rux returned to the meeting.

Chairman Zatorski unseated Messrs. Brogan and Hurne.

## **8. New Business:**

- A. Discussion - Home Occupations:** Mr. Carey explained that the apparent need to regulate home occupations has come to the foreground. He explained that in 1989 and 1990 the PZC examined this issue and found that the regulation of the home-based occupation was somewhat fruitless in that the Town's requirements for permitting was that the business be completely indiscernible to the neighborhood. The decision was made at the time, to aid in the enforcement of troublesome occupations, that the requirement for a permit would be dropped. If a home occupation became evident enforcement would be simplified. This has been successful until now.

Unfortunately, of late, we have encountered a complaint based home occupation situation. As a result of this, he has been asked put forth ideas as to how to appropriately deal with this problem. Mr. Carey explained that it has been his understanding that if home based businesses are to occur in town they should be invisible. There should be no signage, delivery trucks, outside employment, or outside traffic. He referred to a packet of information containing regulations from other jurisdictions. He invited the Commissioners to review this package.

Mr. Carey further recommended that the home occupation permit should not be addressed through the public hearing process or commission action but through a zoning permit. Once an applicant has shown that they are in compliance with the regulation, they will be granted the permit as of right. The permit will become part of the property and can be for a specified period of time or not. It will be valid until the expiration, if there is one, or until the business no longer complies with zoning. Mr. Carey discussed various aspects of different jurisdictions regulations.

The Commission discussed their concerns for addressing this issue. The Chairman requested that the Commissioners review the packet they have received, including the Planimetrics proposal which will be forwarded by the Planning and Zoning Office, for a brief discussion at the next meeting when a workshop will be scheduled.

The Commission continued to discuss various options and pitfalls of each. Not all the Commissioners are convinced that this is a problem nor do they believe that the Commission should be involved in the direct permitting process. The

Chairman requested that this item be placed on the next meeting's agenda under Old Business to discuss whether it should be done, the complexity of the regulation and the process for permitting, schedule a workshop or not, and the various points of view to be considered.

9. **Adjournment:** *Mr. Philhower moved to adjourn the meeting. Mr. Rux seconded the motion. The motion carried unanimously.*

The meeting adjourned at 9:10 p.m.

Respectfully submitted,

Daphne C. Schaub  
Recording Secretary