

TOWN OF EAST LYME
ZONING COMMISSION
September 5th, 2019
REGULAR MEETING MINUTES

FILED

Members Present:

Matthew Walker, Chairman

Norm Peck

Terence Donovan

John Manning

Kimberly Kalajainen

Anne Thurlow, Alternate *(Sat as a Regular Member for item 1.)

James Liska, Alternate

William Dwyer, Alternate *(Sat as Regular Member for item 1.)

September 12, 2019 AT 9:10 AM PM

Breakey Thomas ATC

EAST LYME TOWN CLERK

Also Present:

Bill Mulholland, Zoning Officer

Mark Zamarka, Town Attorney

Rose Ann Hardy, Ex-Officio

Absent:

George McPherson, Secretary

Chairman Walker called the Zoning Commission meeting to order at 7:33 p.m.

The Commission sat Ms. Thurlow and Mr. Dwyer as Regular Members for item #1 only.

Pledge of Allegiance

Mr. Walker led the Pledge.

Public Delegations

There were none.

Public Hearings

There were none.

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.

In order to maintain consistency and in keeping with past practice on hearings, Ms. Kalajainen and Mr. McPherson recused themselves from this item and the Commission sat Ms. Thurlow and Mr. Dwyer in their place.

Mr. Walker gave a brief history of the application and Attorney Zamarka reminded the Commission that at the previous meeting they requested that he prepare two resolutions, one in the affirmative and one in the negative. Mr. Zamarka noted the resolutions were crafted in conjunction with Mr. Mulholland, and distributed them; the Commission took several minutes to review them.

Mr. Zamarka clarified that if the vote is tied it fails; it must pass by a majority.

MOTION (1)

Mr. Peck moved to approve the resolution granting the 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, as written (attached), and hereby grants exceptions to ZR 24.5.2.B. (driveways and offsite parking), ZR 24.6.C (sidewalks) and ZR 24.6.E (landscaping buffers) as requested in the Application.

Mr. Donovan seconded the motion.

Mr. Walker called for final discussion and comments.

Ms. Thurlow said she has the same opinion she had in the previous meeting.

Mr. Peck said he wanted to reiterate that in addition to what is written and the approval, he truly feels this will not affect property values and the alternative to the tower- residential housing development would result in the same arguments with possibly worse results.

Ms. Thurlow said she disagrees with Mr. Peck, she feels it would negatively affect the property in the neighborhood. She said as a homeowner herself she would much rather have more homes next to her than a 175 foot tower looming over her backyard.

Mr. Donovan said he agrees with Mr. Peck. He said there was testimony he couldn't submit into evidence and he would like to see the Commission pay better attention to our records and timelines. He added that in terms of property values you can read studies both for and against such an application; future development is going to happen regardless, and if you couldn't see a balloon, you're not going to see a tower.

Mr. Dwyer observed that when he goes over the bridge to Waterford he noticed the tower over there for two months and now he no longer sees it.

Mr. Manning said he thinks you need to look at the entire neighborhood and what their response is to the potential tower. He said there has been an overwhelming response by the entire neighborhood that this would have a significant and visual impact. Mr. Manning described the beauty of the neighborhood and said that maybe the people driving by on the highway won't see the tower but all the people in that neighborhood will.

Mr. Manning said he is not a real estate agent but he has to believe that it will have an impact on resale values and that's what their (the Commission's) job is.

Mr. Walker said he made himself pretty clear at the last meeting and that without being redundant, he would echo the sentiments of Mr. Manning.

Motion failed, 2-4-0.

Yay: Mr. Donovan & Mr. Peck

Nay: Mr. Walker, Ms. Thurlow, Mr. Manning & Mr. Dwyer

Mr. Zamarka explained that according to 8-3G of the zoning Statutes, unless there is a motion to deny or modify the site plan is presumed to be approved.

MOTION (2)

Mr. Manning moved to deny the 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 as presented and for the reasons outlined in the resolution to deny the Application (attached.)

Ms. Thurlow seconded the motion.

Motion passed, 4-2-0.

Yay: Mr. Walker, Ms. Thurlow, Mr. Manning & Mr. Dwyer

Nay: Mr. Donovan & Mr. Peck

Ms. Thurlow read page 1 through the first half of page 2 and Mr. Walker read the second half of page 2 thru page 3 of the resolution denying the Application of John H. Drabik for a special permit to construct an amateur radio tower into the record.

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

Mr. Mulholland said the legal decision will be published in the New London Day Newspaper on September 12th, 2019.

2. Approval of Minutes of August 1st, 2019.

Mr. Donovan said he had the following corrections:

1. Page 6- it reads "**Mr. Donovan**" called for public comment and it should say "**Mr. Walker**" instead.
2. Page 17- first paragraph reads "...if someone wants to modify os"_ it should say it instead.
3. Page 17- right before motion 5 it reads "Ms. Kalajainen said is..." it should say she

Mr. McPherson said he had the following corrections:

1. Page 12- 5th bullet point reads "blue being against and blue in favor"- one should say pink.

Mr. Walker said he had the following corrections:

1. Page 12- last bullet point reads "creditably" and it should read "credibly" instead.

MOTION (3)

Mr. Donovan moved to approve both the Regular Meeting Minutes of August 1st, 2019 as amended.

Ms. Kalajainen seconded the motion.

Motion passed, 5-0-1.

Mr. McPherson abstained from the vote due to his absence from the August 1st, 2019 meeting.

Old Business-

1. Subcommittee-Site Plan Requirements/Architectural Regulations

Mr. Mulholland said he and Mr. Goeschel are working on these and will have more to report at the next meeting. He said they're making great progress and will have this completed as soon as possible.

New Business-

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

The Commission further discussed timelines regarding testimony for a public hearing and Mr. Donovan said he would like to ensure in the future that there is enough time for their own rebuttal or investigation of submitted material and testimony. Ms. Kalajainen noted they have to vote to close the public hearing and a member can speak up if they have further testimony to contribute. Mr. Walker said if there is more research or review a Commission member needs to do, they need to speak up. Mr. Mulholland said we always have 35 days to complete the public hearing unless an extension is granted by the applicant and that if it concerns a text amendment the Commission can grant themselves

an extension. Mr. Manning asked if we should be deferring more to the Public and not just the professionals; many times public testimony has been repeated when professionals were unable to attend on a specific evening.

2. Zoning Official

Mr. Walker asked about the landscaping plan for Costco and Mr. Mulholland said it's due and he has been told it's coming; he will produce it at the next meeting.

Mr. Mulholland discussed some of the following:

- Niantic Center will be replacing the trees they cut down.
- He met with the Chief Landscaper regarding the sick trees by Walgreens on Flanders Road; the ones that can't be saved will be replaced at full size.
- Costco is making great strides and is currently working on their landscaping.

Mr. Mulholland briefly reviewed the buildings currently under renovation in Town.

3. Comments from Ex-Officio

Ms. Hardy said the BOS approved the Harbor Management Plan update due by the State last night. She said the Conservation of Natural Resources finished their water study and would like to present it at a future Aquifer Protection Agency meeting; they have also finished their Sustainability Grant application and would like to present that at a future BOS meeting and suggested a representative from Zoning might want to attend.

4. Comments from Zoning Board Liaison to Planning Commission

Mr. Donovan mentioned the two subdivisions they approved at the last Planning meeting he attended.

Ms. Kalajainen will attend the October 1st, 2019 Planning Meeting.

5. . Comments from Chairman

Mr. Walker said he has nothing to report.

Adjournment

MOTION (4)

Mr. McPherson moved to adjourn the Zoning Commission Meeting at 8:44 p.m.

Ms. Kalajainen seconded the motion.

Motion passed 6-0-0.

Respectfully Submitted,

Brooke Stevens
Recording Secretary

**RESOLUTION DENYING
APPLICATION OF JOHN H. DRABIK FOR A
SPECIAL PERMIT TO CONSTRUCT AMATER RADIO TOWER**

SEPTEMBER 5, 2019

WHEREAS, on April 18, 2019, Eric J. Garofano, Esq., acting as agent for John H. Drabik Owner ("Applicant") filed with the East Lyme Zoning Commission ("Commission"), an application for a Special Permit to construct a 175 foot tall amateur radio tower to be located on property identified in the application as Ancient Highway, East Lyme Assessors Map 30, Lots 1 and 2 ("Application"); and

WHEREAS, the Commission held public hearings on the application and listened to testimony from the Applicant, the Applicant's representatives and the public during those hearings. Numerous exhibits were submitted by the Applicant, the Commission, and individuals for consideration during the hearing process. In making its decision the Commission is taking into consideration all of the testimony and exhibits submitted at the hearings; and

WHEREAS, the amateur radio tower set forth in the Application is a "Telecommunication Tower" as defined in the East Lyme Zoning Regulations ("Regulations" or "ZR") 1.77; and

WHEREAS, the property on which the tower would be located is in the RU-40 Zoning District; and

WHEREAS, pursuant to section 5 of the Regulations, the RU-40 zoning district is characterized by sparse settlement and a lack of utilities. It is the purpose of the Regulations to encourage low-density residential development in RU-40 zone; and

WHEREAS, pursuant to ZR 31, telecommunication towers are permitted in all zoning districts, subject to Site Plan and Special Permit approval; and

WHEREAS, the general purpose of ZR 31 is to "provide for the location of wireless telecommunication towers and antennae; reducing adverse effect through careful design, siting and vegetation screening; and to minimize the number of towers by encouraging shared use or joint use where practical"; and

WHEREAS, pursuant to ZR 31.2.4, an application for a telecommunication tower shall include documentation of the minimum height needed, prepared by a professional telecommunication systems engineer; and

WHEREAS, ZR 31.3 sets forth in order six siting preferences for telecommunication towers, with Residential Zones listed as the least preferable locations; and

WHEREAS, pursuant to ZR 31.4.1.A all attempts shall be made to co-locate wireless communication towers on existing towers; and

WHEREAS, pursuant to ZR 31.4.B the height of a telecommunications tower shall be site specific and shall be of the minimum height necessary to meet the technical transmission requirements; and

WHEREAS, pursuant to ZR 31.7.B an application for a wireless telecommunication tower must include a report indicating why the proposed site location is necessary to satisfy its function in the applicant's proposed wireless telecommunications system and why at least one alternate site within one mile is not suitable; and

WHEREAS, ZR 31.8 sets forth review standards that the Commission shall consider when deciding on an application for a telecommunications tower; and

WHEREAS, pursuant to ZR 31.8.E, the Commission shall consider design characteristics/architectural treatments that mitigate, reduce or eliminate visual impacts on surrounding areas; and

WHEREAS, pursuant to ZR 31.8.F, if the proposed telecommunications tower is located on a property of important historic and/or architectural character, consideration shall be made of the preservation of such character; and

WHEREAS, the proposed location of the tower is in a residential zone and in close proximity to residential areas along Ancient Highway, Bittersweet Drive, Rose Lane and Chris Allen Drive; and

WHEREAS, the Applicant testified at the public hearing that he had no present intent to use the proposed tower for commercial purposes; and

WHEREAS, ZR 31.2 encourages and permits shared use of telecommunication towers; and

WHEREAS, the Applicant previously applied for a commercial cell phone tower to be located on a parcel of land that is adjacent to the property containing the site proposed for the amateur radio tower in the Application; and

WHEREAS, the Commission heard testimony and took in evidence from members of the public alleging that the location for the proposed tower may have historical and cultural significance to the Mohegan Indian Tribe; and

WHEREAS, on June 29, 2019 the Commission conducted a site walk of the proposed location as well as the surrounding residential areas; and

WHEREAS, the Commission received a signal propagation analysis report which indicated that the telecommunications tower already approved for Mostowy Road would be an equally suitable location for amateur radio communications equipment; and

WHEREAS, co-locating the proposed amateur radio tower on an existing or approved tower is consistent with the general purpose of ZR 31 of minimizing the number of towers by encouraging shared use or joint use where practical; and

WHEREAS, the Application did not include documentation from a professional telecommunications systems engineer regarding the minimum height needed in violation of ZR 31.2.4; and

WHEREAS, the Applicant has not demonstrated the need for a 175-foot tower, and proposed tower is greater than the minimum height necessary to meet the technical transmission requirements in violation of ZR 31.4.B and ZR 31.7.B; and

WHEREAS, the proposed tower would be located in a residential zone and will have an adverse effect on the surrounding residential area; and

WHEREAS, the Applicant has not demonstrated the need for an amateur radio tower in the Town of East Lyme; and

WHEREAS, the Application did not include a report indicating why at least one alternate site within one mile is not suitable in violation of ZR 31.7.B; and

WHEREAS, the approved tower to be located on Mostoway Road is an equally suitable location for amateur radio communications equipment and advances the purpose of ZR 31 by minimizing the number of towers.

BE IT THEREFORE RESOLVED, that for any and all of the foregoing reasons, the East Lyme Zoning Commission hereby DENIES the Application of Eric J. Garofano, Esq., acting as agent for John H. Drabik Owner ("Applicant") for a Special Permit to construct a 175 foot tall amateur radio tower to be located on property identified in the application as Ancient Highway, East Lyme Assessors Map 30, Lots 1 and 2.

**RESOLUTION GRANTING APPLICATION OF JOHN H. DRABIK FOR A
SPECIAL PERMIT TO CONSTRUCT AMATER RADIO TOWER**

SEPTEMBER 5, 2019

WHEREAS, on April 18, 2019, Eric J. Garofano, Esq., acting as agent for John H. Drabik Owner ("Applicant") filed with the East Lyme Zoning Commission ("Commission"), an application for a Special Permit to construct a 175 foot tall amateur radio tower to be located on property identified in the application as Ancient Highway, East Lyme Assessors Map 30, Lots 1 and 2 ("Application"); and

WHEREAS, the Commission held public hearings on the application and listened to testimony from the Applicant, the Applicant's representatives and the public during those hearings. Numerous exhibits were submitted by the Applicant, the Commission, and individuals for consideration during the hearing process. In making its decision the Commission is taking into consideration all of the testimony and exhibits submitted at the hearings; and

WHEREAS, the amateur radio tower set forth in the Application is a "Telecommunication Tower" as defined in the East Lyme Zoning Regulations ("Regulations" or "ZR") 1.77; and

WHEREAS, the property on which the tower would be located is in the RU-40 Zoning District; and

WHEREAS, pursuant to section 5 of the Regulations, the RU-40 zoning district is characterized by sparse settlement and a lack of utilities. It is the purpose of the Regulations to encourage low-density residential development in RU-40 zones; and

WHEREAS, pursuant to ZR 31, telecommunication towers are permitted in all zoning districts, subject to Site Plan and Special Permit approval; and

WHEREAS, the general purpose of ZR 31 is to "provide for the location of wireless telecommunication towers and antennae; reducing adverse effect through careful design, siting and vegetation screening; and to minimize the number of towers by encouraging shared use or joint use where practical"; and

WHEREAS, except for height and location, ZR 31 does not regulate any aspect of amateur radio licensed under the Federal Communications Commission and 47 CFR 97; and

WHEREAS, pursuant to ZR 31.4.1.A all attempts shall be made to co-locate wireless communication towers on existing towers; and

WHEREAS, pursuant to ZR 31.4.B the height of a telecommunications tower shall be site specific and shall be of the minimum height necessary to meet the technical transmission requirements; and

WHEREAS, the Commission finds the Application to be complete; and

WHEREAS, the Applicant testified at the public hearing that he had no present intent to use the proposed tower for commercial purposes; and

WHEREAS, ZR 31.2 encourages and permits shared use of telecommunication towers; and

WHEREAS, on June 29, 2019 the Commission conducted a site walk of the proposed location as well as the surrounding residential areas; and

WHEREAS, the area around the site of the proposed tower is on private property which is undeveloped and heavily wooded and accessible via an access road, and public foot and/or vehicular traffic thereon is not anticipated; and

WHEREAS, the Commission received a report from May Engineering indicating that 175 feet is the minimum height necessary to satisfy the technical requirements for the proposed amateur radio frequencies; and

WHEREAS the Commission received a report from an amateur radio expert indicating that (1) the proposed site is an optimal location for the proposed tower, (2) the tower will enhance radio communications and provide redundancy for emergency communications, (3) 175 feet is the minimum height necessary to satisfy all technical requirements for the proposed amateur frequencies, (4) no existing or planned towers or structures can accommodate the proposed tower, and (5) the site and proposed tower is the only feasible site that provides the necessary height, elevation and location to provide the amateur radio service sought in the application; and

WHEREAS, the Commission finds that the Application satisfies the requirements of sections 24 (Site Plan) 25 (Special Permit) and 31 (Telecommunication Towers) of the Regulations.

BE IT THEREFORE RESOLVED, that the East Lyme Zoning Commission hereby GRANTS the Application of Eric J. Garofano, Esq., acting as agent for John H. Drabik Owner ("Applicant") filed with the East Lyme Zoning Commission ("Commission"), an application for a Special Permit to construct a 175 foot tall amateur radio tower to be located on property identified in the application as Ancient Highway, East Lyme Assessors Map 30, Lots 1 and 2 ("Application"); and

BE IT FURTHER RESOLVED that the Commission hereby GRANTS exceptions to ZR 24.5.2.B.8 (driveways and off-site parking), ZR 24.6.C (sidewalks) and ZR 24.6.E (landscaping buffers) as requested in the Application.