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September 8, 2022

Mr. Harold Thompson, Chairman
Old Lyme Planning Commission
52 Lyme Street
Old Lyme, CT 063716

SUBJECT: Application for a Nine-Lot Subdivision on Property at 16 Neck Road
Applicant: Keystone Capital Corporation

Dear Mr. Thompson:

The Old Lyme Planning Commission will be reviewing a nine-lot subdivision at 16 Neck Road, the site that was previously considered for a 37-unit affordable housing development. Although that previous proposal extended only from Route 156 to the top of the hillside between Route 156 and the Connecticut River, the current proposal proposes lots extending from Route 156 down to the edge of the Connecticut River. As the Commission is aware, the property is located within the Gateway Conservation Zone as codified in Section 25-102c of the Connecticut General Statutes.

Gateway Authority

The statutes governing the authority of the Gateway Commission (Sections 25-102a through 25-102s CGS) do not provide Gateway authority over the review and approval of subdivisions. Gateway's authority, as included in the Old Lyme Zoning Regulations, manages structures through minimum standards for setbacks, structure height and coverage. It is understood that structures are not proposed as a part of this subdivision proposal. That said, there are numerous regulations in the Old Lyme Subdivision Regulations that have been adopted to manage the development of the site prior to any specific development proposals being brought forward. It is this predevelopment site review that is of interest to the Gateway Commission in the management of this important property.

Background

Keystone Capital Corporation has a record of developing properties up and down the east coast of the United States. It is not clear, however, that the company has had experience developing properties in the unique setting of the Lower Connecticut River Valley. As the Planning Commission well knows, our valley has been recognized at international, national, state, regional and local levels for its amazing undeveloped nature and special natural resources. The wetlands of the lower river are "Wetlands of International Significance" according the Ramsar Convention. The Connecticut River is the one and only designated "Blue Way" as designated by the US Department of the Interior and is one of only 14 "American Heritage Rivers" in the United States as designated by Presidential Executive Order in 1997. The Nature Conservancy has designated the tidelands of the river as one of the Western Hemisphere's 40 "Last Great Places". The hillsides of Old Lyme, along with seven other towns along the river, are included in the Gateway Conservation Zone with Old Lyme being a member of the Gateway Compact, a partnership that has preserved the quality of the lower river since 1973. Although most in the lower

river valley know of the river's exceptional quality, its not always evident that those from other areas are truly aware of these facts. It is hoped that Keystone Capital considers the exceptional quality of the valley and of the property they plan to develop as they move forward in their plans to construct nine dwellings, several of which are located on the western-facing hillside above the celebrated Connecticut River.

These comments are based upon the understanding that, in addition to managing the visual and ecological impact of structures, the tree cover on the hillsides of the Connecticut River is one of the most important physical characteristics of the lower river valley, both in the undeveloped appearance of the hillsides and the ecological impact the natural vegetation has, both mature trees and the various kinds of understory vegetation. Along with the Old Lyme Zoning Commission, the Old Lyme Planning Commission can take a role in preserving the hillsides in the lower river valley through subdivision reviews.

One aspect of the application in particular is the request that the applicant be exempted from the requirements of Section 5.9.2, Open Space Dedication Requirement. The Gateway Commission is requesting that the Planning Commission *not* exempt the applicant from the requirements of this regulation, or at least develop a compromise where a conservation easement could be placed on the property. The Gateway Commission would recommend such an easement be placed along the banks of the Connecticut River at the western end of the property. The Gateway Commission is also requesting that the Old Lyme Planning Commission review the application with consideration for important standards in the Old Lyme Subdivision Regulations concerning site development and construction standards and sedimentation and erosion.

Comments

Old Lyme Plan of Conservation and Development.

The Old Lyme PoCD, adopted in February of 2021, includes many findings, policies and recommendations regarding the importance of the natural resources, scenic quality and rural appearance of the town to the well-being of the community. Under Community Appearance, the Plan cites that preservation of natural site features and vistas are critical components of town character. The treed hillside at this property is one of the many vistas in Old Lyme that requires protection (p. 22). Under Policies, the retention of an attractive and rural community appearance should be one of the most important criteria used in land use decision making (p. 26). The treed hillside along the Connecticut River define part of the rural community appearance in Old Lyme. The Plan recommends that land be set aside as open space to preserve natural resources and to maintain the visual and aesthetic rural character of the town (p. 26). Natural and Cultural Resource recommendations include maintaining the scenic character of Old Lyme. The scenic character includes the densely vegetated hillsides of Old Lyme along the Connecticut River and its tributaries. Mature tree stands and steep slopes are to be protected (p. 28). Residential development is encouraged to minimize visual impact on the rural landscape by maintaining open views and vistas and protecting ridgetops (note that this Action is to be overseen by the Gateway Commission and, in this case, the Planning Commission) (p. 30). Preservation of Cultural Features including site trees, scenic views, and vistas is to be emphasized when reviewing development plans (p. 30). In short, the Town's PoCD includes many findings, policies and recommendations that will support strong efforts to minimize the disruption of this property, especially with respect to protection of the view from the Connecticut River.

Subdivision Regulations

Section 4.4.6, Sedimentation and Erosion Control Plan.

Section 4.4.6(A) requires that such a plan be submitted "...*for any lot within the Connecticut River Gateway Conservation Zone*….". In that the Gateway Commission or its staff have not had the opportunity to review the application materials, it is assumed that such a plan has been submitted. This citation is included to demonstrate that properties subdivided in the Gateway Conservation Zone have been highlighted to have an elevated status. Regulations governing such plans include the following considerations:

- Section 4.4.6D1: The development shall be fitted to the topography and soils so as to create the least erosion hazard. This requirement is repeated in Old Lyme Zoning Regulations under Sections 4.10.12.3a and b, regulations that are Gateway standards adopted by the Gateway Commission.

- Section 4.4.6D2: Natural vegetation shall be retained and protected wherever feasible. The Gateway Commission requests that questions be asked regarding the intentions of the developer to clear the property of trees and for conditions to be applied, where possible, to prevent the property from being clear-cut, at least on the river-facing side of the property. It would be easy for the trees to all be clear cut, making development much easier and cost-effective. The Gateway Commission has determined that clear-cutting a hillside is one of the most adverse activities that can occur in the Conservation Zone. Many are aware of a clear-cut hillside property upriver in Deep River that many consider to be a "scar" on the hillside. Clear-cutting of trees should be discouraged or prevented by all means available to regulatory authorities.

Section 4.5.7, Purpose and Disposition of Open Space.

It is assumed that the applicant has presented a report consistent with this section which also requests exemption from the requirements of Section 5.9.2. The Gateway Commission requests that the applicant *not* be exempted from this requirement and that the Planning Commission use its discretion to require open space in the form of a natural treed buffer of at least 100 feet at the edge of the Connecticut River. A conservation easement of at least 100 feet placed along the frontage of the river could also provide the same results and would further enforce the significance of retaining treed and vegetated terrain in close proximity to the river.

Section 5.1.11, Town Plan of Conservation and Development.

This section requires subdivisions to be planned and designed in conformance with the Old Lyme Plan of Conservation and Development, particularly with regard to "...*preservation of lands for parks, recreation and open space* (emph. added)…" Further, preservation of the rural character of the town is cited, a character that is enhanced by the retention of as much of the natural vegetation and tree cover as possible.

Section 5.1.2, Natural Features.

This section requires that the planning and design of subdivision shall provide for retention of the natural features of a tract, including (A) avoiding excessive cuts, fills and regrading which result in potential soil erosion, unnecessary tree and other vegetation removal and disturbance to water resources, and (C) by retention and protection of large specimen trees and forested areas. Again, this attests to the importance of maintaining as much tree cover on this sloped, highly visible hillside as possible.

Section 5.2.1, Building Lots, Subsection A.
Subsection A requires that the developer make best use of the natural terrain, to preserve natural features, including substantial trees, woods, rock outcroppings, views and vistas, water features and the like. As previously stated, this property is in a highly visible location as seen from both the Connecticut River, from Old Saybrook and from the millions of people who travel Interstate 95 every year. The maintenance of the tree cover will be incredibly important at this highly visible site.

Section 5.2.1, Building Lots, Subsection B.
Subsection B requires proposed lots to be established "*to be capable of use without extensive filling or regrading which would result in potential erosion and sedimentation, excessive vegetation removal, or substantial alteration of natural drainage patterns*". On a hillside slope, great care must be taken to develop lots consistent with this requirement.

Section 5.9, Open Space.
In requiring open space, the subdivision regulations highlight the type of open space the town has decided is important. Section 5.9A cites preservation of natural resources, including visual corridors and vistas, to be of importance. From the perspective of Gateway's responsibility in preservation of the scenic quality of the lower river valley in the Conservation Zone, protection of the tree cover that contributes to the natural visual corridors and vistas *as seen from the river and Old Saybrook across the river* would be a primary reason for the designation of open space. As stated earlier, perhaps the implementation of a conservation easement near the river would succeed in accomplishing this goal.

Section 5.9F cites the need for preserving the scenic quality at the site. Open space, or a conservation easement, would accomplish protection of scenic quality consistent with the Old Lyme Subdivision Regulations and consistent with the policies of the Connecticut River Gateway Commission as set out in Section 25-102a of the Connecticut General Statutes.

Section 5.9.6, Methods of Open Space Reservation.
Subsection F allows for the establishment of a perpetual easement that could be used to transfer development rights and further protect the easement area by prohibiting the removal of trees and any other vegetation. Section 4.10.6 of the Old Lyme Zoning Regulations already includes a prohibition of the cutting of vegetation within 50 feet of the river, so a restrictive easement would need to extend further up the hillside than the existing 50-foot limitation in the Zoning Regulations.

Summary
The Gateway Commission respectfully requests that the Old Lyme Planning Commission use all of the regulatory tools available in its decision-making process to manage the development of the site – at least with respect to the western hillside of the property facing the Connecticut River – consistent with the Old Lyme Subdivision Regulations and the policies and standards of the Connecticut River Gateway Commission.

The Old Lyme Plan of Conservation & Development (February, 2021) and the Old Lyme Subdivision Regulations include many passages recommending or requiring that future development is to maintain the scenic character of the town. Protection of natural areas including mature tree stands is recommended for consideration of open space designation. Retention of an attractive and rural community appearance, which would include the treed hillsides of the Connecticut River, should be "*one of the most important criteria used in land use decision making*". Community Appearance recommendations state visual details including preservation of natural site features and vistas are critical components of the town character Old Lyme is charge with

protecting. Preserving and maintaining the tree cover on the river-facing side of this property is consistent with these PoCD recommendations and with the cited Subdivision Regulations.

Thank you for accepting and considering these advisory comments and for your efforts to protect this highly visible riverfront parcel. If members of the Planning Commission have any questions, please don't hesitate to contact us. Thank you for the Town's ongoing partnership in protecting the river scene along the Old Lyme shoreline of the Connecticut River.

On behalf of the Gateway Commission,

J. H. Torrance Downes
Deputy Director, RiverCOG
Staff, Gateway Commission

Ms. Suzanne Thompson, Old Lyme Representative to the Gateway Commission
Mr. Greg Futoma, Old Lyme Alternate to the Gateway Commission