

TOWN OF NEW LONDON
PLANNING BOARD SUBCOMMITTEE
NOVEMBER 7, 2006

PRESENT: Planning Board Chairman Karen Ebel, New London Planner Ken McWilliams, Planning Board Members Dale Conly and Sue Clough, Messer Pond Protective Association Representative Bob Crane, New London Zoning Administrator Peter Stanley, Owner/Developer Harry Snow, Engineer Peter Blakeman.

The PB subcommittee to review Harry Snow's proposed subdivision met at 9:30AM at the New London Fire Station. The proposal being reviewed is for a seven-lot development on property owned by Harry Snow, Tax Map 106, Lot 13, located between Bog Road and Messer Pond. The total area of the parcel is 41.41 acres. The preliminary plan shows lot sizes as proposed lot 1: 7.82 acres; proposed lot 2: 4.34 acres; proposed lot 3: 6.01 acres; proposed lot 4: 6.86 acres; proposed lot 5: 5.84; proposed lot 6: 4.17 acres; proposed lot 7: 4.99 acres. At this meeting, Harry Snow confirmed that per covenants in the deed conveyed to him by previous owners—the Kellners, the setback from Messer Pond will exceed the State's and New London's 50' shore land buffer requirement. Those covenants state that the setback for buildings will be 300-feet from Messer Pond. There includes a 200 foot a non-disturbance buffer which Mr. Snow stated has limitations similar to those in New London 50' shore land buffer. No buildings will be permitted in the area between 200 and 300 feet although driveways, septic systems, utilities etc will be permitted per the deed covenants. Harry Snow agreed to have attorney Michael Feeney fax a copy of those deed covenants to the Planning Board.

Peter Blakeman opened discussion on the buffering requirements for the wetlands that are on the property, pointing out that the wording of Article XIII §G is not clear, noting that the ordinance does not refer to "wetlands" but to "significant wetlands." PB Chair Karen Ebel shared the opinion of Bart Mayer, Town Counsel, as the ZBA decision with those in attendance. The opinion supported the PB interpretation of the wetlands buffer ordinance in the Putnam matter and the ZBA upheld the PB decision on appeal. Chair Ebel said that when they presented this ordinance along with the New London Streams and Wetlands Protection Map dated March 13, 2001, they did not mean that they are limiting the buffering requirement to just those areas mapped. The ordinance does require that site-specific mapping be done by a qualified professional. She pointed out that this requirement does not always work out to the detriment of the developer. Sometimes mapped wetlands shown on the Streams map and destined for buffering actually turn out to have fingers which reduce the amount of wetlands that have to be buffered when examined on the ground.

She went on to say that the broad definition of wetland in the ordinance is what drives what is buffered and what is mapped She reminded everyone that New London changed its definition of wetland to conform to the state and federal regulation, but in doing that, it lost a size delineation. There was discussion regarding the extent to which Wetlands are to be buffered pursuant to of Article XIII, G (c) of the New London Zoning Ordinance. That section requires 100-foot buffering of all mapped wetlands, as further defined by an on-site soil analysis. That raises the question, how far back does the buffering requirement extend, through how many properties? These questions become particularly relevant when looking at proposed lot 1 on the plan, with its fingers of wetland, and a stream. Karen Ebel said the Board faced this question when presented with the Putnam application. Then, as now, the applicants do have the option of applying for a special exception. She suggested that it would be beneficial to have Planning Board endorsement in doing so; therefore, it would be in the applicant's best interest to work through the issues with PB and to try to reach an accommodation.

Peter Blakeman pointed out that the property does meet the density requirement, though perhaps the current proposed lot lines could be adjusted. Karen Ebel asked where they would say the end of the buffer should be on lot 1. Peter Blakeman said they can better answer that after the soil scientist, Peter Schauer, has completed his mapping.

Harry Snow reminded everyone that at the public hearing on this ordinance, they were told that it was not the intention to take all the small lots out of existence. He said his impression was that the 100-foot buffer would apply

to what was identified on the Streams Map. Karen Ebel said they were trying to be fair in letting people know, but financially and practically it was impossible to have a soil scientist map the whole town. Additionally, the soils had to be analyzed on site b/c the mapping methodology was too general. Chair Ebel stated that as in the Putnam case, Harry Snow can apply for a special exception to the buffering requirement. The Putnams had elected only to seek an administrative review of the ordinance. She added once again that it would be good if Mr. Snow could seek a special exception with the support of the Planning Board. In any case, they will still need a site-specific wetlands map, and soils map. The Board cannot draw an arbitrary line.

There was general agreement that the wording of the ordinance needs to be clarified. Peter Stanley suggested that perhaps a formula allowing a diminishing buffer for certain fingers of wetlands would work. Karen Ebel said they are not in a position to do that now. She said they will solicit Harry Snow's input when they do begin to work on revising that ordinance, but for purposes of this application, they have to take the ordinance as it is and Mr. Snow will have to seek a special exception to the buffer requirement.

She asked to see where a building would work on lot 1 if the fingers of wetland were buffered. Peter Blakeman said they can throw a 100-foot buffer line around that and see what it looks like as far as a building site goes. Harry Snow asked if it would be easier if he defined one or two building areas on that particular lot (lot1). Karen Ebel said usually they like to see a building envelope on each shore land lot. Ken McWilliams suggested using some of lot 2 for lot 1 to make a building envelope. Harry Snow said he would not mind committing to a building envelope on lot 1, if that would assure them of the Planning Board's support when they apply for the special exception. Ken McWilliams asked if they could identify the proposed building sites and the center line of the roadway before the site walk. Peter Blakeman said they could, roughly. Chair Ebel reviewed the restrictions which the PB required in Bell subdivision on Messer Pond and mentioned that many of these were also applied on Clark Pond when Bill Green applied for a subdivision. Dale Conly shared the Conservation Notes from the Bell subdivision with Mr. Blakeman. Karen Ebel said there are a number of considerations: cutting restrictions, erosion control, visual impact, fertilizer and salt usage. Sue Clough asked if there should be building envelopes on all seven lots. Peter Blakeman said that with the big buffer of the pond, requiring building envelopes should be unnecessary. Harry Snow agreed, saying that he does not want to restrict himself on the upper lots. She would like to think about requiring building envelopes. Harry Snow pointed out that the large size of these lots would probably mean that they would not be cutting more than 50% of the basal area of trees on the lot. Cutting restrictions apply to areas outside the building footprints, and they can remove dead trees as desired. Karen Ebel said they have to figure out how to make the deed restrictions in related deeds to subsequent owners enforceable by the town because the restrictions are an important aspect of the subdivision approval. Members noted that they can be referenced on the plan.

Dale Conly said he feels that the soil types are significant. He asked how accurate soils mapping can be. Peter Blakeman said the High Intensity Soils Survey shows that soils outside the wetlands are all well-draining, and that is very accurate. Ken McWilliams asked if it is accurate to within 20-feet. Peter Blakeman said that within the wetlands they are right on for accuracy, and can accurately delineate poorly drained and very poorly drained soils. All the rest are 2 and 3.

Ken McWilliams opened some discussion on the question of a cistern or a fire pond. Would it be privately maintained? Will they be setting up a homeowners' association? Harry Snow said he does not plan to set up a homeowners association. Ken McWilliams said that in that case, the developer will be responsible for maintaining a fire pond or cistern. Peter Stanley said it may be possible to put a cistern in the cul-de-sac. If the town were to accept that road, it would have to decide whether or not to accept responsibility for a cistern within the road right of way. Right now, the Town does not have a policy on that. It would be up to the Selectmen. He added that as it is, the Fire Department does a lot of maintenance of fire ponds and cisterns. So far, they have had no failures, but it is hard to get private owners to do the maintenance. Harry Snow pointed out that if there is a cistern or fire pond there, the Town could use it for its own benefit. Sue Clough asked how far this is from a water source. Peter Stanley said the proposed entrance is 1500-feet from a dry hydrant. The policy is to require a water source 1500-feet from each house.

Ken McWilliams opened some discussion on the proposed driveways, suggesting that impact could be reduced by combining the drives to lots 3 and 4 and those to lots 5 and 6. Harry Snow said common driveways get complicated. Which neighbor is going to maintain it? He suggested that he could relocate those driveways in such a way to reduce impact, but still keep them independent.

Peter Stanley opened discussion on the steep slope areas, suggesting that the amount of steep slope shown on the plan may be correct, but they should be drawn more accurately. Peter Blakeman agreed and said he would show the steep slopes areas more precisely on the next revision of the plan.

Sue Clough asked if there is adequate sight distance from this entrance along Bog Road. Peter Blakeman confirmed that there is. Karen Ebel said the abutters immediately across from that may have some concerns about drainage from that entrance, based on comments at the public hearing

Harry Snow suggested they keep his proposal in perspective, pointing out that directly across the pond there are 37 lots all less than one acre, as well as the interstate about 400 to 600 feet away, and the road (Forest Acres) nearby. Karen Ebel said that given all that, don't we need to be more protective now. Sue Clough pointed out that the regulations have changed since those lots were approved. Mr. Snow observed that it might be beneficial to tear down Chair Ebel's house and put the area in conservation because it was in a pretty wet nearby.

Karen Ebel asked about an erosion control plan. Peter Blakeman said that will be part of the final application. Karen Ebel asked if there will be erosion control plans for individual building sites. Peter Stanley said that could be a condition of the subdivision approval and that that might be beneficial in this case given the proximity of the lots to Messer Pond

Karen Ebel asked about blasting. She mentioned that some neighbors were concerned about blasting. Harry Snow said there is no way to know that until they begin work; they prefer to keep blasting to a minimum. It's easier to bring fill in than to blast. Peter Blakeman said they have not seen a lot of sign of ledge on the property and doubted that there would be much blasting. They will be doing test pits for the septic systems. He referred to the profile of the proposed road, showing that there is not a lot of significant cutting required.

PB Member Dale Conly asked if the proposed driveways will be on the preliminary plan. Mr. Blakeman stated that they will be on the plan when it's approved. Ken McWilliams said he has not yet heard from Town Counsel on the proposed new driveway regulations, but those will be in effect by the time this project gets started. Peter Stanley agreed, and informed the meeting that the new regulations will require a 20-foot radius turn (at the cul-de-sac), and will have a 15% slope limitation for the driveways. (They can cut across slopes greater than 15% and less than 25%, but the driveway itself cannot have a slope greater than 15 %.)

Karen Ebel recommended that these conservation-related restrictions be put into the individual lots' deeds as well as on the subdivision plan as they were for buyers other subdivision approvals. The subcommittee members then decided it would be a good idea to go on a site walk immediately.

Site Walk

By the date of this meeting, the property had been surveyed and the wetland areas flagged. Subcommittee members made the following observations on the site walk:

1. Approximate location of proposed access road and cul-de-sac. That latter is located partly on proposed lot 3, and largely in proposed lot 4.
2. Large finger of wetland on lot 4, and the higher area delineated on the map as a 4.9-acre area usable for minimum (building) lot size. Question was raised about driveway access to the house site on this lot. Harry Snow said that there may be an easement over an abutting lot allowing lot 4's driveway to cross a narrower portion of that finger of wetland, or he may adjust lot lines to better accommodate the driveway.

3. Berm along the shore. Sue Clough asked if there will be paths to the water. Harry Snow said none will be defined. The residents will be allowed access for canoes and swimming. He was not sure whether or not there is a dock restriction in the covenants. (Again, the text of those covenants will be sent to the Planning Board.)
4. Areas of scrub shrub along Messer Pond shore, and approximate locations of
 - o the state-required 150' natural woodland buffer ,
 - o the 200-foot no-disturb, no-build buffer per deed covenant,
 - o the 300-foot no-build buffer per deed covenant.
 - o The 50-foot shore land buffer required by New London and the state

Harry Snow clarified that between the 200 and 300-foot line, some disturbance is allowed, for things as septic systems, utilities etc. Peter Stanley clarified that within the 50-foot buffer, only trees under 4-inches in caliper measured five feet above ground may be cut, and only after approval from the Planning Board. The same rule applies to removal of dead trees within the 50-foot buffer. Chair Ebel asked Mr. Snow if the buffering requirements in the deed were there at the request of the Kellners who sold him the property. Mr. Snow stated that he had negotiated with the sellers for about 1 1/2 years and that they insisted on providing far more protection for the pond than was currently required by the New London zoning ordinance. He stated that this affected the purchase price because such buffers could affect the number of lots, among other things.

5. The two streams on the property, one of which flows from the wetland on lot 4 (referred to in #2 above), and the second of which flows onto the property from the east, through the narrow portion of the wetland finger located on proposed lot 1 and into the large scrub shrub area at the southeast corner of the property and Messer Pond. There was some question about whether this second stream is a perennial or intermittent stream (it was flowing on the day of this site walk). Karen Ebel recommended that it is worth being buffered.
6. The subcommittee members spent considerable time on proposed Lot 1 reviewing the area mapped on the New London's wetland map and the fingers of wetland extending from it. Mr. Snow indicated that the probable building site on that lot would be near the upper edge of the fingers. Subcommittee members generally felt that would probably be okay, Members also commented on the clear difference between the scrub shrub wetland closer to the shore and forested wetlands.

Karen Ebel asked Harry Snow if he has even a vague sense of where the buildings will go, suggesting it will be easier for the PB to recommend the granting of a special exception if that information was on the plan. Harry Snow said that realistically, the 300-foot covenant buffer as well as the land itself kind of tells them where buildings can go. He said he would be reluctant to commit to specific building envelopes. Karen Ebel said she does not wish to push him into a corner, but can he show just a general demarcation? Mr. Snow agreed that it really wasn't difficult to identify the probable building site on each lot and agreed to work with Mr. Blakeman to identify general building envelopes. Subcommittee members thanked him and said that would be helpful. Chair Ebel reminded everyone that when the Messer development was approved it was with 15,000 square foot building envelopes and those included all accessory disturbances as driveways, and when the Green development was approved it was with sliding envelopes. Peter Blakeman said the plan for this development will show the test pit locations, and the 4,000 square foot areas around the proposed septic systems. Mr. Snow reiterated that he would have his attorney, Mike Feeney, fax the deed covenants promptly to Chair Ebel and to Mr. McWilliams.

Meeting adjourned at 11:50 a.m.

Respectfully submitted,

Sarah A. Denz
Recording Secretary

DATE APPROVED _____

CHAIRMAN _____