

TOWN OF EAST LYME
ZONING COMMISSION
July 11th, 2019
REGULAR & PUBLIC HEARING MINUTES

Members Present:

Matthew Walker, Chairman
Norm Peck
Terence Donovan
John Manning
Kimberly Kalajainen
George McPherson, Secretary
Anne Thurlow, Alternate
James Liska, Alternate
William Dwyer, Alternate *(Sat as Regular Member for the Public Hearing)

FILED

July 17 20 19 AT 11:10 AM/PM
Kevin Mulholland
EAST LYME TOWN CLERK

Also Present:

Bill Mulholland, Zoning Officer
Mark Zamarka, Town Attorney
Mark Nickerson, First Selectman; Substitute Ex-Officio

Absent:

Rose Ann Hardy, Ex-Officio

Chairman Walker called the Zoning Commission meeting to order at 7:31 p.m.

The Commission sat Mr. Dwyer as a Regular Member for the Public Hearing portion of the meeting and Ms. Kalajainen recused herself from this item.

Pledge of Allegiance

Mr. Walker led the Pledge.

Public Delegations

There were none.

Public Hearings

1. Application of Eric J. Garofano, Esq., Agent for John H. Drabik, Owner, for a Special Permit for construction of a 175' tall amateur radio tower to be located on property identified in the Application as Ancient Highway, East Lyme Assessor's Map 30, Lots 1 & 2.

- Mr. Walker noted the Public Hearing was previously continued and the Applicant and his Attorney were gracious enough to host a site walk for the Commission as well as the Public on June 29th, 2019 at 9:00 a.m.; this provided the opportunity to view the cleared site, surroundings, and see specifically the proposed location of the radio tower. Mr. Walker added that the Commission walked the neighborhood in close proximity to the site, specifically the corner of Bittersweet and Rose Lane.
- Mr. Walker noted Town Attorney, Mark Zamarka is present to assist if needed.

Attorney Garofano of Conway, Londregan, Sheehan & Monaco located at 30 Huntington Street in New London, came forward representing the Applicant. Mr. Garofano said he would be happy to save his comments until the completion of tonight's public comments.

Mr. Walker asked if anyone had anything new information to offer for the record and called for Public Comment.

Anne Santoro of 11 Rose Lane said a revised application was submitted by Mr. Drabik's attorney at the last meeting and most striking to her is that despite the additional documentation the application still remains deficient in a number of respects and made some of the following comments:

- It fails to state facts or provide sufficient evidence that meets the requirements of Section 31 of the Regulations, and appropriateness of land.
- The emergency communications perceived need doesn't exist.
- There is no amateur radio need to reach the desired areas.
- The location- the proximity of the neighborhood, it's a stone throw from a pretty densely populated community; another topic of location is the Tribal Historic Preservation Officer determination concerning the historical and cultural significance to the Mohican Tribe.
- The ongoing litigation both in Tribal Court and State Court precludes the Tribe from setting forward and injecting themselves into a local zoning matter.
- This historical and cultural aspect can't be ignored; we would not put a cell tower in the middle of a cemetery and this is basically what would be happening.
- We don't want a proliferation of towers, try to have the least amount of interference on the land as possible, and the regulations provide for that kind of sequencing; it's a priority that the applicant do due diligence in trying to find alternative locations.
- The application states "an insignificant visual impact" and this is not the case; the footprint, size, the height are all disproportionate to the proposed purposes.

Ms. Santoro noted that other neighbors will be speaking to the application's deficiency and she submitted two items for the record- A map of the existing East Lyme emergency communication facilities/towers (Exhibit E) and a map showing the proposed coverage improvement with the imminent Mostowy tower (Exhibit F.)

Ms. Santoro said Fire Marshal Taylor has attended tonight's meeting to answer any questions regarding current or future emergency communication.

Dr. Richard England of 22 Bittersweet Drive submitted several items for the record- an illustration showing the number of homes you can't see because of the trees (Exhibit G.) He said there are 35 homes within 1,000 feet and 6 homes with 600 feet. Dr. England also submitted a map from the AT&T 2015 85 feet temporary tower application for the same lot which shows the visual impact analysis they did (Exhibit H.) He also submitted a photo from the AT&T balloon test which shows the visibility from Bittersweet Drive (Exhibit I.)

Alan Buchholz of 11 Mackinnon Place submitted a 5 page packet for the record (Exhibit J) consisting of a list of the CT areas across the State with repeaters adjacent to the coastline and in close proximity, a map of the repeaters referenced on the title page, a signal propagation analysis.

Mr. Buchholz detailed Exhibit J.

John Tichy of 9 Bittersweet Drive submitted signatures of all the residents in the area opposing this tower (Exhibit K) and a map illustrating where the residents live (Exhibit L); all within a ½ mile radius of the proposed tower. He discussed the 30 foot square base at the bottom and the four foot square base at the top (of the proposed tower) and commented that it's essentially for a whip antenna. He said if this is a valmont tower, this is a commercial tower; the load carrying capacity which has not been discussed is considerably more than what is required for a simple whip antenna. He added the area has many stone structures which were not visible from the cleared site.

Jim Fleming formerly of 10 Seebeck Road said he lived next door for fifteen years and that Seebeck Road abuttes Mr. Drabik's property. He detailed how he walked the property every day and wants to attest to the ceremonial mounds present and said there were at least 15 of them on the site itself and of significant stature.

Mr. Donovan asked Mr. Fleming if he would have built in house there if he had seen the stone structures beforehand and Mr. Fleming responded that he has no way of answering that.

The Applicant asked for a 5 minute recess to review the new Exhibits and the Commission reconvened at 8:43 p.m.

Mr. Garofano responded to the public comments and said some of the following:

- The Regulations don't require us to prove need.
- 31.7.A talks about identifying other locations within one mile and the Mostowy tower is more than a mile away.
- Daryl's affidavit (Exhibit 10) shows the extensive analysis they did of all the towers including Mostowy.
- Mr. Drabik doesn't own the Mostowy tower and we don't know if there is going to be a lease agreement there.

- An independent amateur tower allows Mr. Drabik to have control, use the equipment he desires, and prevents a costly expense if the Mostoway tower were to be commercial.
- The application is a passive use and there is no evidence there is a cemetery here.

Mr. Garofano submitted a packet for the record (Exhibit M) and made the following comments:

- We are in a lawsuit here but that doesn't prevent the Mohican Tribe from showing up to prevent there no evidence.
- Page 3 lists the various attempts they made to contact the Tribe to no avail, at which point AT&T broke their contract with Mr. Drabik.
- The Tribe refused to show any photograph of a ceremonial structure and blocked a deposition with Elaine Thomas.
- They've tried and Ms. Santoro is not qualified to make these judgements; she worked in the Smithsonian Contract Office.
- The sacred stones were never brought up during the Costco and Gateway Public Hearings and their site is located in the same area.

Mr. Peck asked about the conflicting information from the neighbors and Ms. Thomas regarding items of historical significance.

Mr. Manning about the size of the tower and the neighbor's comment that it's overkill; he asked if they could comment on what it is, what it's capable of bearing and why they won't choose to go lower if it's for amateur radio.

Mr. Garofano said he doesn't know those particular details.

Mr. McPherson asked if the antenna proposed for this site is commercial grade and Mr. Garofano said the antenna is for amateur radio.

Mr. Manning asked if the tower is commercial grade and Mr. Garofano said he doesn't know and can't speak to that but he doesn't think so.

Mr. Manning asked if Mr. Drabik knows if it's commercial grade.

John Drabik of 18 Drabik Road (the Applicant) said he has a history of putting up stuff such as the golf course and he always goes for overkill; you can put up a cheap tower or you can put up a good tower and he prefers to go the commercial route and have it be more professional.

Mr. Walker said he's concerned that a professional communications engineer report was not included in their application. Mr. Garofano said they've complied to the extent they're able to but there are no professional communications engineers in Connecticut. He directed the Commission to the report by Tim Mays in Tab 11 of their application binder.

Mr. Dwyer asked about the height and asked if it would work at a lower height and Mr. Garofano said the height is going to give Mr. Drabik the long distance he desires.

Mr. Walker asked what they would say to neighbors who believe they will have a giant tower hanging over their property. Mr. Garofano said they provided the view shed analysis and certain parts of Bittersweet you will be able to see it, but in today's day and age you see towers everywhere and it's part of modern life.

Mr. Walker said there is conflicting information regarding the historical and cultural significance of the site and whether they've considered hiring someone to provide that information. Mr. Garofano responded that AT&T didn't find anything and an archeologist would have to walk all 12 acres; the cost would be \$10,000-\$12,000.

The Commission discussed how any questions they may have for the Fire Marshal or the like can be done at staff level.

MOTION (1)

Mr. McPherson moved to close the Public Hearing.

Mr. Manning seconded the motion.

Motion carried, 6-0-0.

Regular Meeting-

- 1. Application of Eric J. Garofano, Esq., Agent for John H. Drabik, Owner, for a Special Permit for construction of a 175' tall amateur radio tower to be located on property identified in the Application as Ancient Highway, East Lyme Assessor's Map 30, Lots 1 & 2.**

Mr. Walker noted the great deal of testimony they've heard and suggested taking time to review everything into the record.

The Commission decided to continue this item until the August 1st, 2019 meeting and Mr. McPherson requested that Attorney Zamarka be in attendance.

The Commission took a 5 minute break and convened at 8:54 p.m.

Mr. Dwyer returned to the audience and Ms. Kalajainen rejoined the Commission.

- 2. Request of Theodore A. Harris, Esq., Agent for GDEL Residential B, Gateway Phase II Residential for a site plan modification.**

Attorney Ted Harris of 351 Main Street gave a brief update on Phase II of the residential component and explained their request is to not build the sidewalk that was part of the original approval of the 280 apartments on East Society Road that runs from the developed site to Dean Road; in conjunction with this request they're proposing to donate \$105,000 to the Town's sidewalk fund. He stressed that the sidewalk portion of East Society Road was not required by any regulations- it was a product of a good idea that turned out to be not such a good idea.

Mr. Harris explained it was initially anticipated to be a lot of pedestrian traffic but in reality, that is not the case given there are only three houses on East Society Road and sidewalks are being constructed on the developed site and throughout the residential site; there is no need for sidewalks to Dean Road since there is nothing there, there are no sidewalks on Dean Road, and it's a bad intersection. He said he spoke with the Planning Department who is putting together a sidewalk plan for the Town and there is no plan for sidewalks in this area.

Mr. Harris said another important factor is constructability and said the narrow road in addition to steep terrain, steep slopes, tight quarters, and topography made sidewalk construction completely difficult. He added that rights in various places would be needed from property owners which is problematic.

Mr. Donovan asked why they weren't constructed when the road was completed and Mr. Harris clarified that they would have encountered the same issues regardless of when sidewalk construction was attempted.

Mr. Harris detailed one issue that came up post approval and the Water Department's request to design a new system that would better provide for uninterrupted service during water main breakage. Mr. Harris said they've agreed to do this but it has added an additional couple of hundred thousand dollars in construction costs. He said given the great cost they thought it would be better to balance their resources between the new water system and to contribute to a sidewalk in a location where they will actually be used.

Mr. Mulholland briefly explained how he is in agreement with this assessment to the high speed of the road and lack of need for sidewalks in this area. He said the First Selectman is here to speak to the numbers side of this and Mr. Nickerson came forward to speak. He detailed how the \$105,000 was calculated; given that a commitment was initially made they considered what the fair thing to do is and they worked out it's about \$60 a linear foot and 3,500 feet would be \$210,000. He explained this would be the cost of a sidewalk on a flat surface and they took this figure and cut it in half. Mr. Nickerson said this is a great opportunity for sidewalk work to be made or repaired where needed.

Mr. Nickerson detailed the corridor study that will be taking place along Flanders Road and stressed they're looking at sidewalks and agree their important.

Mr. Walker asked when the excavation of the hill will be completed and buttoned up and Mr. Harris gave an update. He said they believe they're finished blasting and plan will be given to Mr. Mulholland by next week.

The Commission discussed the sidewalk contribution calculation in detail.

Mr. Donovan said he would like to see them actually build a sidewalk somewhere; despite being a bad decision, it was part of the original agreement and the monetary figure of building a sidewalk on East Society should be applied elsewhere. He said we keep granting sidewalk waivers all over Town and asked when we're going to stop.

Mr. Harris clarified that this is not a waiver and Mr. Donovan said it was what they were approved for and asked if they would be willing to apply the \$210,000 elsewhere. Mr. Harris said he can't answer that since they're not here and that they didn't realize how difficult this sidewalk construction would be.

Mr. Walker said he thinks \$105,000 is a fair figure and Mr. Donovan disagreed.

Mr. Peck said he was worried about having a sidewalk here.

Mr. Mulholland said monetary calculation is best left to the First Selectman's Office rather than a Land Use Board.

The Commission further discussed sidewalks.

MOTION (2)

Mr. Peck moved to approve the request of Theodore A. Harris, Esq., Agent for GDEL Residential B, Gateway Phase II Residential for a site plan modification as requested.

Mr. Peck said he thinks this is a gift for the Town and makes a lot of sense.

Ms. Kalajainen said this is a situation where we have an organization that has made a commitment and while the Town needs tax revenue that comes with these great developments, there was a plan and that plan had cost built into it to build a sidewalk. She said someone in this Town needs to ensure that the commitments made are fulfilled. She said she would ask our First Selectman to consider what she as a private citizen feels like a deal being cut by a politician.

Mr. Harris said they're asking for something that will allow this project to go forward and be an asset to this Town.

Ms. Kalajainen said it might not be this Commission's purview but someone needs to ensure that commitments made by organizations like the one Mr. Harris represents, are fulfilled. She said she didn't think there was any need for further comment on this matter.

The Commission further discussed the request.

Ms. Kalajainen seconded the motion.

Motion carried, 5-1-0.

Nay: Mr. Donovan

3. Approval of Minutes of June 20th, 2019 and June 29th, 2019.

MOTION (3)

Mr. McPherson moved to approve both the Regular and Public Hearing Meeting Minutes of June 20th, 2019 as presented.

Mr. Manning seconded the motion.

Motion carried, 5-0-1.

Ms. Donovan Kalajainen abstained from the vote due to her absence from the meeting.

MOTION (4)

Mr. Donovan moved to approve the Site Walk Meeting Minutes of June 29th, 2019 as presented.

Mr. Manning seconded the motion.

Motion carried, 4-0-2.

Ms. Kalajainen and Mr. McPherson abstained from the vote due to their absence from the June 29th, 2019 site walk.

Old Business-

1. Subcommittee-Site Plan Requirements/Architectural Regulations

Mr. Mulholland said he is working on this with Mr. Goeschel.

New Business-

1. Application of Rita Fokaidis for a waiver of Section 24.6 C Sidewalks at 8 Haigh Avenue, Niantic, Connecticut.

Mr. Mulholland said this request has been withdrawn.

2. Any business on the floor, if any by the majority vote of the Commission.

Mr. Donovan discussed the importance of sidewalks in Town and asked if the sidewalk plan for the Town can be shared with them. Mr. Mulholland said he will speak to Mr. Goeschel about this and Ms. Kalajainen noted it would be helpful to know where sidewalks in Town should be.

3. Zoning Official

Mr. Mulholland said he has nothing else to report.

4. Comments from Zoning Board Liaison to Planning Commission

Mr. Thurlow attended the July 9th, 2019 Planning meeting and detailed the 3 1/2 hour contentious West Lane and Bush Hill Public Hearings that took place.

Mr. Walker is scheduled to attend the August 6th, 2019 Planning Commission meeting.

5. Comments from Ex-Officio

Ms. Hardy was not in attendance but Mr. Nickerson shared how Ms. Hardy has been ill and they're hoping for a speedy recovery. He discussed the difficulty of sidewalks in Town in addition to the great speed of vehicles we are seeing. Mr. Nickerson detailed the accident on Riverview Road where Charles Fennick was hurt. He discussed how 500+ people were stopped for speeding in the last week and detailed the two overnight firefighters we now have.

6. Comments from Chairman

Mr. Walker said he has nothing to report.

Adjournment

MOTION (5)

Mr. McPherson moved to adjourn the Zoning Commission Meeting at 9:45 p.m.

Ms. Kalajainen seconded the motion.

Motion passed 6-0-0.

Respectfully Submitted,

Brooke Stevens
Recording Secretary