

Montville Planning & Zoning Commission
REGULAR MEETING
July 23, 2024 - 6:00 p.m.
Town Council Chambers – Town Hall
310 Norwich-New London Turnpike, Uncasville, CT 06382

MINUTES

1. **Call to Order.** Chairperson Lundy called the meeting to order at 6:00pm.
2. **Pledge of Allegiance.** All rose for the Pledge of Allegiance.
3. **Roll Call.** Present: Chairperson Sara Lundy, Vice Chair Wills Pike, Secretary John Desjardins, and Commissioners Chuck Longton, Isaac Tait, John Poole, Joshua Kobyluck, and Joseph Summers. Absent: Commissioner John Estelle. Also Present: Director Matthew Davis, Assistant Planner Meredith Badalucca, and Zoning and Wetlands Officer Stacy Radford.
4. **Additions or Changes to the Agenda.** None.
5. **Minutes:** Approval of the July 9, 2024 Special Meeting Minutes.

Commissioner Pike asked for clarification of page 3 of the minutes regarding condition of approval number 12 bullet point 3 for 24SITE3. He stated the Commission had modified the motion to include a specific date and should read as follows:

“Indicate 1-year *from* 7/9/2024 Temporary Access Drive and add note that immediately upon the expiration of the 1-year period a permanent physical barrier shall be installed to prohibit vehicles to/from/between 1492 and 1502 Route 85.”

MOTION(Desjardins/Longton) to APPROVE the minutes of the July 9, 2024 Special Meeting with amendment. Commissioner Kobyluck abstained from voting. (7-0-1) Motion APPROVED.

6. **Remarks from the public not relating to items on the agenda.** None.
7. **Public Hearing:**
 - a. **24 SUB 2 – Black Ash Estates (970 Old Colchester Rd) (Parcel ID 037-001-000), Oakdale, CT – Owner/Applicant:** Pachaug Capital, LLC for proposed 13-Lot Re-subdivision. *(Submitted 3/28/24, Date of Receipt 4/23/24, PH opened 5/28/24, Cont. to 7/23/24 with 30-day ext. granted. PH must close by 7/25/24. DRD 65 days from close of PH)*

Director Davis explained to the Commission that soon before 4:30pm the same day, Attorney Jon Chase brought to staff two Verified Pleadings for Intervention in Proceedings Pursuant to Connecticut General Statutes § 22a-19 on behalf of his clients Mr. Richard George and Mrs. Katherine George, dated 7/23/2024.

The applicant’s attorney, Attorney Harry Heller with an office at 736 Route 32, explained if the Commission grants the intervention, the intervenors become party of the application.

MOTION (Longton/ Desjardins) to ACCEPT Verified Pleadings for Intervention in Proceedings Pursuant to Connecticut General Statutes § 22a-19. All in favor (8-0-0). Motion APPROVED.

Attorney Heller gave a presentation on behalf of the applicant. He gave the Commission information regarding the proposal of splitting the parcel into 13 building lots and gave some background on the land and location. Attorney Heller stated all proposed deeds and easements had been submitted and reviewed by the Town Attorney. He explained that one of the easement documents is for a Conservation Easement that expands through wetlands and upland review areas of the property to restrict activity. He described if each lot would be standard or interior as well if the driveways would be standard or shared and how each complies with the regulations. Attorney Heller explained the site does not have public sewer or water, but potable water will be allowed per Uncas Health approval. He stated the stormwater management plan had been reviewed by the Town Engineer and all comments had been addressed. He stated the applicant's engineer, Wes Wentworth, P.E. and Soil Scientist, would speak more on that topic after the presentation.

Attorney Heller went on to explain the "administrative role" of the Commission in that they are to look at subdivision and resubdivision applications to see if they comply with all zoning regulations, subdivision regulations, and road standards. He stated the application before the Commission was designed in accordance with all of Montville's regulations and standards to comply. He said staff and staff's consultants have reviewed all documents to ensure compliance and any comments received had been addressed. He cited a number of case law examples to give clarification of the role. Next, Attorney Heller mentioned the Intervention Petitions and Connecticut General Statutes § 22a-19 stating their purpose was to say the application is reasonably likely to unreasonably pollute or destroy natural resources. He explained that only certain matters within the petition relate to the jurisdiction of the Commission, and that other matters relate to the jurisdiction of other commissions such as the Inland Wetlands Commission. Attorney Heller stated he believes the application is in compliance with all regulations as the plans have been reviewed and revised as needed, and that the application is not reasonably likely to unreasonably pollute or destroy natural resources.

Wes Wentworth, with an office in Lebanon, CT, stated the stormwater plan was designed based off of CT DEEP guidelines and in a way to minimize the impact of water runoff. Mr. Wentworth also stated the plan was designed to reduce impervious surfaces. He explained dry wells will be installed to allow treatment of water prior to it being discharged. He stated a long term maintenance plan has been created for the wells. Mr. Wentworth stated on site septic systems have been designed per state health code for all lots and will help protect groundwater and surrounding wells. He explained the different drainage patterns for the lots and how they have no proposed negative impacts to the wetlands or surrounding lots. He stated stone walls will aid in diffusing the flow of water, and there are some existing as well as some proposed. Mr. Wentworth stated there should be no increase in volume or peak flow of water based on 100 year storm calculations, it should stay at or below current conditions.

Attorney Heller spoke again to reiterate how the Intervention Petitions are largely in part to do with wetlands concerns. He stated the application has been reviewed by the Inland Wetlands Commission and there is no proposed regulated activity. He stated again that the application complies with all zoning regulations, is an as-of-right project, and complies with all design standards of the subdivision regulations.

Commissioner Longton inquired about the water supply wells and depth of the water table. Attorney Heller stated the wells have been reviewed by Uncas Health and comply with the Connecticut Health Code. Mr. Wentworth stated the water table depth ranges throughout the year anywhere from 20 to 30 inches.

Commissioner Pike inquired more about the Intervention Petitions. Attorney Heller stated the

intervention has a role, but it is limited.

Commissioner Poole inquired about the long term maintenance plan for the water retention devices and how the buyer would be aware of the necessary maintenance. Attorney Heller stated it would be up to the homebuyer's attorney to do the title search and the information would be available. Commissioner Poole inquired further if there would be requirements for the homeowner to issue a report to show maintenance had been done. Attorney Heller stated there was nothing in place, but that could be something for the Commission to consider.

Commissioner Summers asked Mr. Wentworth if the 1 inch of water calculation mentioned was a standard measurement to use. Mr. Wentworth stated it is standard and had been determined through studies.

Commissioner Pike inquired about the impact on the culvert on Black Ash Road that currently fills up with a large amount of water. Mr. Wentworth stated there will be little to no impact on the current conditions.

Director Davis stated the acceptance of the petition is form only and should have no bearing on the Commission's analysis of the application.

Commissioner Tait asked what the Commission's action can be with the petition. Director Davis stated the Public Hearing would continue like normal, and the Commission would have to make a finding if the application is reasonably likely to cause unreasonable pollution or destruction of natural resources. He explained if there is no finding of same the petition does not have to be considered.

Chairperson Lundy requested a brief recess to allow time for staff to provide a copy of Connecticut General Statute § 22a-19 for the Commission to review to aid in their decision.

MOTION(Lundy/Desjardins) to RECESS meeting. All in favor (8-0-0). Motion APPROVED meeting recessed at 7:24pm.

Chairperson Lundy called the meeting back to order at 7:35pm.

Chairperson Lundy called for those in favor of the application with no response.

Chairperson Lundy called for those against the application.

Jeffrey Dombrowski of 59 Black Ash Road had a photo collage to show the Commission that was entered into the record. He explained the relevance of the photos and stated the stone wall on his property that Mr. Wentworth had mentioned is actually a retaining wall. Mr. Dombrowski stated the rain gardens in the area occasionally freeze and he asked who would be responsible. He also stated his concerns of additional downhill runoff as climate change continues.

Arline Rivera of 65 Black Ash Road stated her concerns of who would be responsible for flood damage caused from the development from the application. She stated her concerns of climate change as there are already issues with flooding in the area. She also explained that she is concerned the drinking water in the area would be affected.

Nicholas Brothers of 85 Black Ash Road stated his concerns are that his septic tank and leeching fields are not correctly located on the plans of the application. He stated according to the plans it appears that his septic is half on his property and half on one of the surrounding lots. He expressed his concern for what would happen to his septic if the surrounding land is developed.

Richard George of 974 Old Colchester Road stated his concerns of having development on three sides of his property. He stated not all of his wells or his septic are indicated correctly or at all on the plans. He stated he was not asked to provide or verify any information. He expressed concerns for additional water from the proposed development as his yard forms a "pond" when it

rains now. Mr. George expressed concerns for the safety and maintenance of the proposed rain gardens. He stated he has concerns about the wetlands and having additional houses may affect them as well as climate change.

Heather Battersby of 950 Old Colchester Road stated her concerns of her septic not being shown in the correct location on the plans. She stated she already has issues with flooding and is concerned there would be an increase if the proposed development happens.

Attorney Jon Chase, with an office in Mystic, spoke representing Mr. Richard George and Mrs. Katherine George. Attorney Chase asked those who had spoken previously to come up one by one to point out their properties as well as the supposed incorrect locations of their septic systems or wells. He stated he had concerns that revisions to the plans and drainage report were submitted last minute as well as only hearing the presentation for the application on the third and apparent last night of the public hearing, which did not give the public adequate time to review and rebut if they found necessary. Attorney Chase requested the public hearing be continued again.

Attorney Chase went on to express his opinion of the public hearing not being lawful due to violation of Connecticut General Statute § 8-7d. He stated because the subdivision regulations state the notice of public hearing is to be published in the newspaper and sent to the applicant via certified mail it should have also been sent to the abutting property owners or posted on the property per the statute.

Chairperson Lundy asked the applicant's Attorney if he would agree to continue the public hearing to look into these claims.

Attorney Heller stated he would not grant a continuance. He disagreed with Attorney Chase's statement. He stated sending a copy of the notice to the applicant is not considered a notice defect under the statute mentioned. Attorney Heller stated he believed Attorney Chase should continue his presentation, the Commission should close the public hearing that evening, and staff should consult the Town Attorney.

Attorney Chase continued to speak now regarding referral requirements listed in the subdivision regulations. He stated the application needed to be referred to the Inland Wetlands Commission and cannot be decided upon by this Commission until a favorable report is received. He stated there is a favorable report of a transfer of a wetlands permit from a 2008 permit to the current applicant but stated it was not a current determination. Attorney Chase entered a copy of the 2008 approved permit into the record. He stated one of the conditions of approval was that any changes to plans would require a new approval from the Inland Wetlands Commission.

Attorney Chase moved on to state that the application does not comply with all performance standards. He highlighted the shared driveway between lots 9 and 10 stating they do not comply with sections 4.11.1 and 4.11.2 of the subdivision regulations.

Attorney Chase next stated an issue of the road widening deeds reviewed by the Town Attorney. He submitted a deed to the record showing the land to have already been conveyed to the Town after the 1985 Dombrowski Subdivision.

Attorney Chase explained he has concerns of the groundwater calculations and stated the drainage report is "insufficient" as it does not list all surrounding ponds and dams. He stated his concerns of feeling he did not have enough time to cross examine the applicant's engineer, Wes Wentworth.

Attorney Heller interjected to state for the record that Attorney Chase is able to cross examine Mr. Wentworth. Attorney Chase refused at the time.

Chairperson Lundy called for those in favor of the application to speak for the second time with no response.

Chairperson Lundy called for those against the application to speak for the second time with no response.

Chairperson Lundy called for those in favor of the application to speak for the third and final time.

Attorney Harry Heller requested a brief recess to review one of Attorney Chase's submissions before speaking,

MOTION(Lundy/Longton) to RECESS meeting. All in favor (8-0-0). Motion APPROVED meeting recessed at 9:43pm.

Chairperson Lundy called the meeting back to order at 9:53pm.

Attorney Heller addressed the claim of density being too high stating that it is only 40% of what is allowed. He stated the claim of the drainage report being based off of 1 inch instead of 1.3 inches is due to the requirements of the regulations that were in effect when the application was submitted. Attorney Heller stated that he would have brought an application before the Inland Wetlands Commission if it was necessary, and that a copy of the current plan was brought before that Commission during the permit transfer process. Next Attorney Heller addressed the comments of the plans not complying with sections 4.11.1 and 4.11.2 stating the plans have to be able to meet the requirements of having frontage, but are not required to access the property using that frontage. Attorney Heller addressed the concerns of neighbors' wells and septic systems not being shown correctly on the plans stating he used the best available information, and has no right to go onto people's properties to locate them. He stated the stormwater calculations have been reviewed by both the applicant's and the town's engineers and revised as necessary. He explained that he could not comment on the road widening deeds at this time, but stated if it is determined that they are not necessary they will not be recorded.

Mr. Wentworth spoke on the rain gardens next to the George residence. He stated their property is a "high point" and the rain water will not affect their property.

Chairperson Lundy called for those against the application to speak for the third and final time.

Arline Rivera of 65 Black Ash Road spoke again to ask if the locations of the wells and septic systems can be added and how to go about it.

Attorney Chase took this opportunity to ask Mr. Wentworth some questions. Attorney Chase asked Mr. Wentworth to confirm some of the information in his letters and report. Asking about the drainage flows on or off site which Mr. Wentworth responded he did not have concerns for these.

Chairperson Lundy invited Attorney Heller to speak one final time as the applicant's representative.

Attorney Heller stated he believes this application complies with all regulations and has no jurisdictional defects. He recommended the Town Attorney be contacted for their opinion as well.

Chairperson Lundy suggested a motion to close the public hearing and table the discussion and decision to a later date.

Commissioner Longton asked if the plans could be updated to show the wells and septic systems.

Director Davis stated once the Public Hearing is closed no new materials can be received, but

suggested that could be made into a condition of approval.

Commissioner Pike expressed his concerns of the public having very specific comments and concerns with the Application.

MOTION(Lundy/Desjardins) to CLOSE the Public Hearing and TABLE discussion and decision to a later date. All in favor (8-0-0). Public Hearing CLOSED at 10:22pm and Discussion and Decision TABLED to next meeting.

8. Old Business:

- a. **24 SITE 5 – 303 Route 32 (070-004-000)** – Owner/Applicant: Lombardi Gravel, LLC for proposed site plan modifications. *(Submitted 6/10/24, Date of Receipt 6/25/24, DRD 8/29/24).*

The applicant's engineer, Ms. Ellen Bartlett, was present for the meeting, but had to leave early and asked Director Davis separately for the application to be continued to a potential special meeting in August. The Commission acknowledged the request, but no motion was made.

9. New Business: None.

- 10. Zoning Matters:** ZEO Report was given to the Commissioners. Zoning and Wetlands Officer Radford advised Commissioners to reach out to her with any questions.

11. Land Use Director Report.

Director Davis stated he would give his report at the next regular meeting.

12. Other Business: None.

13. Correspondence: None.

14. Executive Session: None.

15. Adjournment. The meeting adjourned at 10:27pm.

Respectfully Submitted by:
Megan Egbert
Recording Secretary

AN AUDIO RECORDING OF THE MEETING IS AVAILABLE ON THE TOWN WEBSITE.