

**CONNECTICUT RIVER GATEWAY COMMISSION**  
SPECIAL MEETING MINUTES  
August 10, 2010

**Present/Absent:**

<b>Chester:</b>	<b>Margaret (Peggy) Wilson, Martha Wallace (excused)</b>
<b>Deep River:</b>	<b>Nancy Fischbach, Amy Petrone (excused)</b>
<i>East Haddam:</i>	<i>Harvey Thomas (excused), Vacancy</i>
<i>Essex:</i>	<i>Ellen Whaley (excused), Tony Chirico (excused)</i>
<i>Fenwick:</i>	<b>Ethel Davies, Borough Warden</b>
<b>Haddam:</b>	<b>Susan Bement, Derek Turner</b>
<b>Lyme:</b>	<b>J. Melvin Woody, Lisa Niccolai (excused)</b>
<b>Old Lyme:</b>	<b>Peter Cable, Vacancy</b>
<i>Old Saybrook:</i>	<i>Madge Fish (excused), Vacancy</i>
<i>CRERPA:</i>	<i>Steve Williams (excused)</i>
<i>Midstate RPA:</i>	<b>Raul Debrigard, Stasia DeMichele</b>
<b>DEP:</b>	<b>David Blatt</b>
<b>Staff:</b>	<b>J.H. Torrance Downes</b>
<i>CRERPA:</i>	<i>None</i>
<i>Tidewater:</i>	<i>None</i>
<b>Guests:</b>	Attorney Charles Andres, Attorney William Childress, Ms. Marcy Balint (DEP/OLISP).

**Call to Order**

Chairman **Melvin Woody** called the special meeting of the Gateway Commission to order at 7:32p.

**Special Exception/Section 8-30g CGS Affordable Housing Applications, Marina Village, Old Saybrook**

**Fischbach** started the discussion by clarifying that the commission requested that Atty. Andres to advise it on the Applications and not just on the preparation of a response letter to the Old Saybrook Zoning Commission.

Atty. Andres took the floor, introducing himself and citing recent experience in land use law practice. He summarized his understanding of the Gateway statutory authority including what he referred to as the “veto” authority invested in the GW on zoning map and regulation changes on properties within the GW Conservation Zone. He also summarized GW authority for variance applications. Within this context, he noted that the Site Plan Application submitted under Section 8-30g CGS is *not* a standard application.

**Point 1**

Applications/petitions submitted under Section 25-102g CGS of the GW statutes do not follow the usual sequence of commenting during an application proceeding. The statute contemplates the GW being involved *after* the local process ends. With such applications/petitions, the *decision* of the local Commission is submitted to the GW Commission for their review and either “approval” or “disapproval”. Atty. Andres referred to this as a “veto” power of the local action. Based upon his conversations with Chairman **Woody**, GW staff, Atty. Mark Branse, former GW staff and current CRERPA Executive Director Linda Krause and Old Saybrook Town Planner Christine Nelson, Andres concluded that the Town sought what are referred to as courtesy reviews where comments and concerns from the GW Commission are submitted *as a part of* the application proceedings in hopes of impacting outcome of the proceedings prior to a local decision. With respect to any decision deadlines that the GW may have, Atty. Andres assured the GW that the applicable statute establishes a 35-day clock which starts upon submission of

the *decision* of the local commission. Such clock hasn't started for the GW Commission yet.

#### Point 2

Andres posed the question, what is this application and where does it fit into the normal zoning paradigm? There are two applications at issue, a residential "affordable housing" site plan application and a marina/restaurant/office special exception application.

Site Plan Application. The site plan application covering the residential portion of the development does not include a zoning text amendment "petition" or a proposed map change. There *are* draft zoning regulations included in the submitted application Affordability Plan. Andres said that Section 8-30g CGS requires an applicant for affordable housing to submit a draft zoning text amendment, which hasn't been submitted. Therefore, in Andres' opinion, no zoning text change has been "officially" submitted. He reported that Atty. Branse, representing the Old Saybrook Zoning Commission, has told them that they are to accept the Affordability Plan draft regulations as an actual application for a zoning text amendment. A more typical affordable housing application, Andres said, is a single application which includes a map change proposal, a zoning text change proposal and the site plan application. This form of application, with the map and zoning text change, he indicated, helps in financing because a bank would want to know that zoning compliance is assured.

Andres indicated that Branse has indicated to him that an application modification is expected at this time. Atty. Childress confirmed that the Applicant intends to submit modifications to the draft zoning language that acknowledges the fact that the development will exist in both the Marine Commercial and Residence A zoning districts. The present application language does not make a differentiation.

As a result of the form of the application and the lack of an "official" zoning text or zoning map amendment, there is a question of whether or not the GW "veto" authority found in Section 25-102g CGS applies and whether or not the GW can exercise that authority in the future proceedings of the application.

So, the GW Commission finds itself in a position to advise the Old Saybrook Zoning Commission based upon the submitted application. Andres indicated that there are separate time frames for process for the two applications. Childress indicated that the Applicant hopes to be finished with both applications in the time frame of the Site Plan application, the lesser time limit of the two. Date of submission of the applications: July 5, rescheduled to July 12.

**Woody** asked if a response letter had to be submitted to the OSZC prior to the opening of the public hearing. Andres asked the GW if they felt that he should attend the public hearing to speak on their behalf. Atty Childress indicated that all requests for time deadline extensions will be granted; no effort to cut off proceedings will be made if extensions are requested.

**Woody** asked, no map change has been proposed, but is establishing this development "spot zoning". Andres indicated that, no, it is not.

Andres commented that it is the OSZC that is bound by Section 8-30g CGS, the affordable housing statute, but the GW Commission is not. This is similar to a local Inland Wetlands Commission not being bounded by that statute.

With regard to the importance of the GW mission, the Connecticut Legislature could be perceived as having deemed the protection of the lower river's natural and traditional riverway scene as a substantial public interest based upon their creation of the GW statutory authority.

Atty Childress was asked if the physical nature of the development will change, or will the modifications just involve the zoning text submitted to date. He confirmed that he doesn't expect the buildings, their sizes or their locations to be changed. He noted that a substantive review letter received from the Town's consulting engineer may change that expectation however.

A question was raised with respect to the significance of have two parcels separated by Ferry road with no affordable units being proposed on the riverfront portion of the site. Andres indicated that there is some case law with respect to the necessity of consistent standards and workmanship between affordable and market-rate units.

Discussing the response letter to be written, **Wilson** indicated that it was important that the words used in the writing of the letter should be those which will best serve the Gateway Commission in the event that a court appeal was involved.

Andres addressed his opinion on the construction of the response letter. First, the statutory framework of the Gateway Commission, as written by staff, should definitely be included. A more specific treatment of the relationship of the proposed development and the standards of the Gateway Commission should be included. The summary/conclusion should be rewritten to not be so conclusive on whether or not the proposal is consistent with the mission of the Gateway Commission. With review of the additional information being requested of the Applicant by the Gateway, a different conclusion could be reached by some members.

**Debrigard** asked whether or not there should be consideration of the fact that the buildings are being proposed on top of the *existing* concrete platforms, i.e. the existing footprint is to be used. Some of the existing buildings have heights in excess of 35 feet. Is there a nonconformity consideration involved? Should the GW be looking at the project as if the structures are to be newly constructed from grade and not exceed the 35 foot height maximum or should there be consideration given for the fact that the *existing* buildings exceed the standard at present. It was noted that one of the proposed the structures is nonconforming with respect to the 100 foot setback from the river.

The issue of "adaptive reuse" was raised. Is this application the adaptive reuse of the site and should that have a bearing on the review? It was acknowledged that there was some merit to that line of thinking, but even with the adaptive reuse consideration, the proposed structures in mass seem excessive.

Next, the issue of the visibility of the proposed Manor House to be located on the west side of Ferry Road was raised. The Commission noted the proposed height of that structure and noted what that elevation would be above the river and above the proposed riverfront structures. The location of the Manor House with respect to the proposed riverfront structures also suggested a greater visibility due to gaps in the proposed riverfront structures.

Given the issue of the likely visibility of the Manor House, the Gateway Commission reasserted their need for cross sections and photographs from several perspectives on the river. The discussion included the possibility of having photographs modified using "Photoshop" or some equivalent in order to insert the proposed building envelopes in order to provide sufficient information with which to review visual impacts. Several locations on the opposite side of the river were discussed as possible perspective points. Attorney Andres asked Attorney Childress if the Applicant would entertain the request of such information, which the Gateway Commission had previously requested in earlier presentations by the Applicant). He indicated that he didn't know but that he could certainly ask and let the Commission know what they say. The Applicants were to be meeting on Wednesday, August 11, 2010. Childress

indicated that he would seek an answer during that discussion.

Chairman **Woody** asked if the strategy should be to send an initial response letter to be received at the commencement of the public hearing on August 16, 2010 and, if so, which version prepared by staff should be sent, the “long” version (dated July 15, 2010) or the “short” version (dated August 11, 2010). It was determined that the letters should be combined, first requesting the extension of the public hearing, then presenting the details and citing the Gateway standards to a greater extent than had been – and then acknowledging that the Gateway Commission is undecided on the ultimate visual impact of the proposal on the “natural and traditional riverway scene”. With the requested information, the letter would state, the Commission will be able to come to a decision on the impact. The letter would be presenting the concerns of the Gateway Commission, not presenting a decision to “approve” or “deny”, but to outline why the Commission *might* consider denying the zoning text change.

Andres pointed out that it should be acknowledged that the land is not vacant. The need for the additional perspectives discussed earlier in the meeting was reiterated with Childress reiterating his willingness to ask for the information. Whether or not the Applicant is willing to provide that information, however, is unknown.

**Debrigard** asked, in the event of “potential” litigation, should the GW Commission hold an Executive Session. Andres said that “potential” litigation does not qualify for Executive Session status like “pending” litigation, or litigation that has commenced.

Andres recommended that all of the specifics of the Gateway position should be in the letter for the record of the proceeding. It was reiterated that the letter shouldn’t state or imply that the Commission is opposed, rather that there are concerns that the additional information requested will help rectify.

The question of exactly what information the commission needs from the Applicant was then addressed. The commission decided to ask for perspectives from the DEP Ferry Landing facility in Old Lyme, one of the more public locations on the opposite side of the river. Another perspective should be requested from a location in the middle of the river underneath the Baldwin Bridge. Finally, a perspective should be requested from the location of the marina located across the river from the proposed site. Photographs should be fashioned that include the existing buildings and superimposed representations of the proposed buildings. The perspectives should include any pertinent structures on the west side of Ferry Road, especially the Manor House. Finally, the Commission requests that the perspective previously provided will be needed again, but with the Manor House structure superimposed as well.

The Commission agreed that Attorney Andres, staff, **Melvin Woody** and **Raul Debrigard** should work on the letter and include (1) a request for the extension of the public hearing, (2) a list of Gateway Commission concerns, and (3) revisions that state that the Commission has reached no conclusion regarding the consistency of the project but that to do so, the additional information is needed.

For the official proceedings of the Gateway Commission, although it had been presumed that Attorney Andres would be retained for services with regard to the subject application, a motion was made by **Wilson**, seconded by **Bement** to retain Attorney Chuck Andres of Leclair Ryan as Commission counsel for work on this application. The motion passed unanimously.

Members of the Gateway Commission requested that the Old Saybrook Zoning Commission be asked to provide any information given to them by the Applicant as if GW has an “intervener” status. This was especially important for any revisions and comments regarding those revisions.

Adjournment

Upon motion by **Fischbach**, seconded by **Blatt**, the meeting adjourned at 9:20 p.m.

**The next regular meeting of the Gateway Commission is  
Thursday, August 26, 2010**