

**EAST LYME BOARD OF SELECTMEN  
PUBLIC HEARING  
Wednesday, AUGUST 10th, 2011  
MINUTES**

The East Lyme Board of Selectmen held a Public Hearing on Wednesday, August 10, 2011 commencing at 6 PM at Town Hall, to receive comment on the potential purchase of Darrow Pond.

PRESENT: Paul Formica, Rose Ann Hardy

BOARD OF FINANCE: Bob Kleinhans, Chairman, Steve Larcen, Secretary, Steve Harney, Ray Hart, Steve Kelley, Lisa Picarazzi

ALSO PRESENT: Darci Schofield, Project Manager from the Trust for Public Land  
Robert Tobin, Attorney, Tobin & Carberry  
William Scheer, Town Engineer  
Brad Kargl, Municipal Utility Engineer  
Anna Johnson, Finance Director  
Gary Goeschel, Planning Director  
Art Carlson, Chairman, Natural Resources Commission

FILED IN EAST LYME TOWN  
CLERK'S OFFICE  
July 15 2011 at 9:55 AM PM  
*Beth B Williams*  
EAST LYME TOWN CLERK

Mr. Formica noted that while they do not have a quorum that they expect to take no action on this item and to only take comments from the public. He called the Public Hearing to order at 6:05 PM and led the assembly in the Pledge of Allegiance.

He then welcomed everyone and again noted that they would be taking no action. He provided a recap on where they are with their partnership agreement with the Trust for Public Land and Webster Bank. Roughly 200 ± acres of the 301 acres would be for open space and roughly 100± acres would be land that the Town could use. There are three partially developed wells on the site that have the potential to provide 200,000 gallons of water. They are high in manganese and iron content and while they are not planning on using them now, they do not know what the future will hold and would like possession of them. As part of the regional water interconnection this site would provide a valuable area for the location of a water tank and for pressurization for the system this site was found to be the best site. It would also allow for a number of acres of open space and for use by the utility. As part of the due diligence on the property, the Trust for Public Land is doing an environmental study. He recalled that this property was previously approved for a 600 unit Special Use Elderly Master Plan project. There are some easements and the pond is not available now for use however; they are not purchasing a swimming pool. That is not to say that at some future time discussion of use could not occur. Regarding the affordability, he showed the debt service plan noting that with everything approved (Colton Road Field Services Building, roadwork, restrooms at McCook's and Vets Field) that they are within the operating budget and there would be no net increase. He explained the concern with the visual site of that tank noting that Darrow's Ridge is some 4500 feet from the site and some of the homes may see a bit of the top of the tank. He said that he has spoken with the people living there regarding their concerns and hopes to be able to address them. This is the best locational area for the water tank. He then presented a rough method of potentially carving out the property for open space use and utility use noting that the lines are only one concept. He said that the property is in foreclosure with Webster Bank and that when it was first foreclosed in 2009 the appraisal came in at \$6M; in 2010 it came in at \$4.5M and is now appraised at \$4.15M which is the purchase price. He noted that Planning, Parks & Recreation, Zoning and the Commission for the Conservation of Natural Resources have all been in favor of this purchase. He introduced Darci Schofield of the Trust for Public Land to say a few words.

Darci Schofield, Trust for Public Land said that they have offices in New Haven, CT and Boston, MA and that she is from the Boston office. She explained that they had worked with the Town before and that

they are a National non-profit organization that works with cities and Towns and organizational entities to purchase and protect public land. They take on all due diligence matters and also provide a lot of educational outreach.

Mr. Formica then called for public comment noting that no decisions would be made by the Board of Selectmen this evening on this matter – this is only for public comments.

Karen Rak, 27 Black Point Road said that she wanted to provide them with some statistics regarding affordability. She said that we are in bad times and provided some statistics from the Bureau of Labor Statistics for East Lyme: In June 2010 the unemployment rate was 7.3%; in June 2011 it is 8.5% - so when they speak of 'we' – there are 868 people here without jobs. There is a 31% increase in the number of people receiving food stamps from 2009 to now and the number of people 18 and younger receiving food stamps has doubled. The Day did an article on the number of homes in foreclosure and that has also doubled. They now have a summer feeding program in the Town of East Lyme and in order to qualify for one – 50% of the children have to qualify. She said that she is not advocating these programs – she is stating facts that put into question the term 'affordable'. They have mentioned ball fields and a dog park – they do not need any more ball fields in Town, they have enough. Rather than talk about all of this – she said that she wants to see a plan first before any decisions are made.

John Drabik, 18 Drabik Road asked if Mr. Tobin was the Attorney for the Town now.

Mr. Formica said that he was the Attorney for this project.

Mr. Drabik asked about Attorney O'Connell.

Mr. Formica said that Attorney O'Connell had a conflict with handling this project.

Mr. Drabik asked about Attorney Tobin having a conflict and if he was in fact a sitting member of the Parks & Recreation Commission.

Mr. Formica said that he is a past member of the Parks & Recreation Commission.

Mr. Drabik said that he is concerned with the financial aspect of this. He said that roads, restrooms and such are capital necessities. Rather than buying this property he suggested that they put the Trust for Public land on the Oswegatchie Hills property and buy off Russo and finish one project instead of starting another. He said that they did the schools and other projects when times were flush but those times are gone and they won't see them again for a good 15 years or more. This is not the time for this. They keep using the collective 'we' and that 'we' is only a few people.

Ron Rando, 194 Boston Post Road said that he does not think that they should go into debt for anymore money right now – look at the stock market – they cannot afford to buy this. East Lyme is not in the real estate business and they do not need anymore ball fields. He said that he thought that the \$10M for the interconnection was covering the tank and everything and now they are talking about \$4.15M more for property for the tank location. They were also going to buy the gas station downtown – he said that he just wishes that the Board would work as hard to get some commercial businesses in this Town to give them some tax relief.

John Strafacci, 16 Darrow's Ridge Road said that he appreciates the opportunity of the public hearing and also of the neighborhood meetings that were held but cannot help but feel that this is being offered after the fact and all before the due diligence is done. There have been no studies, no plans that this is the best site for the water tank and the engineer was only hired a week to 10 days ago. He is concerned with the water tower as it is visual pollution on top of the ridge and it will be atrocious. Additionally he has concerns with how the Trust for Public Land and Ms. Schofield have gone about this. He said that she has made comments that Darrow's Ridge people will take care of the maintenance of the dam when he recalled being told when he purchased his home that each landowner around that pond shares equally in the pond and dam upkeep and if the Town purchases – they would also be responsible for the upkeep. He said that he would like Ms. Schofield to correct the record as he feels that she is doing a disservice to him and his property. He thinks that the open space is fine but has heard about ball fields, etc. and the chemicals that would go there on the ball fields will run into the pond and be a nightmare. He also asked where the water main is going in from New London – as given the size of the water main that could potentially cause more issues. He said that he hopes to get more information and that these concerns are taken into account. He thinks that the people are entitled to know what is happening before they vote.

Joe Mingo, 397 Boston Post Road said that he would not speak on the economic issues of the people in the Town of East Lyme. He wished to address Mr. Strafacci. He said that he is on the Wetlands Commission and that non-source point pollution is the biggest cause of the problem and that he would be more concerned with fertilizers from the homes that are already there than from any ball field. He said that he went and looked at the plans from the project proposed for the property and that he would rather look at one water tower than 600 roofs. He said that there is already a water main on this property. He said that he lives on Boston Post Road and there is a water tank there and he does not see even though it is there. The National Guard is also near him and they sometimes make noise but that does not bother him. He said that he does think that a dog park would be an excellent idea for this property as he goes to one in Waterford everyday and it is a great place. He does not think that the Town needs more ball fields. Regarding economic conditions – the bank did not come to the Town, the Town went to the bank and there is a bidding war going on for this property and if we do not buy it – a developer will. He said that he thinks that this is a good deal for the Town and that they do need it for the location of the water tank. He has trouble with the thought of a developer getting hold of it as in this economy it would probably be an Affordable Housing project and that would require the Town to build a new school – so there are times when the Town does need to be in the real estate business. He cited uses such as the forest that is present there now – it could be culled and the wood given to the public; they could have a public garden area there; and a nursery for replacement tree stock as it does have a pristine forest on it. He said that the positives far outweigh the negatives.

Mr. Formica noted that the process here is that Planning conducted an 8-24 review and found this consistent with the Plan of Conservation & Development goals and objectives; the Board of Finance will meet following this and should they approve it, the process will continue to Town Meeting, and referendum vote by the public.

Daryl Hinds(?), 20 Darrow's Ridge Road said that he thinks that it is good to preserve 300 acres but no one has looked at the consequences of buying it and that what they want to do it to keep it as it is. When they speak of ball fields and a dog park they are talking about having to spend more money.

John Drabik, 18 Drabik Road said that they are on top of holding a Board of Finance meeting on this item and they cannot even get the Board of Selectmen here to hear the comments. This is a true rush job. He said that Mr. Mingo made some good points and further that road was laid out in 1731 by Thomas Lee and is a town road and the Town owns the dam. This property never made it to a public offering as he was looking for it. If they are going to put a dog park and ball fields on this property, he asked that they just put it all on the table as everyone is talking about it at other meetings of Boards and Commissions in Town. Regarding run-off – he asked how much animal waste is running into the river from all of those farms up there in the north of Town with no plans on how to manage that. Where is all that waste going as that is where the high bacterial counts come from in the water.

Ron Rando, 194 Boston Post Road asked if the Town buys this property how much property tax dollars are coming off the tax rolls. He said that he heard that Mr. Torrance owns 15% and asked if that was true. Also one of the members on one of the Commissions is handling this real estate and asked if he is going to make a commission on this – he wants an answer.

Mr. Formica said that he spoke to the neighbors at Darrow's Ridge and that there is no plan for a dog park or ball fields. He knows that Parks & Recreation is interested and has suggested that a committee be formed to look into potential uses for the property. This should be comprised of Board and Commission members and the public. He said that he does not personally think that this is a good place for ball fields or a dog park. Regarding the responsibility for the dam and pond ownership – each deed shares equally in that. Attorney Tobin and Ms. Schofield have said that this information is available on the land records. Regarding the taxes for the property – they are \$72,000/year. If a house were to go there, it would be a net loss. The bank owns the property and he does not know of a developer owning a percentage. Pequot Commercial is handling the property and a member is on the Zoning Commission however Zoning did not vote on this.

Mr. Rando said that regarding pollution and the river that they were going to run the sewer line to the Golden spur area but did not as they would have had to pay Waterford for the bigger line. He and Mr. Drabik came and spoke for years recommending that north of I-95 they have five acre building lots. Had they done that, they would not have these issues.

John Drabik, 18 Drabik Road asked if this was our Town plan to buy up every lot for open space. He said that he does not want to be held hostage by the threat of development and they are putting themselves at a disadvantage here as they cannot keep buying everyone in the sewer shed off.

Carol Strafacci, 16 Darrow's Ridge Road asked if dog parks and ball fields were not on Mr. Formica's agenda, how they got on the agenda at all.

Mr. Formica said that in all honesty that he does not know where that came from.

Ms. Strafacci said that she knows that it has been talked about at the Board of Ed meetings and that it is mentioned on their website.

Mr. Formica said that there are no concrete plans for ball fields.

Ms. Strafacci said that she is concerned with the 40 acres that the Town would have for other than utility use.

Mr. Formica said that the most important part to him is the water tank location and the utility/regional interconnection as that is the plan.

Ms. Strafacci said that she would like to be on the committee that he mentioned forming. To Mr. Mingo regarding lawn fertilization – she said that they spend extra on having environmentally safe chemicals applied to their lawns.

Karen Rak, 27 Black Point Road said to Mr. Formica that he had mentioned forming a committee and that the committee should be formed first, and then move those findings to the public. What is happening seems to be backwards.

Mr. Mingo, 397 Boston Post Road said that it is a general fact that homeowners are the prime source of non-source point pollution in the water supply.

Ms. Hardy said that some remarks were made about Ms. Schofield regarding the dam and she asked that Ms. Schofield have the opportunity to reply to those comments.

Ms. Schofield apologized for any confusion and said that she would provide the volume book and page number of the easement for the Darrow property and the homeowners' property so that they would have it.

Mr. Strafacci said that his concern is that she is making remarks that damage him and his property.

Ms. Hardy asked for Attorney Tobin to address this.

Attorney Tobin said that he has a copy of the document and that paragraph five says that they agree to share the maintenance of the pond and dam on an equal basis. The developer passes this on in an equal basis to the homeowners. He said that he would provide a copy if they would like one. (Copy attached at end of minutes)

Ms. Hardy asked Attorney Tobin to state his role regarding the Parks & Recreation Commission.

Attorney Tobin said that he was the Chairman of that Commission 20 years ago and that he has been off of the Commission for many years now. He is serving for this item as Attorney O'Connell had a conflict.

Mr. Formica thanked everyone for coming and closed this Public Hearing at 7:20 PM.

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary, Pro-Tem

3874

**MUTUAL USE AND MAINTENANCE EASEMENT AGREEMENT**

WHEREAS, NEW ENGLAND NATIONAL, LLC, ("New England") a limited liability company organized under and pursuant to the laws of the State of Connecticut with a principal place of business in the Town of East Lyme, County of New London and State of Connecticut, is the owner in fee simple of a portion of Darrow Pond which is situated in the Town of East Lyme, County of New London and State of Connecticut, which said pond is contained within a parcel of land owned by it; and

WHEREAS, NIAN TIC REAL ESTATE LIMITED LIABILITY COMPANY ("Niantic") a limited liability company organized under and pursuant to the laws of the State of Connecticut with a principal place of business in East Lyme is the owner in fee simple of remaining portion of the said Darrow Pond which said pond is contained within a parcel of land owned by it; and

WHEREAS said properties are shown on a map or plan entitled "Plan showing parcels of NEW ENGLAND NATIONAL, LLC and NIAN TIC REAL ESTATE LIMITED LIABILITY COMPANY subject to Mutual Use and Maintenance Easement Mostow Road, East Lyme, Connecticut Scale 1" = 250' dated July 15, 2004 J. Robert Pfanner & Associates, P. C., which map or plan will be recorded on the East Lyme Land Records simultaneously with this Easement; and

WHEREAS, the parties hereto desire to provide for the mutual use of the entire pond by both parties,

NOW, THEREFORE, the parties hereto agree as follows:

1. Each party hereby grants and conveys to the other the permanent and perpetual non-exclusive right and easement to use the other's ownership area of the pond area for the purposes of swimming, fishing and non-motorized boating together with such other recreational activities which will not interfere with the water quality of the pond, or result in objectionable noise. In addition, each party may wharf out into the other's ownership area not more than thirty (30') feet. In addition it shall be the sole and exclusive responsibility of the party that constructs the wharf to be liable to pay all fees, costs and expenses incurred in both the construction of the wharf and the maintenance, repair, reconstruction and/or replacement of the said wharf. Said constructing party shall at all times carry general comprehensive public liability insurance and property damage insurance insuring the interests of both the constructing party and the other owner in fee simple of the other portion of the pond. Insurance coverage shall be in such amounts and in such form and content as shall be acceptable to both parties to this agreement. Said insurance coverage shall at all times provide for 30 days prior written notice to the other party to this agreement before any cancellation, modification or amendment shall be effective relative to the said

no CONVEYANCE TAXES COLLECTED  
*Esther B. Williams*  
 TOWN CLERK OF EAST LYME

LAW OFFICES  
 STEVENS, HARRIS & GUERNSEY, P.C.  
 351 MAIN STREET • P. O. DRAWER 660 • NIAN TIC, CONNECTICUT 06357 • JURIS NUMBER 56685 • (860) 739-6906

Attachment 8/10/2011

BoB Public Hearings  
 +  
 BoB Spec. Meeting

above insurance coverage. Both parties to this agreement shall also provide general comprehensive public liability insurance in connection with the benefits of the mutual use and maintenance agreement. Said liability insurance shall provide for the same coverage and requirements as the above referenced general comprehensive liability insurance coverage relative to the pond.

2. In areas where there shall be non-flooded land between the pond and the others upland, this easement shall include the non-exclusive right to cross such areas for the purposes herein stated.

3. The dam shall be maintained at its current elevation and each party hereto waives such rights, if any, that it shall have to flood the other's upland areas including but not limited to those rights which are described in deeds recorded at Volume 287, Page 121 and Volume 584, Page 624 of the East Lyme Land Records.

4. Each party hereto reserves the right to use their respective owned portions of the pond for any use or purposes which will not interfere with the mutual easements herein created including, but not limited to, the right to improve the shore area of the pond adjoining their upland area, and to wharf out to the extent that they deem appropriate along the areas of their upland ownership.

5. Each of the parties hereto agree for themselves and their successors and assigns to share both the maintenance of Darrow Pond and the dam maintenance on an equal basis. Neither party shall incur any expense with respect to such maintenance without first notifying the other, in writing, of intent to perform such maintenance, and the estimated cost thereof. In the event the parties can not agree on the need or amount of proration as provided herein of such maintenance, such decision shall be submitted to arbitration in accordance with the rules of the American Arbitration Association and the decision of the arbitration procedure shall be final and binding on both parties. Assignees of each party shall share maintenance pro-rata with such party based upon the relative area of the land of the Assignee compared to original Assignor's land.

6. It is the intent of this Easement to benefit and burden all the properties shown on the above referenced Plan provided that said properties shall be annexed to properties owned by either NIAN TIC or NEW ENGLAND.

7. Nothing herein shall be construed to eliminate any required governmental permitting with respect to any of the activities described herein, such required permitting, if any, to be the responsibility of the respective party who shall undertake such activity. Both parties to this agreement hereby agree to indemnify, save and hold the other party to this agreement, its successors and assigns harmless from and against all loss, costs, damage, liability and expense (including without limitation reasonable attorneys fees and

LAW OFFICES

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disbursements) the said other party may incur or suffer as a result of the use of the easement area by the other party to this agreement.

8. This Agreement is intended to be a permanent easement which shall run with the land as shown on said Plan and to the benefit and burden of the respective parties, their successors and assigns and such benefits and burdens may be assigned by either or both parties to a homeowners and/or condominium association or any other entity or record title holder which shall acquire by assignment the rights and obligations as herein described. Said entity and/or homeowners association and/or condominium association shall have the right to further assign all the rights and obligations herein described to third parties. Such unit owners and/or lot owners and/or homeowners association and/or condominium association and/or other entity may be assigned the rights and obligations herein described.

9. Each of the parties hereto hereby covenant and agree that neither shall permit or grant a right of public access to Darrow Pond, it being the intent that each party shall maintain its private access rights to the pond.

IN WITNESS WHEREOF the parties have hereunto set their hand and seals this 29<sup>th</sup> day of July, 2004.

Signed, sealed and delivered in the presence of

*Thomas A. Harris*  
*[Signature]*  
*Thomas A. Harris*  
*[Signature]*

NEW ENGLAND NATIONAL LLC  
By: *[Signature]*

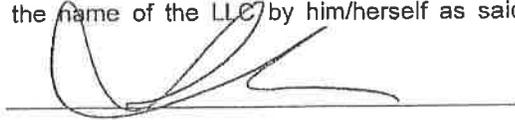
NIANTIC REAL ESTATE LIMITED LIABILITY COMPANY  
By: *[Signature]*

Its Member, duly authorized

STATE OF CONNECTICUT  
COUNTY OF NEW LONDON

SS: East Lyme July 29, 2004

On this the 29 day of July, 2004, before me, the undersigned officer, personally appeared Robert Blatt who acknowledged him/herself to be the duly authorized Member of NEW ENGLAND NATIONAL, LLC and that he/she, as such Member, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the LLC by him/herself as said Member.

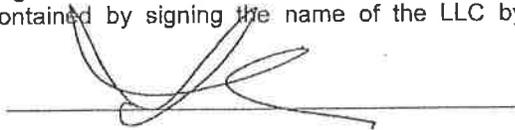


Commissioner of the Superior Court

STATE OF CONNECTICUT  
COUNTY OF NEW LONDON

SS: East Lyme July 29, 2004

On this the 29<sup>th</sup> day of July, 2004, before me, the undersigned officer, personally appeared Jeffrey Jermine who acknowledged him/herself to be the duly authorized Manager of NIAN TIC REAL ESTATE LIMITED LIABILITY COMPANY and that he/she, as such Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the LLC by him/herself as said Manager.



Commissioner of the Superior Court

Recorded July 29 2004  
4:18 <sup>AM</sup> <sub>PM</sub> Ester B. Williams  
East Lyme Town Clerk