

**TOWN OF EAST LYME
ZONING COMMISSION
October 1st, 2020
REGULAR & PUBLIC HEARING MEETING MINUTES**

Join Zoom Meeting

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Meeting ID: 829 9505 0759 Passcode: 586123

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Meeting ID: 829 9505 0759 Passcode: 586123

Find your local number: <https://us02web.zoom.us/u/kbdMerOPIw>

Members Present:

Matthew Walker, Chairman

Norm Peck

Terence Donovan

Bill Dwyer

Anne Thurlow

Kimberly Kalajainen

George McPherson, Alternate

Denise Markovitz, Alternate

James Liska, Alternate

FILED

Oct 8 2020 AT 8:50 AM PM

Brooke Parsons ATC

EAST LYME TOWN CLERK

Also Present:

Bill Mulholland, Zoning Official

Jennifer Lindo, Zoom Moderator

Mark Zamarka, Town Attorney

Present for Applications:

Timothy Hollister, Attorney

Glenn Russo, Applicant/Owner

Absent:

Rose Ann Hardy, Ex-Officio

The Regular Meeting of the East Lyme Zoning Commission was held on Thursday, October 1st, 2020, at 7:30 p.m., via Zoom; this teleconference was recorded in its entirety and in accordance with the requirements of executive order 7B, issued by Governor Lamont, which allows for public meetings to be held over teleconference.

Chairman Walker called the Zoning Commission meeting to order at 7:32 p.m.

Public Delegations-

Time set aside for the public to address the Commission on subject matters not on the Agenda.

There were none.

Public Hearings-

1. **Application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC c/o Timothy Hollister, Shipman & Goodwin, LLP for a text amendment revision of Section 32 to replace Preliminary Site Plan/Final Site Plan with "Master Plan" procedure as used in Gateway Development.**
 - Mr. Donovan read the Southeastern Council of Governments Letter dated September 8th, 2020 into the record.
 - Mr. Donovan read the DEEP letter by Marcy Balint dated September 29th, 2020 into the record.
 - Mr. Donovan read the Planning Commission letter dated September 15th, 2020 into the record.

Mr. Walker turned the floor over to Attorney Hollister, representing the Applicant, for his presentation. Mr. Hollister shared some of the following:

- He noted for the record that they reviewed the published notice.
- The copy of the proposed text amendment was filed timely with the Town Clerk and they thanked Ms. Lindo for her logistical help.
- They submitted fairly extensive materials electronically on Tuesday of this week.
- They don't expect to close the hearing tonight; several lengthy letters were submitted in the last 24 hours from Save the Sound and Friends of Oswegatchie, and they would like time to review and respond in writing.
- It's unfortunate that Marcy Balint's letter got read first because she doesn't understand what is being proposed here; it kind of poisons the atmosphere to have that letter read before the Applicant can explain what he is asking for and why.
- A two step process for developing any type of large parcel is a common method- a master plan followed by a final site plan.
- A master plan is an overall layout which identifies use, location of buildings, location of roads and utilities, proposed open space, identification of where the wetlands are, coastal boundaries and so forth.
- Master plans don't include detailed engineering, stormwater detail, a wetlands application or high intensity soil survey; these items are deferred to the final site plan.
- Avoiding a master plan is a well known technique of opposing large developments.
- Master plans are a benefit to the town, property owner and public; you're locking in the major elements without forcing the applicant, staff or public to be immersed in details

which may become superseded or changed until there is an agreement on the overall plan.

- This approach has been used on the Darrow Pond Development as well as the mixed use Gateway Project.
- In 2011 a Superior Court judge overruled this Commission's 2007 denial of Landmark's original zoning application.
- The Zoning Commission was ordered to adopt a regulation which would contain this two step process and they did so in 2013.
- Landmark came before this Commission in 2015 with an application to rezone 123 of their 236 acres to affordable housing and an agreement to devote 87 acres to open space at no cost to the Town, and all the elements of a master plan previously mentioned were identified.
- The Commission denied the rezoning by limiting the area to be rezoned from 123 acres to 36 acres.
- The Commission claimed they did so because the Applicant didn't provide a final site plan with all the wetlands identified, sewer disposal, stormwater management, and effects on public health and safety.
- The Applicant pursued this in Court for several years but after receiving their final sewer approval they decided to proceed by proposing a regulation more specifically about the master plan so there would be no doubt about the interpretation.
- The purpose of the text amendment is to clarify beyond any discussion that the regulatory process for affordable housing applications will use this two step process.

Mr. Hollister discussed Gateway and Darrow Pond and detailed how they attempted to utilize aspects of these approved applications for the proposed text amendment. He strongly emphasized that anyone who suggests that this structure is an attempt to evade regulatory review at the front or back end, is simply not understanding the process.

Mr. Hollister said he wants to speak in regards to the Planning Commission letter:

- They weren't informed of nor invited to the Planning Commission meeting of September 1st, 2020.
- The letter is incorrect- that they mistakenly say it doesn't encourage affordable housing but it absolutely does by deferring the very expensive detailed engineering to a later stage while providing the macro elements up front.
- The Planning Commission claims they don't know the residential makeup but for 13 years this has been one and two bedroom rental units and not age restricted.
- They say it eliminates the need for an impact statement when it merely defers the detailed impact statement to the final site plan stage where the Commission will retain all of their rights.
- There is no reduction in engineering.
- They say the height is increasing and of course it is since we're coming in with apartment buildings.

Mr. Hollister noted that he has similar comments in regards to the letter by Marcy Balint. He added Ms. Balint has a long history of making comments regarding this matter which are not within her authority or her official role at DEEP. He said there asking to show the layout of the buildings and to do the detailed stormwater engineering based on the layout of the buildings and the roads at a later time and after everyone has agreed on what will be developed, what won't, where the open space will be located and so forth.

Mr. Hollister said they're trying to move this to a process that will benefit everyone; a process they're very familiar with given Gateway and Darrow Pond Development. He said they'd like to keep the hearing open for at least another session in order to respond to any public comments.

Mr. Walker thanked Mr, Hollister and said he wanted to assure him they're a very autonomous commission and take into account the letters they get from various referrals but are aware of their own legislative capacity and will take a very close look at this application.

Glenn Russo, the Applicant, said he has a few points he would like to make and shared some of the following:

- The Commission was ordered by the judge to create a two step process.
- The Town was ordered to adopt our regulations which were drafted utilizing the existing regulations and are almost identical.
- They actually offer more information than section 12 (a); they called the preliminary site plan stage 1 and the final site plan stage 2.
- This application requests re-identifying the preliminary site plan definitions- instead of using "preliminary site plan" they're inserting the words "master plan."
- To avoid any confusion they decided to rename the plan but the text that goes with it remains unchanged.
- They also added some details to a few of the sections to tighten up some language.
- The Planning Commission's last paragraph is probably their strongest piece of evidence in that it says "what they're proposing is essentially what is there."
- The judge said he is entitled to the same two step process afforded Gateway and Darrow Pond Development.

Mr. Donovan read the letter submitted from Friends of Oswegatchie Hills Nature Preserve dated September 28th, 2020 (attached.)

Mr. Walker read the letter from Macolm Hall of 4 South Drive (attached.)

Mr. Donovan and Mr. Walker read the letter from Save the Sound dated September 20th, 2020 (attached.)

Mr. Walker read the letter from Karen Bloustine of 1 Marjorie Way (attached.)

Mr. Donovan read the letter of Kathleen Cooper of Niantic (attached.)

Mr. Walker read the letter from Jonathan G. Lincoln of 37 Hillwood Drive (attached.)

Mr. Walker read the letter from Fred Grimsey of Save the River, Save the Hills into the record (attached.)

Mr. Donovan read the letter from Nancy P. Foster of 290R Old Black Point Road (attached.)

Mr. Walker read the letter from Donald W. Gerwick (attached.)

Mr. Walker called for Public Comment:

1. Roger Reynolds said some of the following:
 - The Applicant is trying to do what they've attempted for decades- to get approval from this Commission without providing the necessary and adequate environmental information.
 - He has consistently refused to provide this information and the denial of his application(s) has been upheld by the Court who recently advised denying the project in its entirety.
 - The application to change the text amendment is to suit the needs of one applicant and one parcel of land.
 - Two previous judges have denied applications on this parcel altogether because of overwhelming environmental concerns as well as being inconsistent with the Plan of Conservation and Development.
 - Most recently a third judge reused to make a ruling because the applicant did not provide the necessary environmental information.
 - Stormwater information was clearly inadequate and wetland information was incomplete as well as inaccurate.

2. Michael Sheehan of 52 Quarry Dock Road said his concern is that this request is going to apply to all affordable housing development and not just to Landmark. He's concerned about the removal of the consideration of how an application might affect the health, safety and the environment without having the necessary details to make an educated decision when the application is before the Commission. He feels this request is improper and in conflict with the judge's decision. He urges them to refuse this application.

3. Michael Dunn of 9 King Arthur Drive asked if Mr. Hollister is aware that he's asking for 840 units on 36 acres which is 1/20 of an acre for each housing unit verses 3; it's 60 times more dense than what is permitted. He said this density is why environmental concerns are so important. Mr. Dunn said zoning regulations are for everyone in Town and this is a blatant attempt to customize the regulations to fit one project without fulfilling approval criteria.

Mr. Walker said there is much to review and digest and asked Attorney Zamarka if he had anything he'd like to add and he said not at this time. Ms. Lindo said the next meeting is scheduled for October 15th, 2020.

Regular Meeting-

- 1. Application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC c/o Timothy Hollister, Shipman & Goodwin, LLP for a text amendment revision of Section 32 to replace Preliminary Site Plan/Final Site Plan with "Master Plan" procedure as used in Gateway Development.**

This item has been continued to the October 15th, 2020 meeting.

- 2. Request of Theodore A. Harris, Esq., for Guy's Service Station for a modification of a portion of the landscaping site plan for property at 87 W Main Street, Niantic.**

This item has been continued to the October 15th, 2020 meeting.

- 3. Approval of Minutes of September 3rd, 2020**

MOTION (1)

Mr. Donovan moved to approve the meeting minutes of September 3rd, 2020 as presented.

Ms. Thurlow seconded the motion.

Motion carried, 5-0-1.

Ms. Kalajained abstained from the vote due to her absence from the September 3rd, 2020 meeting.

Old Business-

There was none.

New Business-

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

There was none.

- 2 Zoning Official**

Mr. Mulholland said they are very busy and he thinks we're going to see a lot of new businesses next Spring despite the pandemic.

- 3 Comments from Ex-Officio**

Ms. Hardy was not in attendance.

- 4 Comments from Zoning board liaison to the Planning Commission**

Mr. Walker said Mr. Peck is scheduled to attend the October 6th, 2020 Planning Commission meeting, Ms. Thurlow is scheduled for November 10th, 2020, and he is scheduled for December 1st, 2020.

5 Comments from Chairman

Mr. Walker said he has nothing to report. He invited everyone to take a close look at the text amendment.

Adjournment

MOTION (2)

Ms. Kalajainen moved to adjourn the Zoning Commission Meeting at 9:20 p.m.

Mr. Dwyer seconded the motion.

Motion passed 6-0-0.

Respectfully Submitted,

Brooke Stevens
Recording Secretary

SOUTHEASTERN CONNECTICUT COUNCIL OF GOVERNMENTS

5 Connecticut Avenue, Norwich, Connecticut 06360
(860) 889-2324/Fax: (860) 889-1222/Email: office@seccog.org

(Via electronic mail)

September 8, 2020

Mr. Matthew Walker
Chairman
Town of East Lyme Zoning Commission
PO Box 519
Niantic, Connecticut 06357

Dear Mr. Walker:

I am writing in response to an application to amend the zoning regulations of the Town of East Lyme. The application was referred to this agency pursuant to Section 8-3b of the Connecticut General Statutes, in correspondence dated August 17th.

The proposed regulation amendments seek to make changes to the bulk regulations of the Affordable Housing District (AHD) and allow for a conceptual "Affordable Housing Master Development Plan" to accompany an application for zone change to AHD.

Based on a review of the material submitted, SCCOG staff determined that the proposed amendments are not likely to result in an adverse inter-municipal impact.

If you have any questions, please contact me at 860-889-2324.

Sincerely,



Samuel Alexander, AICP
Planner III
salexander@seccog.org

Member Municipalities:

Bozrah * Colchester * East Lyme * Franklin * Griswold * Borough of Jewett City * City of Groton * Town of Groton * Lebanon * Ledyard * Lisbon * Montville * New London * North Stonington * Norwich * Preston * Salem * Sprague * Stonington * Stonington Borough * Waterford * Windham

If language assistance is needed, please contact SCCOG at 860-889-2324. office@seccog.org.

Si necesita asistencia lingüística, por favor comuníquese a 860-889-2324. office@seccog.org.

如果您需要语言帮助, 请致电860-889-2324或发送电子邮件至 office@seccog.org.

Town of



East Lyme

108 Pennsylvania Ave
Niantic, Connecticut 06357

Phone: (860) 691-4114

Fax: (860) 860-691-0351

P.O. Drawer 519

Department of Planning &
Inland Wetlands

*Gary A. Goeschel II, Director of Planning /
Inland Wetlands Agent*

September 15, 2020

Matt Walker, Chairman
East Lyme Zoning Commission
Town of East Lyme
P.O. Box 519
108 Pennsylvania Avenue
Niantic, Connecticut 06357

RE: Zoning Referral - Application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC c/o Timothy Hollister, Shipman & Goodwin, LLP; Application to amend the East Lyme Zoning regulations Section 32, Affordable Housing District.

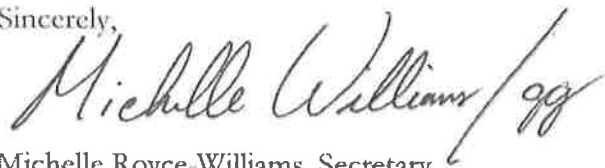
Chairman Walker:

The East Lyme Planning Commission at its meeting of September 1, 2020, found the above referenced text amendment, INCONSISTENT with the 2009 East Lyme Plan of Conservation and Development, as amended for the following reasons:

1. It does not encourage Affordable Housing in the IHZ or within our downtown Villages;
2. We cannot adequately know the impact of the proposed regulation without knowing the residential make-up of the development (i.e. Elderly vs market rate),
3. The proposed language eliminates the need for A statement describing any impact on public health and safety, including emergency services.
4. The reduction in engineering standards may result in unintended environmental consequences particularly in relation to storm water management
5. The proposed regulation Sec. 32.4.2 proposes increases in building heights which, as AHD's may be located in low density areas, such building heights may not be in keeping with the traditional New England Character as defined in the POCD Objective 1.1.
6. Reducing the setbacks and buffer requirements may create negative environmental impacts.
7. The current Zoning Regulations Section 32.9.1 permits a Preliminary Site Plan, the purpose of which is to require the submission to the Zoning Commission of information sufficient to allow it to evaluate a development plan for under the standard of 8-30g, and to allow an applicant to defer, until approval is granted, completion of details and specifications that will define what is to be built but are not essential to the 8-30g analysis. The proposed regulation is essentially the same.

If you have any further questions regarding this letter or the POCD, please do not hesitate to contact the Director of Planning, Gary A. Goeschel II, at (860) 691-4105.

Sincerely,

A handwritten signature in cursive script that reads "Michelle Williams" followed by a stylized flourish that looks like "gg".

Michelle Royce-Williams, Secretary
East Lyme Planning Commission

cc: William Mulholland, Zoning Official
file

Town of
108 Pennsylvania Ave
Niantic, Connecticut 06357



East Lyme
P.O. Drawer 519

Department of Planning &
Inland Wetlands & Watercourses
Gary A. Goeschel II, Director of Planning /
Inland Wetlands Agent

MEMORANDUM

To: East Lyme Planning Commission

From: Gary A. Goeschel II, Director of Planning 

Date: September 1, 2020

Re: **Zoning Referral - Application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC**
c/o Timothy Hollister, Shipman & Goodwin, LLP; Application to amend the East Lyme Zoning
regulations Section 32, Affordable Housing District.

The above application proposes to amend Section 32 - Affordable Housing District of the East Lyme Zoning Regulations to replace Preliminary Site Plan/ Final Site Plan with "Master Plan" procedure as used in the Gateway Planned Development District (GPDD). In addition, the proposed text amendment also proposes to change the maximum building height of single-family detached dwellings from 30-feet to 35-feet. It also proposes a building height of 40-feet for Townhouse or Garden style dwellings and a 50-foot building height for Multi-family Dwellings serviced by an elevator.

Further, the application proposes adding the following language to section 32.4.5 Setbacks:

“;...or (2) is designated as open space, in which case the Commission may require setbacks of not less than twenty-five (25) feet from the adjacent boundary line.”

And the following language to Section 32.4.6 Buffers:

“...or (2) is designated as open space,....”

And the following language to Section 32.4.7 Buffer Area:

“(1) is already zoned for multi-family residential uses, or (2) is designated as open space, in which case the Commission may provide for a buffer strip of not less than twenty-five (25) from the adjacent boundary line. All buffer areas shall be planted or preserved in a natural state in a mixture of evergreen and deciduous tree and shrubs and shall be maintained in proper order so as to protect adjacent properties and present a reasonably opaque, natural barrier to a height of ten (10) feet.

Upon review of the above referenced Zoning Referral with the 2009 Plan of Conservation and Development, as amended, I offer the following:

FINDINGS:

1.3 Objectives and Policies

OBJECTIVE 1.1: To maintain the traditional New England character of the community and enhance the village identities of East Lyme.

POLICY:

East Lyme offers an attractive residential environment and other quality-of-life factors, including expansive water views, extensive open spaces, a seaside village center, agricultural opportunities, recreational opportunities and quality public services. As such, the Town should maintain the unique character and personality of both Niantic and Flanders villages through the development of village area plans. Single family and two-family dwellings, small scale mixed-use, and senior housing, should be encouraged in the village districts. East Lyme should continue to provide for multifamily housing to meet need for a variety of housing types at affordable cost.

POCD COMPATIBILITY

As the proposed amendment proposes to increase building heights, it is critical building sitting, orientation, massing, architectural design etc..., be considered relative any expansive water views and extensive open spaces.

OBJECTIVE 1.2: Establish a coordinated, cooperative system of land-use decision making to ensure that development continues to meet high performance standards, specifically with regard to open space preservation, view corridor protection, environmental protection, sustainability, and landscaping and building design treatments consistent with East Lyme's New England setting.

POLICY:

All boards and commissions with authority over land-use decisions must coordinate their efforts toward these objectives. East Lyme should define and develop improved standards for landscaping, building and site design that incorporates energy and resource conservation, promotes sustainability, and enhances town character and protects existing residential neighborhoods. Such standards would benefit all the townspeople by contributing to protecting our environment, maintaining property values, minimizing the impact of new development on existing land uses and limiting the growth of municipal service and maintenance costs. Commissions must ensure that the regulations under which they operate also support these objectives.

POCD COMPATIBILITY

The Policy that supports Object 1.2 states "Commissions must ensure that regulations under which they operate also support these objectives." These objectives are "protecting our environment, maintaining property values, minimizing the impact of new development on existing land uses and limiting the growth of municipal service and maintenance costs." As such, would the proposed amendment protect our environment, maintaining property values, minimize the impact of new development on existing land uses and limiting the growth of municipal service and maintenance costs?

- **Protecting our Environment:**

The proposed amendment does not appear to adversely impact the environment nor protect it as both multi-family and elderly housing are permitted uses within the town.

- **Maintaining Property Values:**

It's difficult to ascertain whether the proposed amendment would maintain or adversely impact property values. However, according to Section 3.1.2 of the POCD, 83-percent (329 units) of the 397 multi-family units built between 1997 and 2000 are classified as detached condominiums. Of these units, 67-percent are designed as two or three bedroom detached condominium homes which have the potential to be converted to standard family homes, but would still be classified as multifamily. According to the POCD, multifamily housing can provide affordability for the elderly population. Interestingly, Section 3.1.2 of the POCD points out that rental rates were on the rise rising during development of the 1999 Plan due to the decline in supply of residential rental property and speculated that the demand and rental rates in East Lyme are likely to increase in the near future with the profitability of constructing new multifamily units.

- **Impact of New Development on Existing Land Uses and limit the growth of municipal service and maintenance costs:**

The proposed amendment does not appear to exacerbate or minimize the impact of new development on existing land uses as "Ownership of the dwelling units is of no importance from a land-use perspective; both apartments and condominiums are considered multifamily housing." However, ownership is important in limiting the growth of municipal services and maintenance costs as multi-family uses verse elderly housing uses typically generate more traffic, wastewater, refuse and school children whereas elderly housing may generate the need for increased emergency services or transportation needs as well as other community services.

Secondly, the proposed amendment proposes a Preliminary Site Plan/ Final Site Plan that would follow the "Master Plan" procedure as used in the Gateway Planned Development District (GPDD). As such, a "Master Plan" procedure would establish a consistent, coordinated, cooperative system of land-use decision making to Affordable Housing applications that ensure that development continues to meet high performance standards, specifically with regard to open space preservation, view corridor protection, environmental protection, sustainability, and landscaping and building design treatments consistent with East Lyme's New England setting.

Chapter 3 Land Use

3.3 Mixed Use and Affordable Housing, page 76

"Residents voiced their preference for affordable housing where it would strengthen village centers and bring awareness that such residential development in Niantic and Flanders villages would provide pedestrian access to shopping, employment and Town facilities." Residents also articulated their strong desire to accommodate affordable housing to reach the goal of 10-percent and their preference for well-

planned affordable housing development that is compatible with the community's New England character."

The proposed regulation would provide for affordable housing within East Lyme. However, Section 32.2 does not direct the residential development to the village centers. As such, valued rural areas, open space and important habitats not recommended for development may be subject to development. In addition, such housing may also be proposed in industrially zoned areas of which 178±-acres of the 1,110-acres zoned for industrial use, are presently occupied by industrial uses. There are a number of health and safety concerns associated with locating residential development adjacent or in close proximity to industrial uses.

Further, the Affordable Housing Study prepared for East Lyme by the SECHA (Southeastern Connecticut Housing Alliance), Appendix E of the POCD, recommends enhancing and reviving historic villages with architecturally compatible, infill development that adds life to East Lyme's community spaces and maximizes walkability and reduces auto-dependency for East Lyme residents by focusing on redevelopment rather than new development. Although the proposed language does not prohibit redevelopment or affordable housing within our village centers, the proposed regulation does not direct, focus, or require redevelopment in village centers where such development has been identified to be beneficial. Several years ago, the Zoning Commission adopted Incentive Housing Zones to take a proactive approach to the need for affordable housing and promote affordable housing development in our Village Centers.

Therefore, I offer the following resolution:

BE IT RESOLVED:

Pursuant to Section 8-3A of the Connecticut General Statutes, the Planning Commission of the Town of East Lyme, exercising its authority and having reviewed the proposal to amend Section 32 of the East Lyme Zoning Regulations, referenced above, **FINDS** the aforesaid proposal **CONSISTENT/INCONSISTENT** with the 2009 Plan of Conservation and Development, as amended based on the above findings (with the following comments and or recommendations):

1.

2.

3.

4.

Etc...



Connecticut Department of

**ENERGY &
ENVIRONMENTAL
PROTECTION**

Land and Water Resources Division

September 29, 2020, by email

East Lyme Zoning Commission
c/o Mathew Walker, Chairman
P.O. Box 519
Niantic, Connecticut 06357

Subject: Proposed Zone Regulation Amendment to Section 32, for the Application of Landmark Development Group, LLC and Jarvis of Cheshire LLC

Dear Commissioners:

Thank you for notifying the Land & Water Resources Division (LWRD) of the proposed zone regulation amendment referenced above and received on September on August 17, 2020. Acting as the Commissioner's staff, our office has reviewed the revised proposal for consistency with the policies and standards of the Connecticut Coastal Management Act (CCMA, Connecticut General Statutes (CGS) sections 22a-90 through 22a-112, inclusive) and offers the following comments.

As the Commission is aware, the Land & Water Resources Division (formerly OLISP) has commented many times on Coastal Site Plan Review and zone change applications related to Landmark Development Group's proposals at this site. Over the years we have provided detailed coastal management and environmental comments concerning potential adverse impacts associated with intense development on a resource sensitive, steep and rocky site adjacent to the Niantic River. While we might take issue with certain aspects of Mr. Hollister's introductory statement, we will confine our comments to the language of the zone change proposal that was submitted.

In that regard, we offer the following for the Commission's consideration.

- 1. 32.9, General Provisions:** There are three ways proposed to initiate designation as an Affordable Housing Development (AHD): conceptual site plan, Affordable Housing Master Development Plan (AHMDP), and Site Plan (SP). These are not necessarily concurrent, but may be, or stand alone, depending on what is chosen. It appears one can get both an AHMDP and then Site Plan approval. Or one can simply get a SP approval, which is confusing and the logic behind the various options is hard to clearly understand at face value.

2. **32.9.2.H, Master Plan Elements:** This section suggests that Coastal Site Plan review (CSPR) requirements and analysis as outlined in CGS Section 22a-105 thru 109 would not apply, *as statutorily required*. Rather, it would only apply “where residential development is proposed” specifically in contrast to the CCMA’s requirements, which require projects “partially or fully located in the coastal boundary” to be subject to CSPR and CCMA requirements.
3. **32.9.2.H, Master Plan Elements:** Also, this section notes the only coastal resource information is limited to a “description of resources” where actual “residential development occurs”. It has been our office’s long-term experience that all aspects of development, road building, blasting, land clearing, stormwater management measures that drain or discharge to coastal waterbodies and wetlands down hill, along with an analysis of such activities on coastal resources including wetlands, vernal ponds, water quality, are equally if not more important in the CSPR impact analysis process. Therefore, this requires more than a “description”, but an analysis of potential adverse impacts, and how to avoid and/or best minimize such impacts. (See Coastal Site Plan fact sheet attached for more info).
4. **32.9.4, Decisions on Site Plans:** While the initial AHMDP approval seems to discount the CCMA and CSPR process, the ultimate Site Plan approval after the AHMDP approval, (along with Section 24 info) would appear to force a Commission approval, without benefit of resource and water quality considerations and analysis. In fact this section requires the Commission “shall approve the SP.” This is contrary to the tenets of Planning and Zoning-to render a decision based on all required information, prior to a decision.
5. **32.9.2.H, Master Plan Elements:** This section would also limit coastal resource information to that depicted on DEEP’s “Coastal Resources Map dated 1979”, This map, which is only available in paper form, has never had any legal significance and is likely to be inaccurate and out of date. Coastal resource data should be presented and analyzed using the best available information and technology, and analysis and any resource impact should be based on what currently exists on the site, not a map over 40 years old.
6. **32.9.2.H, Master Plan Elements:** This section would “exclude driveways, which are exempt uses within the coastal zone.” However, driveways are not necessarily or always exempt from coastal site plan review. (Our comments in 2015 to the commission noted this previously on an earlier application). Section 22a-109(b) states that a commission “may” exempt certain minor uses from coastal site plan review. Indeed, smaller uses, such as driveways, garages, pools, accessory structures or clear cutting, can often create significant impacts, and should not be exempt from a master plan review of a large and significant development proposal. Not requiring coastal resource information for “driveways” or internal access roads, as proposed, would omit the exact analysis required for thorough analysis of potential adverse impacts to resources at this site, contrary to the fundamentals of the CCMA.

7. Further, and to reiterate, a coastal site plan review application is required for any proposed development pursuant to CGS 22a-105(b), which requires “coastal site plan reviews” for certain site plans, plans and applications for activities or projects located fully or partially within the coastal boundary. The large access road (previously referred to as a “boulevard” in prior site plans) goes directly across the coastal boundary areas, over rocky and steep terrain, posing direct and potential impacts to coastal resource and water quality , and is therefore not eligible for exemption as a minor activity under CGS 22a-109(b).
8. Coastal “zone” is not a legal definition per the CCMA. The correct terminology is “coastal boundary” which is statutorily defined per CGS 22a-94(b).
9. In summary, it is unclear at what point the statutorily-required CSPR would be triggered if this zone change proposal were adopted. Would it be at the “preliminary”, AHMDP or Site Plan stage, or just ignored or minimized? The AHMDP would seem to undermine the tenets of the CCMA by restricting Coastal Site Plan review to “where residential development occurs.” Also, the proposal appears to strictly tie the Commission’s hand to the original AHMDP, requiring they “shall” approve, if basic information required, and ignoring the long-standing documented environmental, policy and plan concerns with development at this 236 acre site. Without a full coastal site plan application, with all information and analysis, and the ability to make a decision based on that, the CCMA appears to be “written out” of this proposal. We recommend revisions to this zone regulation amendment to address the insufficiencies above, with clear specification as to when a Coastal Site Plan is required, for the entire development site, as statutorily consistent and required pursuant to CGS 22a-105 thru 109 of the CCMA.

These comments are made in response to the review requirement contained in C.G.S. Section 22a-104(e) which requires that any zoning regulations or changes thereto affecting the area within the coastal boundary, shall be consistent with the policies of C.G.S. Section 22a-92 and the criteria of subsection (b) of Section 22a-102 of the CCMA. Further, this section requires that notification be sent to the Commissioner of Energy and Environmental Protection at least 35 days prior to the commencement of the public hearing. Once notified, our Office is responsible for reviewing the proposal’s consistency with the policies of Section 22a-92 and the criteria of Section 22a-102(b) of the CCMA.

Should you have any questions regarding this letter or any other coastal management matter, please feel free to contact me at 860-424-3034.

Sincerely,

Marcy L. Balint, Sr. Coastal Planner
Land and Water Resources Division

CC: Tim Hollister, Landmark Development Group, LLC And Jarvis of Cheshire, LLC.
Bill Mulholland, ZEO



Connecticut Coastal Management Program Fact Sheet for *COASTAL SITE PLAN REVIEW*

What are Coastal Site Plans?

The Connecticut Coastal Management Act [CCMA, Connecticut General Statutes (CGS) Sections 22a-90 through 22a-112, inclusive] requires “coastal site plan reviews” for certain site plans, plans and applications for activities or projects located fully or partially within the coastal boundary. Coastal site plan reviews must be conducted for the following applications if the proposed activity or use is located landward of the mean high water mark¹:

- site plans submitted to a zoning commission in accordance with CGS Section 22a-109;
- plans submitted to a planning commission for subdivision or resubdivision;
- applications for special exceptions or special permits submitted to a planning commission, zoning commission or zoning board of appeals;
- applications for variances submitted to a zoning board of appeals; and
- referrals of proposed municipal projects to a planning commission pursuant to CGS Section 8-24 [CGS Section 22a-105(b)].

In accordance with CGS Section 22a-109(b), certain minor uses and activities may be exempted from coastal site plan review by municipal zoning regulations. Check your municipality’s zoning regulations for exemptions.

What must be included in a coastal site plan?

The CCMA identifies the minimum level of information that must be included in a coastal site plan application. A complete application must contain the following:

- ✓ a plan showing the location and spatial relationship of coastal resources on and contiguous to the subject site;
- ✓ a description of the entire project with appropriate plans, indicating project location, design, timing, and methods of construction;
- ✓ an assessment of the capability of the resources to accommodate the proposed use;
- ✓ an assessment of the suitability of the project for the proposed location, especially if the project site is waterfront or abuts tidal wetlands;
- ✓ an evaluation of the potential beneficial and adverse impacts of the project on coastal

- resources and future water-dependent development activities;
- ✓ a description of proposed methods to mitigate (minimize, not compensate) adverse effects on coastal resources and future water-dependent development activities; and
- ✓ any other requirements specified by municipal regulation [CGS Section 22a-105(c)].

For more information regarding what constitutes a complete application, please see the [Coastal Site Plan Review Application Checklist](#).

What must the commission or board consider when acting upon a coastal site plan?

The appropriate commission or board must determine: 1) whether or not the proposed activity is consistent with all applicable coastal policies and standards in the CCMA; and 2) whether or not the potential adverse impacts of the proposed activity on both coastal resources and future water-dependent development activities are acceptable. In making this determination the municipal authority must look at the following aspects of the proposal:

- consider the characteristics of the site including the location and condition of coastal resources on-site;
- consider the potential effects, both beneficial and adverse, of the proposed activity on coastal resources and future water-dependent development opportunities;
- follow all applicable goals and policies stated in CGS Section 22a-92 and identify conflicts between the proposed activity and any goal or policy;
- determine whether any remaining adverse impacts have been adequately minimized (see the [Adverse Impacts](#) fact sheet for more information); and
- determine that the proposed activity satisfies other lawful criteria including, specifically, the municipal zoning or subdivision regulations or other applicable municipal regulations or ordinances [CGS Sections 22a-106(a) and (b)].

Must a coastal site plan application be referred to the DEEP for review?

Maybe. If a coastal site plan review application includes a shoreline flood and erosion control structure or includes a change in the zoning map or regulations, referral to DEEP is required by statute (see the [Mandatory Municipal Referrals](#) and [Shoreline Flood and Erosion Control Structures](#) fact sheets). **However, even if the project does not require mandatory referral, we strongly recommend consultation with DEEP's Land and Water Resources Division (LWRD) regarding coastal site plans for major development proposals, all waterfront proposals including those that are characterized as living shorelines, and proposals where wetlands, beaches and dunes, coastal bluffs and escarpments, or coastal waters could be affected.** In these cases, referral to LWRD for technical review assistance may be appropriate.

Are there additional statutory considerations when acting upon a coastal site plan application?

Yes. These include:

DECISION

A municipal commission or board may approve, modify, condition, or deny a coastal site plan based upon the review criteria listed above. The commission or board must state in writing the findings and reasons for its action (i.e., the action to approve, modify, condition, or deny the coastal site plan review application) [CGS Section 22a-106(d)].

DECISIONS REGARDING SHORELINE FLOOD AND EROSION CONTROL STRUCTURES

A municipal commission or board must approve a coastal site plan application for a shoreline flood and erosion structure if the record demonstrates and the commission makes specific written findings that the structure is:

(1) necessary and unavoidable for the protection of

- water-dependent uses,
- infrastructural facilities,
- commercial and residential structures and substantial appurtenances attached or integral thereto constructed as of January 1, 1995;
- a cemetery or burial grounds; **AND**

(2) there is no feasible, less environmentally damaging alternative; **AND**

(3) all reasonable mitigation measures and techniques are implemented to minimize adverse environmental impacts.

In the case of any application for a shoreline flood and erosion control structure that is denied on the basis of a finding that there may be feasible, less environmentally damaging alternatives to such structure, or a finding that reasonable mitigation measures and techniques have not been provided, the commission must propose on the record, in writing, the types of feasible alternatives or mitigation measures and techniques that the applicant may investigate. However, this requirement does not shift the burden from the applicant to prove that he/she is entitled to approval of the proposed shoreline flood and erosion control structure or to present alternatives to such structure (see the *Shoreline Flood and Erosion Control Structures* fact sheet and the *Shoreline Flood and Erosion Control Structures Consistency Checklist*).

WRITTEN FINDINGS

When a coastal site plan review decision is made, the commission or board must state in writing the findings and reasons for its actions. These are commonly termed "written findings" and should document and support the commission's decision. For example, when an application is approved, with or without conditions or modifications, the written findings should detail why the commission found that the project:

- is consistent with all applicable goals and conditions contained in CGS Section 22a-92; and
- incorporates as conditions or modifications, if applicable, all reasonable measures to mitigate (or lessen) the adverse impacts of the proposed activity on both coastal resources and future water-dependent development activities [CGS Section 22a-106(e)].

If a coastal site plan review application for a shoreline flood and erosion control structure is denied, the written findings must detail in writing

- the types of feasible, less environmentally damaging alternatives to such structure, or
- which reasonable mitigation measures and techniques have not been provided that the applicant should investigate.

See the *Shoreline Flood and Erosion Control Structures* fact sheet and the *Shoreline Flood and Erosion Control Structures Consistency Checklist*.

AUTHORITY TO REQUIRE A FINANCIAL ASSURANCE

The commission or board may also require a bond, escrow account, or other surety or financial security arrangement to secure compliance with any modifications, conditions and other terms stated in its approval of a coastal site plan [CGS Section 22a-107].

LACK OF TIMELY DECISION

If the commission or board fails to render a decision within the time period provided for by the General Statutes (or by any special act for such decision), the coastal site plan is deemed rejected [CGS Section 22a-105(f)].

VIOLATIONS

Any activity within the coastal boundary that is not exempt from coastal site plan review that occurs without receiving a lawful approval from a municipal board or commission or that violates the terms or conditions of such approval is a public nuisance [CGS Section 22a-108].

Municipalities have the authority to exercise all enforcement remedies legally available to them for the abatement of such nuisances. The Commissioner of Energy and Environmental Protection may also order that such a public nuisance be halted, abated, removed, or modified

and that the site of the violation be restored as nearly as reasonably possible to its condition prior to the violation [CGS Section 22a-108].

Upon receipt of a petition signed by at least twenty-five residents of the municipality in which an activity is located, the commissioner of environmental protection shall investigate to determine whether or not an activity described in the petition constitutes a public nuisance [CGS Section 22a-108].

Does the DEEP have authority over coastal site plan reviews?

Not directly. The authority for coastal site plan review lies with the municipal board or commission responsible for the decision on the underlying application. However, the DEEP exercises an oversight role in municipal coastal management activities and, in accordance with CGS Section 22a-110, has “party status” in all coastal site plan reviews and can appeal a municipal decision.

¹ The mean high water mark is the average of all high tide elevations based on 19-year series of tide observations by the National Ocean Survey. The mean high water mark delineates the seaward extent of private ownership of upland property as well as the limits of municipal jurisdiction for regulating upland development projects; the State of Connecticut holds title as trustee to the lands waterward of mean high water.

Jennifer Lindo

From: Kris Lambert <ksl-bnl@sbcglobal.net>
Sent: Tuesday, September 29, 2020 9:29 AM
To: Jennifer Lindo
Subject: Zoning Commission Meeting - October 1
Attachments: EL Zoning Letter 8-2020 ltrhd FINAL.docx

Jennifer -

On behalf of the Friends of the Oswegatchie Hills Nature Preserve, I am submitting a letter regarding the application of Landmark Development Group for a text amendment revision of the Zoning Regulations, Section 32, Affordable Housing District. Please forward this letter to the chair of the commission, Matt Walker, as well as the remaining members of the commission. We would like this letter to be read into the record of the public hearing scheduled for this Thursday, October 1.

If you have any questions, you may reach me at 860-501-0074.

Thank you for your help.

Kris Lambert
President
Friends of the Oswegatchie Hills Nature Preserve



Friends of the
**OSWEGATCHIE HILLS
NATURE PRESERVE**

P.O. Box 163 • Niantic, Connecticut • 06357

September 28, 2020

Dear Chairman Walker and Commissioners of the East Lyme Zoning Commission:

I am writing to you as President of the Friends of Oswegatchie Hills Nature Preserve to express our opposition to the proposed amendment to the East Lyme affordable housing regulations. As you know, our organization, in coordination with the Town of East Lyme and the East Lyme Land Trust, is chiefly responsible for the maintenance of the nature preserve known as the Oswegatchie Hills Nature Preserve, which abuts the property of Landmark Development. Our organization has reviewed and opposes the application to amend Section 32 of the East Lyme Affordable Housing Zoning Regulations (hereafter "Section 32") submitted by Landmark Development Group LLC and Jarvis of Cheshire LLC (hereafter "Landmark").

The proposed amendments to Section 32 are yet another attempt by Landmark to establish a zoning approval scheme that substantially minimizes the detailed information that this Commission is required by law to receive and to review, in order to determine whether a development application will cause health, safety, environmental and coastal concerns.

This request is striking in that it was Landmark itself that drafted Section 32 and stipulated to this approval and review process with the Town. And now, they propose to "cherry pick" many sections of those very regulations to favor their one specific application.

By Landmark's own admission in its counsel's cover letter to this application, it represents that "the intent of this amendment is to prohibit and avoid the demands for unnecessary and costly engineering at the first stage." In requesting this change, Landmark is attempting to remove the Commission's discretion and to make approval mandatory at the first stage. This attempt to provide as little information to the Commission as possible up front, and to then lock in a mandatory approval with no discretion completely violates the 2011 court order of the Connecticut Superior Court. The Court ordered that the approval process must not eliminate the requirements that a developer submit the type of detailed information before approval has become mandatory that the Commission needs to determine whether environmental, health and safety impacts would result from the proposal. In compliance with that order, Section 32 was adopted by both this Commission and Landmark in a stipulated agreement in 2013.

These affordable housing regulations have been used successfully in their current format by developers who have obtained approvals based on these regulations and built affordable residential housing in town currently and in the past. They are in place to be applied uniformly and fairly to all future applications and must be appropriate for use town-wide. In fact, in 2015 Landmark itself utilized these regulations and obtained zoning approval subject to certain conditions imposed by this Commission. Rather than taking "Yes" for an answer and attempting to comply with your conditions, Landmark has now filed this application to again try to change the rules that apply to all solely to benefit itself.

To accomplish this goal, Landmark proposes that you now adopt a Master Development Plan sequence similar to that which was adopted for the Gateway development for affordable housing projects, and to "cherry pick" certain elements of that planning process that it deems beneficial to its plans. This continues a pattern that Landmark has tried to use over the years of comparing approvals of other projects in other parts of town to itself. In this case, the differences between the Gateway and Landmark developments and properties are substantial and stark.

The Gateway Planned Development District (hereafter "GPDD") was added as Section 11A of the zoning regulations in 2001. The first sentence states "Purpose – Coordinate development of **properties under separate ownership...**". Section 11.A.9 adds the Master Development Plan (hereafter "MDP") as "an alternative to the traditional parcel by parcel development..." Section 11.A.9.1 states that "The **purpose** of the MDP process is to encourage the comprehensive planning and coordinated **mixed-use** development of **multiple parcels** within the district..."

Furthermore, the Gateway District and Master Plan was conceived by the town, rather than a particular developer, as a way to attain very specific town goals. In fact, Landmark's proposal in Oswegatchie Hills meets NONE of the four approval criteria as the Zoning Commission defined in 2001 (eleven years before the affordable housing regulations were adopted). The Approval Criteria as listed in (11.A.9.5) is:

1. Consistency with the Plan of Conservation and Development (hereafter "POCD")
2. Consistency with the goal to broaden the tax base...
3. Consistency with the purpose of the alternative MDP process
4. ... provisions for necessary utility and traffic infrastructure...

A master plan can be denied for any one of those criteria. The Landmark Oswegatchie Hills plan fails on all four criteria.

1. The POCD shows Oswegatchie Hills as Open Space and reiterates that that has been the wish of the town for decades and well before Landmark began its development efforts. By contrast, East Lyme engaged the Yale Urban Design Workshop to interview towns people about desired uses, and the ZC incorporated as Fig A in Section 11.A.8 Yale's proposed April 1997 sketch for Gateway.
2. Numerous studies show that residential development adds more municipal costs for services than is generated by the tax revenues.
3. As stated above, "The purpose of the MDP process is to encourage the comprehensive planning and coordinated mixed-use development of multiple parcels within the district..."
4. Landmark's proposed text amendment removes from 32.9.2 the requirement that the developer demonstrate it can provide water and sewer or community septic and water or a combination of public and onsite or community water waste disposal.

The differences between Gateway and Landmark's proposed project are substantial. Gateway includes a large commercial/retail component: it had multiple land owners: it was targeted for development: the GPDD was proposed by the town: and it was fully within the town's sewer service district. By contrast, Landmark proposes a residential only development: it has single ownership: its development is inconsistent with the POCD: its regulations were drafted by the developer: and it is only partially within the town sewer service district. While all of these contrasts between Gateway and Oswegatchie Hills are important, the most important by far is the fact that the Gateway property slopes down to one of the nation's largest highways, I-95, and Oswegatchie Hills slopes down to the beautiful, but very environmentally sensitive, Niantic River.

The net result of this proposal is a watered-down AHD regulation portion and a watered-down master plan portion customized and combined to suit the specific goals of one particular application. We urge the Commission to deny Landmark's self-serving proposed amendments so that it will continue to be provided with all the necessary information in order to make informed decisions on all affordable housing proposals that come before it.

Thank you for your consideration.



Kristin S. Lambert
President

From: [Malcolm Hall](#)
To: [Jennifer Lindo](#)
Subject: Proposed Amendment to Encourage Commercial Land Development in Nature Preserves
Date: Tuesday, September 29, 2020 4:16:15 PM

Dear Chairman Walker and Commissioners of the East Lyme Zoning Commission:

I'm writing to you as a concerned citizen and a member of the FOHNP. I'm amazed that in this time of devastating climate change developers will continue to try to undermine zoning regulations in order to compromise the integrity of our nature preserves. The Oswegatchie Preserve is a local treasure. To threaten its protections in order to build more luxury housings for the benefit of a few land speculators is just flat out wrong.

As stewards of our community, your primary responsibility is more than simply to promote business and facilitate commerce. You are also charged with protecting our quality of life, which includes the quality of our environment. Please don't compromise the fragile protections that the Oswegatchie Hills now enjoy.

Sincerely,
Malcolm Hall
4 South Drive
Niantic, CT 06357



Save the Sound[®]
Action for our region's environment.

TESTIMONY REGARDING APPLICATION OF LANDMARK FOR AMENDMENT TO EAST LYME ZONING REGULATIONS

Save the Sound is a nonprofit organization representing over 4,200 member households and 10,000 activists in Connecticut and New York. Our mission is to protect and improve the land, air, and water of the entire Long Island Sound region. We use legal and scientific expertise and bring citizens together to achieve results that benefit our environment for current and future generations.

September 30, 2020

Dear Chairman Walker and Commissioners of the East Lyme Zoning Commission:

I am writing on behalf of Save the Sound to oppose the Application of Landmark Development Group, et. al., for Amendment to the East Lyme Affordable Housing regulations. The Application should be denied because (1) the Applicant has already formally stipulated to the Existing AHD Regulations and cannot, after the fact, claim that they are now somehow inconsistent or discriminatory, (2) the Existing AHD Regulations closely track Judge Frazzini's opinion in the Applicant's case, (3) the Applicant's Proposed AHD Regulations are inconsistent with Judge Frazzini's opinion in that they would allow for effective approval before meaningful engineering and environmental information had been submitted and review had been completed, and (4) the Applicant fails to appreciate the very substantive differences between the Proposed AHD Regulations and the Gateway Planned Development District which serve very different purposes and involve very different environmental considerations.

Background

While the Application seeks to change the AHD Regulations for the entire town, it quite clearly addresses the Applicant's proposed development on Calkins Road in East Lyme as the sole basis to support the change. The property in question consists of 236 acres of steep-sloped, forested land adjacent to the Niantic River, which empties into Long Island Sound. The property is situated in the East Lyme portion of the Oswegatchie Hills area, an environmentally unique area where environmental agencies, the legislature, commissions, and towns are unanimous in their view that open space should be preserved and protected while dense development should be constrained.

The proposed development has a long history in the East Lyme Zoning Commission and in the Connecticut Courts. The applicant has made a number of highly inaccurate characterizations of this history, none of which are supported by any citations.

The Applicants have on three prior occasions sought the Commission's approval to develop dense housing on its property in some manner. All three applications were denied by the Commission primarily on environmental grounds, and all three decisions were subsequently appealed to the Superior Court.

In the first case, the court held that the Commission properly concluded that the substantial public interests in preserving the Oswegatchie Hills as open space outweighed the need for affordable housing. *Landmark I*, 2004 WL 2166353 at *1. Judge Quinn noted that the record reflected a long history of efforts to preserve the Oswegatchie Hills as open space including (1) the comprehensive plan for the town in 1967, (2) an open space acquisition plan in 1974, (3) a 1977 report recommending purchase of the property outright by the town for preservation, (4) East Lyme's 1987 revision to its plan of development, (5) the legislature's designation of the area as a "Conservation Zone," (5) and the establishment of the Niantic River Gateway Zone and Commission to preserve the character of the area. *Id.* at *8. In the second proceeding, Judge Prescott held that the Commission appropriately denied the Application for affordable housing due to open space and coastal management considerations. *Landmark II*, 2008 WL 544646 at *13, *16. The "lengthy history of preservation efforts alone make it apparent that the area has been under consideration for conservation due to its unique features for a long time. In addition, it is precisely some of the site's unique features, its fragile soils and rocky slopes as well as any development's impact upon the water resources which make it physically less suitable for dense development than other areas of the town." *Id.*, citing *Landmark I*.

The third case was decided in 2011 by Judge Frazzini, and the instant regulations were passed directly as a result of that decision. In this proceeding, like the others, the Applicants sought to construct a high density affordable housing development in the Oswegatchie Hills. The proposed development would feature 840 units (408 one-bedroom apartments and 432 two-bedroom apartments), and 1,767 impervious parking spaces totaling 36 acres. The parking lot alone is 7 times the size of a Super Stop and Shop parking lot. (ROR PH 12 *Transcript of June 18, 2015 Public Hearing* at p. 87). This proposal was initiated in 2005 when the Applicants applied to the Commission to request an AHD zone change for all 236 acres. The Commission denied that application, and the Applicants subsequently appealed the denial to the Superior Court.

As discussed more fully below, the Superior Court, Frazzini, J., found that (1) there was a substantial interest in preservation that outweighed the need for affordable housing, (2) there was insufficient information submitted by the Applicant to the Commission to make a final decision as to whether the AHD zone should be limited to the sewer service district or apply to the entire parcel and (3) on remand the Commission should create a preliminary and/or final site plan process to gather environmental information and upon consideration of all of the environmental information make a decision as to whether the AHD zone should remain limited to the sewer service district.

On remand the Applicants stipulated with the Commission to an AHD regulation ("Existing AHD Regulation") that would provide for process to effectuate Judge Frazzini's decision. Yet, in the proceedings on their application, the Applicants refused to provide the required environmental information in certain instances (Coastal Management Act information) and have provided incomplete or inadequate information in other instances (wetlands and stormwater). While Save the Sound and others urged the Commission to deny the preliminary application for failure to provide necessary information, the Zoning Commission, after a hearing, conditionally approved the application within the sewer district and deferred the consideration of the missing and deficient environmental information to later stages of the process.

The Applicant Has Already Stipulated to the Existing AHD Regulations That It Is Now Seeking To Challenge

It is critical to note that the AHD regulation was not unilaterally passed by the Commission, but it was negotiated between the Commission and the Applicants and fully agreed to, **indeed formally stipulated to**, by the Applicant acting through its attorney. In its most recent appeal filed with the Superior Court, the Applicant's attorney represents, "in April 2013, **by Stipulated Judgment**, the Zoning Commission adopted a zoning regulation text amendment, which established the AHD, Section 32 of the Regulations." *Landmark Development v East Lyme Zoning Commission Appeal from Zoning Commission*, September 9, 2015. At the zoning hearing before the appeal, attorney Hollister for the Applicants explained,

Now, in April 2013, Landmark and this Commission **reached a settlement, which was approved by another Superior Court judge**, its (inaudible) Section 32, revised form and that is at tab 3 of your March 4, 2015 materials. So that's the affordable housing district regulation. That is the regulation upon which we're going to proceed in tonight's proceeding.

(Emphasis added). (ROR PH 11, *Transcript of June 4, 2015 Public Hearing* p. 20).

Despite this, in the filing with this Commission, the Applicants inaccurately (or at very least misleadingly) state that they had "objected" to a part of the provision without disclosing that they had, in fact, formally stipulated to the Existing AHD Regulation in their entirety. The Applicant has always had very sophisticated and highly qualified counsel throughout this process and cannot now claim to be unaware of, or somehow not responsible, for what it has agreed to. To allow this would violate principles of res judicata, considerations of judicial economy and basic principles of justice and fairness.

Indeed, there was good reason for the Applicants to make this Stipulation. As will be shown below, the stipulated regulations closely track, and fully implement, Judge Frazzini's decision.

The Existing AHD Regulations Are Consistent With, and Closely Track, the Court's Decision

The Applicants seek to remove the requirement for coastal zone information and for an adequate preliminary stormwater management plan. Yet this is precisely the environmental information that was required by Judge Frazzini to be submitted by the Applicant and considered by the Commission.

The Applicant inaccurately claims that Judge Frazzini's decision held that the Commission could not limit the proposed change to the sewer service district. In fact, Judge Frazzini's 2011 decision held that more detailed environmental information would be needed to make such a decision. The court stated:

[t]here was sufficient evidence in the record . . . to support the commission’s reasons to deny a zone change for the entire [Applicants’] property based on preserving open space and preventing adverse impact on environmental and coastal resources. Both of these are matters of substantial public interest that the commission could consider and clearly outweigh the need for affordable housing.

Without the types of information sought by the DE[E]P . . . the court cannot find that the substantial public interest in avoiding damage to coastal resources or the environment could have been protected by expanding the change of zone from that approved by the commission—the area inside the town’s sewer service district—to the entire area covered by the site plan drawings. The substantial public interest in avoiding excessive environmental harm and damage to coastal resources can be protected, however, by a remand for the commission to amend its zoning regulations as specified above, for Landmark then to submit **a preliminary or final site plan that provides the information necessary for the commission to assess those matters**, and for the commission then to determine whether the substantial public interest in avoiding damage to coastal resources or the environment can be protected by expanding the change of zone from that approved by the commission—the area inside the town’s sewer service district—to the entire area covered by the site plan drawings.

Landmark Dev. Grp., LLC v. E. Lyme Zoning Comm’n, 2011 WL 5842576, at *41, *42 (Conn. Super. Ct. Oct. 31, 2011) (*Landmark III*).

Coastal Resources

Consistently with Judge Frazzini’s decision, the Director of the Office of Long Island Sound Programs of DEEP submitted a letter in the zoning proceedings stating that coastal information was (1) required by the CCMA and (2) not provided by the Applicant. He stated that the Applicants’ proposed development was located partially within a coastal boundary that includes inland wetlands and therefore **the entire project** was subject to coastal review under Conn. Gen. Stat. § 22a-105(b). (ROR, Exh 10 *CT DEEP Referral Response* at 5). The Director explained that the proximity of the Applicants’ proposed development to these on-site wetlands and coastal resources would create “almost certain impacts . . . on the wetlands, habitat and water quality.” However, the Applicants’ failure to submit coastal resource information and a coastal site plan review application pursuant to Conn. Gen. Stat. § 22a-105(b) would make the calculation of “precise harm . . . to [coastal] resources at this site . . . not comprehensively possible at this time.”

The Director further stated that the Applicants’ proposed design is characterized by shallow depth-to-bedrock and steep slopes that would necessitate significant alterations of the site to prepare the land for road access and community septic. These alterations “would create significant stormwater runoff that would adversely impact coastal resources and water quality.” In addition, the alterations would “cause potential sedimentation and erosion, nitrogen loading, and impacts on . . . finfish, shellfish, and wildlife on the site, along Latimer, Brook, the Niantic River, and ultimately Long Island Sound.” For these reasons, the Director recommended the

denial of the Applicants' proposed zone change and the Preliminary Site Plan. The Applicants failed to rebut, respond to or address this evidence in any manner.

Despite all of this, the Applicants boldly state that “[c]oastal resources information [from DEEP] was not required because none of the 36 acre residential development area was within the coastal zone, and the driveway was already designated as exempt.” The Applicants requested amendment seeks to limit the coastal zone resource consideration to the area strictly within the zone. This violates Frazzini’s decision, DEEP’s recommendation of denial based upon coastal zone considerations and the CT Coastal Management Act itself.

Wetlands

The Applicants also claim that they submitted the location of wetlands. Yet, Soil Scientist John Ianni established that the Applicants had failed to properly identify and delineate at least one significant vernal pool containing wetland that was on their property. (See ROR PH 12 *Transcript of June 18, 2015 Public Hearing* pp. 73-74, and ROR Exh. 48. *Friends of Oswegatchie Hills Presentation*). The Applicants did not seek to rebut, contradict, or respond in any manner to this evidence. The requirement to provide wetland information necessarily includes the requirement to provide ACCURATE wetlands information. They failed to do so.

Stormwater

The Applicants also neglect to mention all of the problems identified with its preliminary stormwater plan. The plan was found to be deficient by Engineer Steven Trinkaus in a manner that would lead to channelization and negatively impact the environment. This information was neither contested nor responded to by the Applicant.

Instead of seeking to correct these problems, the Applicant has sought to amend the regulation to limit what kind of stormwater information could be required by the zoning commission. It should be noted that the GPDD Gateway Planned Development District actually requires not only an adequate preliminary stormwater plan, but a full stormwater plan. Section 11A.8.1.

Thus, the uncontested record shows that the Applicants have failed altogether to submit the required coastal information and have submitted inadequate and inaccurate information regarding both stormwater and wetlands. Instead of seeking to submit complete and accurate information, Landmark now seeks to amend the regulations themselves to eliminate the need for this information. Yet this is precisely the information that Frazzini required before a final decision as to whether to increase the size of the zone beyond the sewer service district could be made.

Judge Frazzini’s Decision Explicitly Required the Applicant to Submit Substantive Information on Impact to the Environment and for the Commission to Consider it Through a Preliminary or Final Site Plan Process

The Applicant’s main substantive contention is that Judge Frazzini’s decision prohibits the current preliminary and final site plan process, but instead requires the alternative master plan

process set out by the Applicant. There was, of course, no reference to a “master plan” in Judge Frazzini’s decision quoted above and certainly no requirement for one. Instead the two ways that the judge provided environmental information could be provided was **either** through a preliminary **or** a final site plan. That is precisely what the Existing AHD Regulation implements. The idea that it was required to be a “master plan” originates wholly within the mind of the Applicant, has no basis in any prior judicial decisions. In fact the decision made clear that unless and until the Applicants submitted the actual environmental information, a final decision could not be made on the size and extent of the AHD zone.

What the Applicant actually seeks is entitlement to an approval that becomes binding upon the Commission in a later stage without having submitted engineering, environmental or other information. This is what the Applicant unsuccessfully sought from Judge Frazzini and continues to seek now. This not only defies common sense and the most basic principles of good government, but it defies Judge Frazzini’s decision, applicable law, and the Applicants’ own Stipulation.

The GPDDD Gateway Planned Development District Served a Different Purpose in that it Applied to a Multi-Use, Multi-Parcel Property That Was (1) Located Wholly Within the Sewer District, (2) Consistent with the Plan of Conservation and Development, and (3) Entirely Outside of the Coastal Zone

The Applicants essentially argue that this Commission should now disregard Judge Frazzini’s decision and their prior Stipulation and instead adopt a new process that includes the parts of a separate Master Plan regulation that would be most advantageous to the Applicants while excluding those aspects of the Master Plan process that would prohibit the Applicants’ development. The Master Plan process was created for a very different purpose from the AHD regulations. The Master Plan purpose is to “[c]oordinate development of properties under separate ownership and provide safeguards that one or another early development does not jeopardize maximum build-out.” Section 11A. The purpose of the AHD Regulations is to “provide for, encourage and accommodate affordable Housing.” Section 32.1 There are also very significant differences between the Applicant’s proposal and the Gateway development. First, the entire Gateway parcel is within the sewer service district and was required to be pursuant to Section 11A.5.2 which only allows discharges to the sewer system. Yet the Applicants object to being confined to the sewer service district and are seeking to expand the zone beyond that. Second, the Master Plan requires a showing of consistency with the Plan of Conservation and Development. Section The Applicants’ development, as set forth above, would not meet such a threshold. Finally, the entire Gateway parcel is located outside of the coastal zone. Thus, DEEP did not submit comments and did not recommend rejection of that master plan on environmental grounds as they have in the Applicants’ case.

Conclusion

For the foregoing reasons, Save the Sound hereby urges the Commission to reject Landmark's Application for a Regulation change.

Respectfully Submitted,

SAVE THE SOUND



By: Roger F. Reynolds, Esq.
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New Haven, CT 06510
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rreynolds@savethesound.org

From: [Karen Bloustine](#)
To: [Jennifer Lindo](#)
Subject: Landmark Development Company
Date: Wednesday, September 30, 2020 3:12:22 PM

In reading over the information regarding the recent application, it seems as if Landmark is just trying to get around provisions they helped set up

I do not oppose new construction in East Lyme, but it is vital that the Zoning Commission be allowed to evaluate any new applications on its environmental impact and not have their hands tied for future situations.

Karen Bloustine
ksbloustine@gmail.com
1 Marjories Way
Niantic 06357

From: [Kathleen C. Cooper](#)
To: [Jennifer Lindo](#)
Subject: Oswegatchie Hills
Date: Thursday, October 01, 2020 10:09:46 AM

Dear Chairman Walker and Commissioners of the East Lyme Zoning Commission:

I wish to communicate that I heartily agree with all of the points made by Kristin Lambert, in her eloquent and informed letter to you, dated September 28 (quoted below, for your convenience). Please protect our fragile eco-system and beautiful open spaces!

Thank you very much for your time and attention.

Very respectfully,

Kathleen Cooper (Niantic, CT)

Dear Chairman Walker and Commissioners of the East Lyme Zoning Commission:

I am writing to you as President of the Friends of Oswegatchie Hills Nature Preserve to express our opposition to the proposed amendment to the East Lyme affordable housing regulations. As you know, our organization, in coordination with the Town of East Lyme and the East Lyme Land Trust, is chiefly responsible for the maintenance of the nature preserve known as the Oswegatchie Hills Nature Preserve, which abuts the property of Landmark Development. Our organization has reviewed and opposes the application to amend Section 32 of the East Lyme Affordable Housing Zoning Regulations (hereafter "Section 32") submitted by Landmark Development Group LLC and Jarvis of Cheshire LLC (hereafter "Landmark").

The proposed amendments to Section 32 are yet another attempt by Landmark to establish a zoning approval scheme that substantially minimizes the detailed information that this Commission is required by law to receive and to review, in order to determine whether a development application will cause health, safety, environmental and coastal concerns.

This request is striking in that it was Landmark itself that drafted Section 32 and stipulated to this approval and review process with the Town. And now, they propose to "cherry pick" many sections of those very regulations to favor their one specific application.

By Landmark's own admission in its counsel's cover letter to this application, it represents that "the intent of this amendment is to prohibit and avoid the demands for unnecessary and costly engineering at the first stage." In requesting this change, Landmark is attempting to remove the Commission's discretion and to make approval mandatory at the first stage. This attempt to provide as little information to the Commission as possible up front, and to then lock in a mandatory approval with no discretion completely violates the 2011 court order of the Connecticut Superior Court. The Court ordered that the approval process must not eliminate the requirements that a developer submit the type of detailed information before approval has become mandatory that the Commission needs to determine whether environmental, health and safety impacts would result from the proposal. In compliance with that order, Section 32 was adopted by both this Commission and Landmark in a stipulated agreement in 2013.

These affordable housing regulations have been used successfully in their current format by developers who have obtained approvals based on these regulations and built affordable residential housing in town currently and in the past. They are in place to be applied uniformly and fairly to all future applications and must be appropriate for use town-wide. In fact, in 2015 Landmark itself utilized these regulations and obtained zoning approval subject to certain conditions imposed by this Commission. Rather than taking “Yes” for an answer and attempting to comply with your conditions, Landmark has now filed this application to again try to change the rules that apply to all solely to benefit itself.

To accomplish this goal, Landmark proposes that you now adopt a Master Development Plan sequence similar to that which was adopted for the Gateway development for affordable housing projects, and to “cherry pick” certain elements of that planning process that it deems beneficial to its plans. This continues a pattern that Landmark has tried to use over the years of comparing approvals of other projects in other parts of town to itself. In this case, the differences between the Gateway and Landmark developments and properties are substantial and stark.

September 28, 2020

The Gateway Planned Development District (hereafter “GPDD”) was added as Section 11A of the zoning regulations in 2001. The first sentence states “Purpose – Coordinate development of properties under separate ownership...”. Section 11.A.9 adds the Master Development Plan (hereafter “MDP”) as “an alternative to the traditional parcel by parcel development...”. Section 11.A.9.1 states that “The purpose of the MDP process is to encourage the comprehensive planning and coordinated mixed-use development of multiple parcels within the district...”.

Furthermore, the Gateway District and Master Plan was conceived by the town, rather than a particular developer, as a way to attain very specific town goals. In fact, Landmark’s proposal in Oswegatchie Hills meets NONE of the four approval criteria as the Zoning Commission defined in 2001 (eleven years before the affordable housing regulations were adopted). The Approval Criteria as listed in (11.A.9.5) is:

1. Consistency with the Plan of Conservation and Development (hereafter “POCD”)
2. Consistency with the goal to broaden the tax base...
3. Consistency with the purpose of the alternative MDP process
4. ... provisions for necessary utility and traffic infrastructure...

A master plan can be denied for any one of those criteria. The Landmark Oswegatchie Hills plan fails on all four criteria.

1. The POCD shows Oswegatchie Hills as Open Space and reiterates that that has been the wish of the town for decades and well before Landmark began its development efforts. By contrast, East Lyme engaged the Yale Urban Design Workshop to interview towns people about desired uses, and the ZC incorporated as Fig A in Section 11.A.8 Yale’s proposed April 1997 sketch for Gateway.
2. Numerous studies show that residential development adds more municipal costs for

services than is generated by the tax revenues.

3. As stated above, “The purpose of the MDP process is to encourage the comprehensive planning and coordinated mixed-use development of multiple parcels within the district...”.
4. Landmark’s proposed text amendment removes from 32.9.2 the requirement that the developer demonstrate it can provide water and sewer or community septic and water or a combination of public and onsite or community water waste disposal.

The differences between Gateway and Landmark’s proposed project are substantial. Gateway includes a large commercial/retail component: it had multiple land owners: it was targeted for development: the GPDD was proposed by the town: and it was fully within the town’s sewer service district. By contrast, Landmark proposes a residential only development: it has single ownership: its development is inconsistent with the POCD: its regulations were drafted by the developer: and it is only partially within the town sewer service district. While all of these contrasts between Gateway and Oswegatchie Hills are important, the most important by far is the fact that the Gateway property slopes down to one of the nation’s largest highways, I-95, and Oswegatchie Hills slopes down to the beautiful, but very environmentally sensitive, Niantic River.

The net result of this proposal is a watered-down AHD regulation portion and a watered-down master plan portion customized and combined to suit the specific goals of one particular application. We urge the Commission to deny Landmark’s self-serving proposed amendments so that it will continue to be provided with all the necessary information in order to make informed decisions on all affordable housing proposals that come before it.

Thank you for your consideration.



Kristin S. Lambert President

From: [Nancy P. Foster](#)
To: [Jennifer Lindo](#)
Subject: Oswegatchie Hills Nature Preserve
Date: Thursday, October 01, 2020 3:23:14 PM

Dear Sir/Madam:

I am writing to voice my support for blocking any and all development of the Oswegatchie Hill Nature Preserve. I am, like so many residents of East Lyme, appalled at the constant attempts by Landmark Development to ruin this gem of a property that is used and loved by so many of us living in East Lyme. The tactics used by Landmark have cost our town dearly both in treasure and time and we are at a point in history when the Hills needs to be protected once and for all.

I have personally enjoyed the Preserve for years and can be found hiking there throughout the year. I have introduced the Preserve to over 25 people all of whom are amazed that right here in the town of Niantic we have such a wonderful facility. To lose even a acre of this land would be a travesty and I beg the town to continue the fight to fend off development of any kind.

Please forward my email on to the appropriate people in Town Government and enter it into the permanent record.

Many thanks, Nancy Pomeroy Foster

290R Old Black Point Road
860-235-4901

From: [Donald Gerwick](#)
To: [Jennifer Lindo](#)
Subject: Proposed Zoning Regulation Revision
Date: Thursday, October 1, 2020 5:36:24 PM

Dear Commissioners;

As a resident of East Lyme I am strongly opposed to the proposed revision of the current Affordable Housing District regulations that is to be considered at tonight's (Oct. 1, 2020) Zoning Commission meeting.

A regulation, in any form, that does not allow, or limits, a Commission to legally require information related to potential "Environmental Impacts" of a proposed development, in my opinion, is simply "putting the cart before the horse". I further believe that Commissions cannot make truly informed decisions without full knowledge of all impacts, including, and perhaps most importantly, environmental impacts.

I respectfully request the Commission to deny the proposed regulation change.

Donald W. Gerwick, P.E., L.S.

From: [Nancy P. Foster](#)
To: [Jennifer Lindo](#)
Subject: Oswegatchie Hills Nature Preserve
Date: Thursday, October 01, 2020 3:23:14 PM

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