

East Hampton Planning and Zoning Commission  
Regular Meeting  
July 7, 2010  
Town Hall Meeting Room

Unapproved Minutes
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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 Mark Philhower (8:04), Members, Peter Aarrestad, Richard Gosselin, Rowland Rux, Alternate Members Darin Hurne, Kevin Kuhr, Meg Wright, and Planning, Zoning & Building Administrator James Carey (7:34) were present.

**Absent:** Members Roy Gauthier and James Sennett were absent.

Alternate Members Darin Hurne, Kevin Kuhr, and Meg Wright were seated at this time.

2. **Special Presentation & Discussion - Planimetrics – Incentive Housing Zone:**  
Glenn Chalder, Planimetrics, was present to discuss the Incentive Housing Program. He reminded that Commissioners that the last workshop was held in March. At that time the Commission discussed with him the different aspects of the Village Center that make it suitable for this program. The Town received a grant to study the possibility of housing development. The area considered to have the most potential for this is the Village Center area. Tonight he will discuss the preliminary regulatory concept for the Incentive Housing Zone. Mr. Chalder clarified that this preliminary concept is not compliant with the IHZ program in terms of getting subsequent grants from the State of Connecticut. The Commission has opted to proceed in this direction because it is doubtful that the State funds will be available. The Commission is more comfortable with maximum density limitations as opposed to minimum densities as required by the program and with a special permit process versus the site plan process as required by the program. If the Town does decide to pursue State funds in the future changes will need to be made to be eligible. Mr. Chalder gave an overview of the preliminary concept as depicted in Planimetric's Booklet #9, June 30, 2010, Preliminary Regulatory Concepts. (Attachment 1)

The next steps in this process will be to finalize the Design Elements Survey. This should be possible for the August meeting. A public informational meeting would be appropriate when the Commission is ready. The Commission should be ready to do this in September.

3. **Approval of Minutes:**  
A. **June 2, 2010:** *Mr. Rux moved, and Ms. Wright seconded, to approve the Minutes of June 2, 2010 as amended. The motion carried unanimously.*
4. **Communications, Liaison Reports, and Public Comments:**  
**Communications:** Mr. Carey reported that all communications had been forwarded by email prior to the meeting.

**Liaison Reports:**

Mr. Zatorski reported that all information regarding IWWA will be discussed during the agenda item to which it relates.

Mr. Carey reported that the Horsley Whitten Group held a low impact development workshop in town for the Salmon River Watershed Partnership. The workshop targeted the private developing community to promote state-of-the-art low impact development techniques. Currently the Horsley Whitten Group is working on developing a regulation that can be used by all the Partnership Towns. The workshops should begin sometime this fall.

Mr. Aarrestad reported that a public meeting that was scheduled for July 12<sup>th</sup> to vote on the next phase of the public water system has been cancelled. The State Department of Public Health did designate the Town of East Hampton the top priority town for a 2% low interest loan through the State's Drinking Water Revolving Fund. The State has extended that deadline and the meeting has been postponed.

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

Mary Ann Dostaler, 56 William Drive, requested that a copy of the Planimetrics' Booklet #9 be forwarded to her electronically. She will share it with the Re-Development Agency and respond to the PZC. Ms. Dostaler also clarified that the EDC did previously suggest a "Village District". She also expressed appreciation to the Commission for their willingness to hear Item No. 8.A, Discussion: Angelo Tammaro - Building Permit Accessory Structure – 81 North Main Street – Map 04A/Block 45A/Lot 20.

Fran Klein, 12 Bellevue Street, was present to support Angelo Tammaro. She has been affected by the zoning concerns at Angelico's. She requested that the Commission seriously consider Mr. Tammaro's concerns and pointed out that he is representing many people from the neighborhood, some of whom could not be present. She is also concerned that the IHZ project may adversely impact the Town's schools.

5. **Read Legal Notice:** Mr. Carey read the legal notice into the record at this time.

6. **Set Public Hearing(s) for July 7, 2010:**

A. **Application of Peter Marlow Forest Products, LLC**, 149 Chestnut Hill Road, Stockwell Timber Harvest, for a Special Permit per Section 24 - Timber Harvesting – Map 13/Block 32/Lot 16; and

B. **Application of Traditional Innovations**, 265 West High Street, Sports On 66, for a Commercial Site Plan Review – Map 6/Block 12/Lots 9.

*Mr. Rux moved to schedule the public hearing of Peter Marlow Forest Products, LLC, 149 Chestnut Hill Road, Stockwell Timber Harvest, for a Special Permit per Section 24, Timber Harvesting, Map 13/Block 32/Lot 16, for the meeting of August 4, 2010; and the public hearing of Traditional Innovations, 265 West High Street, Sports On 66, for a Commercial Site Plan Review, Map 6/Block 12/Lots 9, for the meeting of September 1, 2010. Mr. Aarrestad seconded the motion. The motion carried unanimously.*

7. **Public Hearing for July 7, 2010:**

Messrs. Philhower and Rux recused themselves from the meeting at this time.

**A. Application of Chatham Engineering Inc, Skyline Drive, Skyline Estates – Phase IV, for a 5-Lot Resubdivision in the Lake Pocotopaug Protection Area – Map 18/Block 44/Lots 78-13, 78-14 & 78-15:**

David Erlandson, P.E., was present to represent Ed Jackowitz, the owner. He explained that the original approval included the subject 3 lots which were intended for the personal use of the owner and his family. Those plans have since changed and the owner has chosen not to keep this area for personal use; therefore the applicant has proposed to re-subdivide this property into 5 lots more similar in size to the balance of lots in the subdivision. There are no conservation easements on this area. There are open space areas encumbered with easements to the east of this area. The drainage easements that are on this area will continue as they exist. The new proposal reduces the impervious surface by a third. The original approval included 75% more open space than required; therefore the additional lots will not require additional open space. These lots will also be subject to all the additional requirements of the original approval.

The Chairman opened the public hearing at this time.

Jean Loveland, 35 Skyline Drive, was present to express no opposition to this change at all. She lives directly across the street from this location.

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

*Mr. Gosselin moved, and Mr. Hurne seconded, to approve the application of Chatham Engineering Inc, Skyline Drive, Skyline Estates – Phase IV, for a 5-Lot Resubdivision in the Lake Pocotopaug Protection Area, Map 18/Block 44/Lots 78-13, 78-14 & 78-15, as presented on the plans dated February 20, 2010 and received on May 4, 2010. The motion carried unanimously.*

**8. New Business:**

Mr. Hurne was unseated, Mr. Philhower was seated, and Mr. Rux was re-seated at this time.

**A. Discussion: Angelo Tammaro – Building Permit, Accessory Structure, 81 North Main Street – Map 04A/Block 45A/Lot 20:** Angelo Tammaro was present to discuss with the Commission his concerns regarding Angelico's Lakehouse Restaurant. He claimed that Angelico's created the same revisions to their site plan as this Commission denied without prejudice in 2009 and the sound is worse now than it ever was before. He further claimed that when he contacted the Building Department about the wall his inquiries were not addressed. When his inquiries were not addressed by the building department after a week or a week and a half he went to the State Building Inspector with his concerns. The State Building Inspector informed him that a building permit was required for a fence over 6 feet. When the State Building Inspector contacted the East Hampton Building Department they were informed that the owner of Angelico's had been requested to apply for a building permit and that the process was underway. Mr. Tammaro then distributed copies of the permit for an 8" fence that was approved on May 4, and issued on May 26, 2010. Mr. Tammaro further stated

that no stop work order was issued and the wall was never properly inspected. Finally, he is concerned by the sight line at the intersection of North Main Street and Barbara Avenue which has been impacted by the wall. Mr. Tammaro submitted pictures for the Commission's review.

Chairman Zatorski displayed the site plan that was denied without prejudice in 2009 and discussed the application as it progressed. The wall that is in question does resemble a portion of the site plan that was denied in 2009 without a roof. The Commission further discussed that the measurement of the fence should begin at the average grade of the area around the fence. The Chairman discussed that the fence has been placed on top of a roughly 3' berm; thereby creating an 11' fence.

Mr. Philhower discussed his concern that Angelico's should have come back to the PZC for approval of a site plan modification for the fence. He believes that any time a commercial property plans to put up a fence they should request a modification approval of the Commission. He believes a permit should not have been issued without prior approval of the PZC.

Chairman Zatorski pointed out to the Commissioners that the East Hampton Zoning Regulations state that a fence up to 8' is permitted by our regulations without a permit. The State Building Code requires that a fence of 6' requires a permit.

Mr. Carey read the definition of "Fence" into the record, "FENCE - Any artificially constructed barrier of any material or combination of materials erected, above grade, to enclose or screen areas of land. Any fence exceeding eight (8) feet in height shall require a building permit before it is installed, and must meet the building setback requirements for the zone in which it is located. (Effective: August 24, 2007)". He further explained that when the original idea of the 8' fence was proposed, it was an effort between Paul Angelico, his sound engineer, the Town Manager, and himself to find a resolution to the concerns of the neighbors regarding the noise emanating from the outdoor entertainment at Angelico's. The Town Council has been adamant that a solution be achieved. The site plan modification application that was denied was the first attempt at that solution. This plan had three distinct components. These components were not about a fence. They were about a sound attenuation wall and two roof structures. That was found to be inadequate and perhaps resonant to the neighbors.

At that time Mr. Angelico asked whether he needed a permit to construct a fence 8' high. Mr. Carey told him he did not need a permit. This was, and continues to be, the Town's regulation for fences. This has been the standard extended to everyone in East Hampton. He was not aware that in the 2005 State of Connecticut Building Code the requirement of the State was changed to require a permit of fences erected over 6' in height. When the State Building Officials Office made Mr. Carey aware of the change to the State Building Code, after they heard from Mr. Tammaro, Mr. Carey immediately contacted Mr. Angelico and informed him he did need to obtain a building permit. Mr. Angelico did subsequently apply for the permit.

Mr. Carey further explained that it has never been his practice, or the practice of this Building Department, to require anyone to tear down the work that has been done. He has never made people tear down things needlessly because they neglected to follow the accepted protocol or attempted to sneak it past the Town Officials. If he is capable of making a determination that the construction is safe and it is within the parameters of the Building Code, he never requires that a structure be taken down. If a structure is determined to be unsafe or outside the parameters of the Building Code, then he requires it to be taken down.

Mr. Carey explained that he has never required that a commercial property owner apply to the PZC for a site plan modification to install a fence. If, as Mr. Philhower has indicated, that is required that will be a change in policy because that has not been the case until now. Mr. Carey clarified that fencing had never been indicated on the Angelico's site plans; however when the business opened and noise and parking became an issue, fencing was installed without site plan modification.

Mr. Carey discussed with the Commission that typically appeals to his decisions go to the Zoning Board of Appeals (ZBA). If this Commission feels that a site plan modification application to add a fence to this commercial site plan should have been brought before them or if they feel that the 8' fence sitting on a 3' berm is a zoning violation, Mr. Carey will be happy to begin the process to appeal and the ZBA will have the opportunity to rule on this matter. Mr. Carey further discussed that if he has violated Building Code or left a non-code compliant structure in place then this issue should be taken to the local Building Code Board of Appeals. This Board can rule directly on Mr. Carey's actions as Building Official. Those are the options for proceeding with this issue.

Finally, Mr. Carey stated that the intention of Mr. Angelico is not to continue to aggravate the neighbors. He clearly has been trying to arrive at a solution as he was instructed months ago by the Town Council. Whether this has been effective or not, Mr. Carey does not know. The Town Council has been attempting recently to perform sound studies to determine the current level of noise emanating from Angelico's outdoor entertainment. If it is the will of the community to order that this wall be taken down, Mr. Carey will enforce that order.

Chairman Zatorski read the East Hampton Police Incident Report No. 10-5638 into the record at this time. (Attachment 2)

Mr. Tammaro disagreed with the Police Report.

Mr. Aarrestad questioned whether the changes that have been made have improved the noise problem for the neighbors.

Mr. Carey responded that he is unable to answer that question. The studies are ongoing. What he is sure of is that the intention of this structure is to help to resolve the problems for the neighbors.

The Commission discussed the average grade and the use of the berm as a base for the fence and how it relates to the zoning requirements. The Zoning Regulation does indicate that a building permit is not required on a fence to 8'.

The fact that the State Building Code was revised to reduce the height limit that would trigger the need for a permit without catching the attention of the Town's Building Official does not concern the Commission. The volume of information precludes anyone person from catching every change made. The Commission discussed whether they should have been approached about the fence in the form of a site plan modification. The Commissioners discussed whether or not, and how, this issue should be referred to the ZBA.

*Mr. Zatorski moved, and Mr. Rux seconded, to forward this matter to the ZBA for further determination of a zoning violation based on this discussion held at this meeting on July 7, 2010. The motion carried unanimously.*

The Chairman called for a five minute recess at this time.

The Chairman reconvened the meeting at 9:34 p.m.

**B. Discussion - Shelley Green, Nature Conservancy - Regarding Acquisition of Property from Middlesex Land Trust, Inc. – Map 14/Block 31A/Lots 4-1 through 4-5:**

Shelley Green, Lower Connecticut River Program Director for The Nature Conservancy (TNC), was present to discuss TNC's request.

Mr. Carey explained that there was a subdivision created off of Route 151 a number of years ago which included a conservation easement across five lots. This subdivision has never been built and there has been no use of the conservation area except to post that it is indeed a conservation area. TNC has requested that the Town consider giving that easement to the U.S. Fish and Wildlife Service. The Town has not had any interest in this area since the easement was granted and it is recommended that the Town agree to this transfer.

Ms. Greene explained that the Town holds a two-acre conservation easement within this 40-acre property. The Conservancy purchased the property in 2003 and sold it for 25% of what it was purchased for to the Middlesex Land Trust. The Middlesex Land Trust now holds the property. TNC has a conservation easement over the whole property and the Town has the two-acre piece that was a result of the PZC subdivision process. Federal funding has been obtained for the Fish and Wildlife Service to purchase this property to become part of the Silvio O. Conte Fish and Wildlife Refuge which includes the lower Salmon River area. The town of Haddam and TNC jointly owned the Elm Camp Johnson property just downstream of here and sold it to U.S. Fish and Wildlife Service. This is now part of the Refuge. U.S. Fish and Wildlife Service has goals that are very much in line with TNC for the property. This would be conservation in perpetuity with long term stewardship and actual conservation management for the property. The easement needs to be extinguished because the U.S. Fish and Wildlife Service will not buy the property if it is encumbered by any easements. Even TNC is in the process to release their easement over the property.

*Mr. Zatorski moved, and Mr. Philhower seconded, a motion to release the conservation easement on 2 acres of property on Moodus Road, Map 14/Block 31A/Lots 4-1 through 4-5, held by the Town of East Hampton and recorded at the Office of the Town Clerk in Book 460, Page 80, to be recorded at the time of the*

*sale of the property by The Nature Conservancy to the United States Fish and Wildlife Service. The Commission also supports delivering the release of the Conservation restriction to The Nature Conservancy to be held in escrow by the Conservancy pending closing. The motion carried unanimously.*

*Mr. Zatorski moved, and Mr. Philhower seconded, that the PZC recommends the release of the Town's conservation easement on 2 acres of property on Moodus Road, Map 14/Block 31A/Lots 4-1 through 4-5, held by the Town of East Hampton and recorded at the Office of the Town Clerk in Book 460, Page 80 to the Town Council for the purpose of adding the subject land to the Salmon River Division of the Silvio O. Conte Fish & Wildlife Refuge. The motion carried unanimously.*

- C. Preliminary Discussion** - Steve & Lisa Motto, 130 East High Street, Sustainable, Livable Community: Steve Motto, Dream Developers LLC was present to discuss upcoming plans for property located at 130 East High Street. Mr. Motto discussed the development that has taken place in the area to date. He explained that he is in control of approximately 79 acres that abuts Route 66, travels down behind Laurel Ridge Phases 1 and 2, cuts over toward Baker Hill, and then comes back to Route 66. He hopes to build a "Sustainable, Walkable Community".

Kent Schwendy, Professional Engineer with Fuss & O'Neill, was present to discuss the concept plan he has helped to design for this area. He specializes in walkable-livable communities, traditional neighborhood development, village communities, and sustainable site design. The plan is to create a community, a village, a sustainable development. This will be a significant project that will take many phases and many years to build out. The first phase of this project will be to build a daycare but the plan for it will not make total sense unless the Commission is aware of the overall plan.

The intention is to create commercial, retail, mixed use, residential, residential over retail and potentially office use in different phases of the community. Each area will provide a different aspect to the community. The first phase will draw traffic in from the Route 66 corridor. Subsequent phases will probably progress in a clockwise order and be progressively less mixed use as it is distanced from the first phase. In this type of community the plan is based on minutes of walk-time. The idea is to have attractions distanced by increments of minutes. The maximum distance is typically a five-minute walk.

The entire property will be under an association ownership. There will be no subdivision at all. The lines that are visible in the plan are not lot lines but are useful for planning purposes and will essentially become condominium lines as part of an association. Conceptually it is very similar to the overlay zone being planned for the Village, providing mixed use within the zoning, duplexes, townhomes, etc. The difference is doing it without subdivision and separate lots that already exist in the Village. This will be done through "Nested" associations. All of the "Nested" Associations will then be members of a larger association that addresses other concerns of the area. This whole plan will consist of private roads.

Low impact design and sustainability is very important to Fuss & O'Neill and to the Mottos. Fuss & O'Neill wrote the Stormwater Quality Manual for DEP in Connecticut and Rhode Island and contributed to the one in Massachusetts.

Patrick Pinnell, Architect/Planner from Chester, first licensed in 1978, has been doing "New Urbanism" since 1980. Mr. Pinnell briefly highlighted his career and the value of this type of development. The challenge of this property to a developer is to draw traffic in from the Route 66 corridor. Working within the natural terrain and hydrology to develop something consistently interesting, varied, and walkable that would appeal to different market segments and a variety of households. The intent is to retain residents through each transition in life. Mr. Pinnell discussed the planning aspects as the phases develop through the community.

The Commission discussed housing type, density, road width, emergency services and zoning with Mr. Motto and his professionals. They also discussed the Low Impact Development aspect of this development. The Commission expressed desire to create housing that would help the community with its low income housing requirements. Briefly, before closing the professionals described Phase One, the daycare facility, to the Commission.

Chairman Zatorski added item 8.D under New Business to the Agenda.

**D. Belltown Daycare: Chairman Zatorski Questioned Town Staff as to the Status of this Project:** Mr. Carey clarified that he has been in touch with the applicant regarding the Commission's requests and concerns and he will provide a complete update in August.

9. **Old Business:** None.

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

The meeting adjourned at 10:58 p.m.

Respectfully submitted,

Daphne C. Schaub  
Recording Secretary