

February 9, 2022.

Via email: ethanp@ipswich.gov

Carolyn Britt, Chair
Planning Board
25 Green Street
Ipswich, MA 01938

**Re: 55 Waldingfield
Open Space Requirement Concerns**

Dear Chair Britt:

I have reviewed the Town Counsel's memo of February 8th with respect to open space, and I believe it raises more questions than it answers with respect to the Open Space Requirement under the GEPD Bylaw. I ask the Planning Board to consider the following questions I have with respect to the Open Space Requirement:

(1) With respect to the 8.8 acre Julia Bird Reservation parcel, isn't the Applicant foreclosed from meeting any of the available conveyance options for contribution to the Open Space Requirement because conveyance option "iv" has been in effect since 1972 with the Greenbelt? Isn't it clear that the requirement is prospective only - that land owned by the Applicant "**shall be made subject to a conservation restriction**" (as opposed to "have been made subject to")? The applicable section of the GEPD Bylaw is provided below for reference:

Open Space Restriction: A minimum of forty percent (40%) of the land owned by the applicant **shall** either be:

- i. Conveyed to the Town of Ipswich and accepted by it for open space use;
- ii.. Conveyed to the Commonwealth of Massachusetts as part of a state forest, park, or wildlife management area;
- iii. Conveyed to a non-profit corporation, the principal purpose of which is the conservation of open space, and made subject to a conservation restriction prepared in accordance with the provisions of Section 31 and 33, inclusive, of Chapter 184 of the General Laws of the Commonwealth of Massachusetts;
- iv. Made subject to a conservation restriction prepared in accordance with the provisions of Section 31 and 33, inclusive, of Chapter 184 of the General Laws of the Commonwealth of Massachusetts running in favor of either the Town or, upon the approval of the Planning Board, a non-profit corporation, the principal purpose of which is the conservation of open space. The conservation restriction shall provide that such land shall be kept, in perpetuity, in an open or natural state, in accordance with the above- noted sections of Chapter 184 of the General Laws.

In designating the open space, the applicant shall apply the guidelines adopted by the Planning Board in May of 1997, entitled CRITERIA FOR EVALUATING PROPOSED OPEN SPACE. At least a portion of the open space shall be available for use by the general public, unless the applicant can provide compelling reasons to the Planning Board why such access would be infeasible. If it is deemed necessary to achieve the purposes of this subsection, the Planning Board may increase the open space minimum requirement by not more than ten percent (10%).

My understanding is that the 40% requirement is a **future** requirement, not a backward looking one. As such, the guiding paragraph directly below the conveyance options for the Open Space Requirement within the Bylaw is moot for any conservation parcels already meeting any one of the above.

(2) The Applicant claims that by granting public access to an already conserved property, the Applicant should then be allowed to claim option “iv,” (an existent CR) for purposes of fulfilling the Open Space Requirement, since there is no specific public use easement other than the 2016 public easement granted to the Essex County Trail Association. This is problematic as the current Conservation Restriction with Greenbelt closely aligns with the **Riverfront Area** along the Ipswich River. As such, there is a wetland restriction consisting of a 200 foot setback that should not be disturbed without Conservation Commission approval, as required by current zoning law:

[The Riverfront Area is the land within 200 feet of a river or perennial stream. All activities that could alter the Riverfront Area must be approved by the Commission under the Wetlands Protection Act and the Wetland Protection Bylaw.](#)

Has permission been granted by the CC for public use along the Ipswich River’s protected waterfront?

(3) Town Counsel’s memo of February 8th seems to suggest that the Planning Board has discretion to use the guiding paragraph (*Criteria for Evaluation Proposed Open Space*) on any portion of an existing CR, if the Planning Board unilaterally gives its approval to that CR some fifty years later. Town Counsel suggests the Planning Board is able to assume prior permanent conveyances can be ignored for purposes of the Open Space Requirement under the GEPD Bylaw. This raises an odd question: **What Criteria will the Planning Board seek to apply to the Greenbelt CR of 1972 for purposes of the Open Space Contribution?** The answer is obviously none, as Greenbelt is not a party to the transaction nor, I presume, interested in allowing any further input from the Planning Board to somehow assist with the Applicant’s request for claiming option “iv” to meet its Open Space Requirement.

Please consider the above in your further deliberations concerning the unprecedented allowance for the Applicant to disregard the current CR and Riverfront Area restrictions in its ask that the Planning Board allow such protected and conserved property to be used (in part or in whole) for the Open Space Requirement.

Thank you for your kind attention.

Bryan Townsend