

Landmark Text Amendment  
Section 32 Affordable Housing  
11/12/2020  
Exhibit List

Exhibit #	Description	Date
A	Application for Zoning Text Amendment from Landmark Development Group LLC and Jarvis of Cheshire, LLC	6/26/2020
B	Applicants consent to Extension of Time to schedule public hearing	7/30/2020
C	Town Clerk and The Day Legals	9/15/2020
D	SE CT COG Referral Response	9/8/2020
E	EL Planning Commission Referral Response	9/15/2020
F	DEEP Referral Response	9/29/2020
G	Landmark Supplemental Materials	9/29/2020
H	Letter from Oswegatchie Hills Nature Preserve	9/29/2020
I	Letter from Malcolm Hall	9/29/2020
J	Letter from Save the Sound Reynolds	9/30/2020
K	Letter from Karen Bloustine	9/30/2020
L	Letter from Cooper	10/1/2020
M	Letter from Lincoln	10/1/2020
N	Letter from Save the River Save the Hills	10/1/2020
O	Letter from Foster	10/1/2020
P	Letter from Gerwick	10/1/2020

# Town of East Lyme

PO Box 519  
Niantic, CT 06357  
(860) 691-4114  
Fax: (860) 691-0351

Zone TA Permit # \_\_\_\_\_

Date Entered into ZTA Log \_\_\_\_\_

## APPLICATION FOR ZONING REGULATION TEXT AMENDMENT

Date of Application: June 26, 2020

Applicant's Name: Landmark Development Group, LLC and Jarvis of Cheshire, LLC  
c/o Timothy S. Hollister, Shipman & Goodwin LLP

Applicant's Address: One Constitution Plaza, Hartford, CT 06103 Telephone: (860) 251-5601

Text Amendment of Section #: 32

DESCRIPTION OF TEXT AMENDMENT OF ZONING REGULATIONS REQUESTED {must comply all other applicable Zoning Regulations of the Town of East Lyme}:

Revision of Section 32 to replace Preliminary Site Plan/Final Site Plan with "Master Plan" procedure, as used in Gateway development.

Signature of Applicant: Timothy S. Hollister, Attorney-in-fact for applicant.

\*\*\*\*\*

### Below this line for Office Use Only:

\*\*\*\*\*

Attach a copy of what is being changed, omitted or added to the Zoning Regulations.

AMENDMENT PROPOSAL ATTACHED      YES    NO

PERMIT FEE: TEXT AMENDMENT      \$300.00

STATE FEE:      \$60.00

CHECK #: 314927

TOTAL DUE:      \$ 360.00

At its meeting on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the East Lyme Zoning Commission voted and accepted the above referenced Text Amendment to the Town of East Lyme Zoning Regulations.  
Dated: \_\_\_\_\_  
Matthew Walker, Chairman  
East Lyme Zoning Commission

**APPLICATION OF LANDMARK DEVELOPMENT  
GROUP LLC AND JARVIS OF CHESHIRE LLC  
FOR AMENDMENT TO EAST LYME  
ZONING REGULATIONS § 32,  
AFFORDABLE HOUSING DISTRICT**

**June 23, 2020**

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## **June 19, 2020**

1. Transmittal and overview letter from Shipman & Goodwin LLP
2. Existing § 32, Affordable Housing District, 2013
3. Proposed Revised Affordable Housing District Regulation, June 2020

### SUBMITTED SEPARATELY

Application Fee  $\$300 + \$60 = \$360$

# **TAB 1**



**Timothy S. Hollister**  
**Phone: (860) 251-5601**  
**Fax: (860) 251-5318**  
**thollister@goodwin.com**

June 23, 2020

HAND DELIVERY

Mr. Matthew Walker, Chair,  
and Commission Members  
Zoning Commission  
Town of East Lyme  
108 Pennsylvania Avenue  
P. O. Box 519  
Niantic, CT 06357

Re: Application of Landmark Development Group LLC and Jarvis of Cheshire LLC for Amendment to East Lyme Zoning Regulations § 32, Affordable Housing District

Dear Chair Walker and Commission Members:

On behalf of our clients Landmark Development Group LLC and Jarvis of Cheshire LLC (collectively, "Landmark"), we are submitting this application to amend § 32 of the East Lyme Zoning Regulations, in connection with a proposed multi-family residential development, with an affordable housing component, on Calkins Road in East Lyme.

The purpose of this regulation amendment is to revise the affordable housing development process that is permitted by § 32 to use the Master Development Plan sequence and criteria that were used for the "Gateway" development on the north side of I-95, instead of the Preliminary / Final Site Plan process in the current regulations, which this Commission declined to follow when Landmark applied for a zone change and Preliminary Site Plan approval in 2015.

## **Background**

Landmark and its affiliate Jarvis, located in Middletown, Connecticut, purchased the 236 acres of land adjacent to Calkins Road in 1998 in large part because it is mostly within the town's sewer district; was zoned for residential development; abuts to the west a large, state-sponsored, sewer, affordable housing development known as "Deerfield"; has been turned down several times by the Town and the State for open space acquisition; and is surrounded by a combination of residential development (the "Golden Spur" to the northeast and several neighborhoods to the south), and by open space, making it ideal for residential use. Calkins Road, River Road, and Hill Road are public streets providing access from Route 1. Landmark's parcel has frontage on a section of Route 1 through which East Lyme's Water and Sewer Commission had previously approved construction of a sewer extension.

In 2005, Landmark filed an application for residential development under General Statutes § 8-30g, the affordable housing statute. This Commission denied that application in 2007, and Landmark appealed. In October 2011, a Superior Court judge rejected most of this Commission's reasons for denying Landmark's application, and remanded with direction to the Commission to adopt the regulations proposed by Landmark, with certain revisions, and with direction to Landmark to facilitate further review by laying out the parameters and infrastructure of its proposed site plan, and demonstrating that the preliminary layout will not have adverse environmental impacts. As to the zone change, the Court held that the Commission could not limit the proposed rezoning to the sewer district.

Regarding Landmark's preliminary site plan, based in large part on the Commission's previous processing and conditional approval of a 600-unit development called Darrow Pond (ultimately, not constructed), Judge Frazzini directed that the availability of sewer, water, and traffic access could be addressed by condition of approval. To guide the Commission's ongoing § 8-30g application and review process, the Court upheld the basic elements of the preliminary site plan, encouraged open space preservation.

Judge Frazzini also specifically addressed the driveway from the residential units to the property's entrance onto River Road and Calkins Road; the driveway is the only part of the development plan that crosses within the coastal management area. The Court observed (at 93-94) that both the Coastal Management Act and East Lyme's coastal regulations exempt driveways from coastal impact review, and that even DEEP, which had submitted a letter about potential coastal impacts, had not mentioned the driveway. Thus, the Court overruled the Commission on coastal resource impacts from the driveway, while noting that a final engineering of the driveway would be part of a detailed site plan.

In June 2012, Landmark took two steps in response to the Court's remand: proposing a final AHD regulation, and applying to the Water and Sewer Commission for confirmation of public sewer system capacity to serve a multi-family development. In December 2012, this Commission adopted a revised AHD regulation, with one provision to which Landmark objected.

The parties thereafter worked out a settlement, and the Superior Court approved settlement of the final AHD regulation in April 2013. That regulation is attached at Tab 2. Landmark also applied for sewer capacity.

In March 2015, Landmark applied to this Commission to rezone 123 acres of its 236 acre parcel from RU-120, a zone that allows as-of-right single-family homes on lots of three acres or more (which could yield up to 60 luxury homes), to Affordable Housing Development under § 32. The rezoning proposal was accompanied by a "Preliminary Site Plan" that:

- complied with Judge Frazzini's 2011 decision and remand orders;
- showed the proposed residential buildings clustered within a 36± acre area located at the western / uphill side of the property, in an area where sewer service is allowed by regulation, outside the coastal boundary, adjacent to Deerfield, and 650 to 900 feet from the Niantic River;
- showed a maximum residential unit density and layout that complied with the dimensional requirements of the AHD regulation;
- provided all of the information listed in § 32.9 of the AHD regulation for rezoning and a Preliminary Site Plan, including the physical feasibility of the proposed rezoning, density, and layout, by confirming the location / routes of public water and sewer lines and stormwater management components; and updating traffic and emergency vehicle access to show that there has been no change to these plan aspects since the court decision in 2011; and
- committed the balance of the rezoning acreage, 87 acres – 70 percent of the rezone and 36 percent of the total site – to open space.

As Landmark explained to the Zoning Commission during hearings in 2015, however, its application, while detailed as to parameters, boundaries, locations, and routes as required by § 32's provisions for *Preliminary* Site Plans, was not required to be accompanied by a fully engineered set of plans.

Nonetheless, at that point, the Commission and its staff began to dispute both what a Preliminary Site Plan is under § 32, and what the § 32 process requires. The Commission claimed that Landmark had not submitted the information listed in § 32.9.1 for Preliminary Site Plans:

- C. "location of wetlands, watercourses, and slopes in excess of twenty-five percent;"
- F. sewage disposal and water supply locations and systems, ownership, operation, and maintenance;
- G. preliminary stormwater management plan;
- H. coastal zone resources information;
- I. traffic impact statement or report; and
- O. statement describing any impact on public health and safety, including emergency services.

*But Landmark submitted all of this information.* The location of wetlands and steep slopes was shown. The location of sewer and water lines was shown. The preliminary stormwater management plan was provided. Coastal resources information 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 updated traffic study was submitted, and a statement about safety impacts. A compliance chart documenting all of this was provided.

The Commission's claims of missing information stemmed from its refusal to recognize the difference stated in § 32 between a Preliminary Site Plan and a Final Site Plan. For example, the Commission received a map showing the location of wetlands, but then disputed the wetlands line identification in one small corner of the PSP, even though the Zoning Commission has no authority and no need at the PSP stage to resolve a minor discrepancy about a wetlands boundary delineation. The Commission refused to recognize that the application before it was not and should not be required to provide engineering details.

Notwithstanding its claims that Landmark had not submitted required information, the Commission did not declare the application incomplete; to the contrary, it acted on the application, reducing the proposed rezoning acreage from 123 to 36 acres, a transparent effort to reduce the maximum potential density from 840 units to approximately 360 units. In doing so, the Commission distorted the requirements and purpose of the Preliminary Site Plan rules by subjecting the Preliminary Plan to Final Site Plan standards, by imposing a variety of premature, *ad hoc* and *ultra vires requirements*, and speculative approval conditions.

The Commission's 2015 action also was not based on accurate description of Landmark's property. For example, Landmark's 236 acres is not "a steep, rocky, largely undeveloped expanse" on a "rugged hilly wilderness," or a parcel that the Town of East Lyme has "worked to preserve" as open space. In fact, the western portion of the 236 acres is relatively flat, outside

the coastal zone, with minimal wetlands; as to the remaining property, the vast majority is gently sloping and more than capable of support the type of development and density proposed. In addition to being within the sewer district, zoned for single-family homes on three-acre minimum lots, and abutting a large multi-family, state-sponsored affordable housing development, this 236-acre parcel was rejected several times in the 1990's by the State Department of Environmental Protection for open space acquisition because of "the intensive development in the surrounding area" and a lack of public access to the site.

Overall, the Commission in 2015 misstated the AHD regulation. The Commission essentially asserted that an application for a Preliminary or Final Site Plan is completely discretionary. In addition, the Commission asked why Landmark applied to rezone 123 acres while proposing to limit residential buildings to less than 36 acres, apparently overlooking the obvious answer, which was clustering units so as to create substantial open space.

The Commission also in 2015 acted contrary to the AHD regulation by demanding that Landmark file a fully-engineered site plan, with a high-intensity wetlands soil survey and other detailed "environmental" data, as a condition of proceeding with rezoning and the Preliminary Site Plan.

### **Proposed Text Amendment to § 32**

Development of a multi-family housing with an affordable component requires, among other things, clear procedural rules that do not allow for deviation. To address and avoid in the future the distortions that occurred in the 2015 process, Landmark now proposes an amendment to § 32, see Tab 3, attached. This text amendment is based on and builds upon the parameters approved in the 2011 court decision and the sewer capacity obtained from the Water and Sewer Authority in 2018. The amendment contains minor revisions and improvement to provisions regarding building height, setbacks and buffers. More importantly, this amendment, in § 32.9, proposes a Master Plan process just like the one used successfully and seamlessly by this Commission for the Gateway development from 2008 to 2015, instead of the PSP / FSP process in the current regulation. **The intent of the Master Plan process as used with Gateway is to make it clear that the first step is for the applicant to layout and the Commission to review for impact the macro elements of the development – building layout, building height, availability of infrastructure, and feasibility of emergency vehicle access.** After approval of a Master Plan, a site plan application follows. Under the Master Plan process, if the site plan substantially conforms to the previously approved Master Plan macro elements, then site plan approval should be non-discretionary. In other words, the intent of this proposed amendment is to prohibit and avoid the demands for unnecessary and costly engineering at the first stage, as the Commission did in 2015 in its denial. The engineering details that flesh out the Master Plan elements are clearly deferred to the later site plan stage; the first stage will be review and approval of the Master Plan elements only, to determine whether

June 19, 2020  
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they meet what is in the Master Plan regulation and § 8-30g standards. When the East Lyme Zoning Commission approved the Gateway apartment development it demonstrated a familiarity and understanding of how the Master plan concept works and should be administered, and therefore has a clear basis and reason to utilize that process for Landmark's development.

We request that this application be scheduled for public hearing. Thank you.

Very truly yours,



Timothy S. Hollister

TSH:ekf  
Attachments

c: Landmark Development Group LLC (w/ att.)  
F. A. Hesketh & Associates, Inc. (w/ att.)

# **TAB 2**

## SCHEDULE A

### PROPOSED AMENDMENTS TO EAST LYME ZONING REGULATIONS

Section 32 of the Zoning Regulations of the Town of East Lyme shall be amended to read as follows:

#### SECTION 32: - AFFORDABLE HOUSING DISTRICT

- 32.1 GENERAL DESCRIPTION AND PURPOSE: A district designed to provide for, encourage and accommodate affordable housing, as defined by the Connecticut General Statutes Section 8-39a and Section 8-30g, *et seq.*
- 32.2 DESIGNATION OF AFFORDABLE HOUSING DISTRICT: An Affordable Housing District (AHO) may be proposed for and located on parcels of land, or combinations of adjacent parcels of land, containing at least ten (10) acres.
- 32.3 PERMITTED USES: The following uses of buildings and/or land and no others shall be permitted subject to site plan approval in accordance with Section 24:
- 32.3.1 An affordable housing development, as defined in Connecticut General Statutes Section 8-30g. The development may consist of single-family or multi-family dwellings arranged on single or multiple lots within the District.
- 32.3.2 Accessory uses customarily incidental to the above permitted uses.
- 32.4 DIMENSIONAL AND BULK REGULATIONS
- 32.4.1 LOT SIZE: Lots for single-family dwellings shall contain no less than ten thousand (10,000 square feet). Lots for multi-family dwellings shall contain no less than ten (10) acres.
- 32.4.2 HEIGHT: The maximum height of single-family detached dwellings shall be thirty (30) feet.
- 32.4.3 MULTI-FAMILY UNIT DENSITY: The maximum number of multi-family dwelling units permitted on any lot shall be as follows:
- |                     |   |
|---------------------|---|
| 1 bedroom:          | 5,445 square feet / unit (8 units / acre) |
| 2 bedroom:          | 7,260 square feet / unit (6 units / acre) |
| 3 or more bedrooms: | 8,712 square feet / unit (5 units / acre) |

On lots to which public sewer and water facilities are not available, the maximum density of multi-family dwelling units shall be one unit per ten thousand (10,000) square feet of land.

- 32.4.4 **FRONTAGE:** Each lot and/or land area shall have not less than fifty (50) feet frontage.
- 32.4.5 **SETBACKS:** No new building or structure shall be placed less than one hundred fifty (150) feet from the street line or less than one hundred (100) feet from the boundary of any other lot or parcel outside of the AHO, unless such lot or parcel is already zoned for multi-family residential uses.
- 32.4.6 **BUFFERS:** A suitable landscaped buffer strip not less than one hundred (100) feet wide shall be provided along the boundary of any other lot or parcel outside of the AHO, unless such lot or parcel is already zoned for multi-family residential uses, in which case the Commission may provide for a buffer strip of not less than twenty-five (25) feet from the adjacent boundary line.
- 32.4.7 **BUFFER AREA:** There shall be provided a landscaped side or rear yard buffer area of at least one hundred (100) feet in width adjacent to the boundary of any other lot or parcel outside of the AHO, unless such lot or parcel is already zoned for multi-family residential uses, in which case the Commission may provide for a buffer strip of not less than twenty-five (25) feet from the adjacent boundary line. All buffer areas shall be planted or preserved in a natural state in a mixture of evergreen and deciduous trees 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.
- 32.4.8 **GROUPING:** The minimum distance between any two (2) structures shall be twenty-four (24) feet, unless the Commission finds that the design of the proposed development would be benefited by closer spacing.
- 32.4.9 **YARDS**
- |             |         |
|-------------|---------|
| Front Yard: | 25 feet |
| Side Yard:  | 25 feet |
| Rear Yard:  | 50 feet |
- 32.4.10 **LOT COVERAGE:** The total lot coverage of all buildings and structures on any lot shall not be greater than thirty (30) percent of the lot area.

- 32.5 OFF-STREET PARKING: Off-street parking and loading spaces shall be provided in accordance with the provisions of Section 22 of these regulations. Spaces within garages shall count towards the required minimum number of spaces.
- 32.6 OPEN SPACE: For any affordable housing development, an area equal to ten (10) percent of the total lot area shall be set aside as open space. Buffer strips required pursuant to Section 32.4.6 shall be included in the computation of open space.
- 32.7 AFFORDABLE HOUSING RESTRICTIONS

Prior to the issuance of any building permit for a development approved pursuant to this Article, there shall be recorded in the East Lyme land records a document entitled "Affordable Housing Development Restrictions," executed by the owner of the AHO; dated, witnessed, and acknowledged in the manner required for deeds; containing a real estate description of the AHO and containing substantially the following language in accordance with General Statutes Section 8-30g *et seq.*:

Not less than thirty (30) percent of the dwelling units of a development in the AHO will be conveyed by deeds containing covenants or restrictions ("deed restrictions") which shall require that such dwelling units shall be sold or rented at or below prices which will preserve the units as housing for which persons pay thirty (30) percent or less of their annual income, where such income is less than or equal to eighty (80) percent of the median income. Such restrictions shall remain in force for at least forty (40) years after the initial occupation of the proposed development.

Within the AHO herein described, not less than fifteen (15) percent of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to sixty (60) percent of the median income. The remainder of the dwelling units conveyed subject to the deed restrictions shall be sold or rented to persons and families whose income is less than or equal to eighty (80) percent of the median income.

"Median income" means, after adjustments for family size, the lesser of the state median income or the area median income for the area in which East Lyme is located, as determined by the United States Department of Housing and Urban Development.

# **TAB 3**

*June*

**SECTION 32**  
**Proposed Amendment, April 2020**

AFFORDABLE HOUSING DISTRICT

32.1 GENERAL DESCRIPTION AND PURPOSE: A district designed to provide for, encourage and accommodate market rate and affordable housing as a "set-aside development," as defined by Connecticut General Statutes Section 8-30g.

32.2 DESIGNATION OF AFFORDABLE HOUSING DISTRICT: An Affordable Housing District (AHD) may be proposed for and located on parcels of land, or combinations of adjacent parcels of land, containing at least ten (10) acres.

32.3 PERMITTED USES: The following uses of buildings and/or land and no others shall be permitted subject to site plan approval in accordance with Section 24:

32.3.1 An affordable housing development, as defined in Connecticut General Statutes Section 8-30g. The development may consist of single-family or multi-family dwellings arranged on single or multiple lots within the District.

32.3.2 Accessory uses customarily incidental to the above permitted uses.

32.4 DIMENSIONAL AND BULK REGULATIONS

32.4.1 **LOT SIZE:** Lots for single-family dwellings shall contain no less than ten thousand (10,000) square feet. Lots for multi-family dwellings shall contain no less than ten (10) acres.

32.4.2 **HEIGHT: The maximum height from first floor finish elevation to the roof soffit shall be:**

A. Single Family Detached Dwellings: thirty-five (35) feet;

B. Townhouse or Garden Style Dwellings: forty (40) feet; and

C. Multi-family Dwellings serviced by an Elevator: fifty (50) feet.

32.4.3 **MULTI-FAMILY UNIT DENSITY:** The maximum number of multi-family dwelling units permitted on any lot shall be as follows:

1 bedroom: 5,445 square feet / unit (8 units / acre);

2 bedrooms: 7,260 square feet / unit (6 units / acre); and

3 or more bedrooms: 8,712 square feet / unit (5 units / acre).

32.4.4 FRONTAGE: Each lot and/or land area shall have not less than fifty (50) feet frontage.

32.4.5 **SETBACKS:** No new building or structure shall be placed less than one hundred fifty (150) feet from the street line or less than one hundred (100) feet from the boundary of any other lot or parcel outside of the AHD, unless such lot or parcel is (1) already zoned for multi-family residential uses; 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.

32.4.6 **BUFFERS:** A suitable landscaped buffer strip not less than one hundred (100) feet wide shall be provided along the boundary of any other lot or parcel outside of the AHD, unless such lot or parcel is (1) 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) feet from the adjacent boundary line.

32.4.7 **BUFFER AREA:** There shall be provided a landscaped side or rear yard buffer area of at least one hundred (100) feet in width adjacent to the boundary of any other lot or parcel outside of the AHD, unless such lot or parcel (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) feet from the adjacent boundary line. All buffer areas shall be planted or preserved in a natural state in a mixture of evergreen and deciduous trees 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.

32.4.8 **GROUPING:** The minimum distance between any two (2) structures shall be twenty-four (24) feet, unless the Commission finds that the design of the proposed development would be benefited by closer spacing.

32.4.9 **YARDS**

Front Yard: 25 feet;

Side Yard: 25 feet; and

Rear Yard: 50 feet.

32.4.10 **LOT COVERAGE:** The total lot coverage of all buildings and structures on any lot shall not be greater than thirty (30) percent of the lot area.

32.4.11 **TIDAL WETLANDS:** A one hundred fifty (150) feet non-disturbed buffer shall be required from tidal wetlands and watercourses.

32.5 **OFF-STREET PARKING:** Off-street parking and loading spaces shall be provided in accordance with the provisions of Section 22 of these regulations. Spaces within garages shall count towards the required minimum number of spaces.

32.6 **OPEN SPACE:** For any affordable housing development, an area equal to ten (10) percent of the total lot area shall be set aside as open space. Buffer strips required pursuant to Section 32.4.6 shall be included in the computation of open space.

32.7 **AFFORDABLE HOUSING RESTRICTIONS**

Prior to the issuance of any building permit for a development approved pursuant to this Section, there shall be recorded in the East Lyme land records a document entitled "Affordable Housing Development Restrictions," executed by the owner of the development; dated, witnessed, and acknowledged in the manner required for deeds; containing a real estate description of the development and containing substantially the following language in accordance with General Statutes Section 8-30g *et seq.*:

Not less than thirty (30) percent of the dwelling units of a development in the AHD will be conveyed by deeds containing covenants or restrictions ("deed restrictions") which shall require that such dwelling units shall be sold or rented at or below prices which will preserve the units as housing for which persons pay thirty (30) percent or less of their annual income, where such income is less than or equal to eighty (80) percent of the median income. Such restrictions shall remain in force for at least forty (40) years after the initial occupation of the proposed development.

Within the AHD herein described, not less than fifteen (15) percent of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to sixty (60) percent of the median income. The remainder of the dwelling units conveyed subject to the deed restrictions shall be sold or rented to persons and families whose income is less than or equal to eighty (80) percent of the median income.

"Median income" means, after adjustments for family size, the lesser of the state median income or the area median income for the area in which East Lyme is located, as determined by the United States Department of Housing and Urban Development.

32.7.1 The owner of the land and buildings within the AHD may, during such forty (40) year period, change the designation of which units within the AHD shall be maintained as affordable, provided that the minimum thirty (30) percent set aside shall be maintained, and the AHD as a whole shall continue to comply with the provisions of these restrictions.

32.7.2 These restrictions may be enforced by the applicant or by the East Lyme Zoning Official or the East Lyme Housing Authority, or any other suitable town agency selected by its Board of Selectmen.

32.8 **PHASED APPROVAL:** The applicant may request an approval of the development plan to be completed in stages. The minimum amount of land to be included within any single stage of development shall be five (5) acres. Each stage shall be capable of independent existence without the completion of succeeding stages. Buffer requirements shall not apply to the common line between stages of development. Each phase must contain the required percentage of affordable units.

32.9 **GENERAL PROVISIONS:** An application for designation as an AHD may be initiated in three ways: (i) a conceptual site plan in accordance with General Statutes Section 8-30g; or (ii) an application for approval of an AFFORDABLE HOUSING MASTER DEVELOPMENT PLAN ("AHMDP"); or (iii) an application for approval of a Site Plan ("SP"). The Commission shall have the discretion to hold a public hearing on an application for approval of an AHMDP and/or on an application for approval of a SP.

32.9.1 **AFFORDABLE HOUSING MASTER DEVELOPMENT PLAN:** The purpose of a AHMDP is to require the submission to the Zoning Commission of information sufficient to allow it to evaluate a development plan under the standard of §8-30g, and to allow an applicant to defer, until approval is granted, completion of details and specifications required under Section 24 of these Regulations. Therefore, an AHMDP submitted with an application to rezone an eligible parcel or parcels of land as an AHD shall contain the following:

32.9.2 **MASTER PLAN ELEMENTS**

- A. An A-2 property line survey.
- B. Topographical contours at ten (10) foot intervals.
- C. Location of wetlands, watercourses, and slopes in excess of twenty-five (25) percent.
- D. General layout of all proposed buildings and structures.
- E. Areas proposed for open space and/or recreational purposes.
- F. Sewage disposal and water supply locations and system, ownership, operation, and maintenance.
- G. Preliminary storm water management plan containing only structural best management practices (roof leader discharges;

runoff from driveways, parking and sidewalks; catch basin design; bioretention basins and vegetated level spreaders); pollution prevention best management practices (roof runoff management; litter and pet waste control; driveway, parking lot and sidewalk sweeping and vacuuming; impervious / porous pavement; catch basin cleaning; bioretention basins and vegetated level spreaders; mowing; annual soil testing and conditioning; litter, debris, sediment, and plant biomass removal); and cultural practices for landscaped areas (fertilizer management, pesticide management, winter sanding operations, and emergency spill containment).

- H. Coastal zone resources information, limited to a description of coastal resources currently existing within the coastal management zone on the portion of the subject property where residential development is proposed, as depicted on the Department of Energy and Environmental Protections' Coastal Resources Map dated 1979 as revised, and excluding areas designated as proposed open space, and excluding driveways, which are exempt uses within coastal zones.
- I. Traffic impact statement or report.
- J. Preliminary design plans for all proposed buildings and structures.
- K. A table showing the number of units and number of bedrooms for each unit.
- L. An Affordability Plan containing all of the documents and information required by General Statutes Section 8-30g.
- M. A list of all coordinate permits and approvals needed by the applicant before beginning construction
- N. Soil types from the New London County Soil Survey.

**32.9.3 SITE PLAN:** An application for SP approval shall contain all of the information required for a AHMDP, as well as any additional information that may be required for site plan applications under Section 24 of these Regulations.

**32.9.4 DECISIONS ON SITE PLAN APPLICATIONS:** If the applicant submits an application for approval of an AHMDP in connection with an application for designation of an AHD, the Commission shall either approve, approve with modifications, or deny said AHMDP at the time it acts on the proposed AHD designation. If the AHMDP is approved, or approved with modifications, the applicant shall file an application for

**approval of an SP, which application shall include all information required under Section 24 of these Regulations for a site plan application. If the SP substantially conforms to the AHMDP as approved, and includes all information required by Section 24 of these Regulations, the Commission shall approve the SP. If the applicant submits an application for approval of an SP in connection with an application for designation of an AHD without having first obtained AHMDP approval, the Commission shall either approve, approve with modifications, or deny said SP at the time it acts on the proposed AHD designation.**

## Jennifer Lindo

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**From:** Hollister, Timothy <THollister@goodwin.com>  
**Sent:** Thursday, July 30, 2020 10:24 AM  
**To:** Jennifer Lindo  
**Cc:** Bill Mulholland  
**Subject:** RE: Landmark zoning reg amendment application

Landmark consents to October 1, but we need the hearing held that day whether live or online please

**From:** Jennifer Lindo <jlindo@eltownhall.com>  
**Sent:** Thursday, July 30, 2020 10:13 AM  
**To:** Hollister, Timothy <THollister@goodwin.com>  
**Cc:** Bill Mulholland <billm@eltownhall.com>  
**Subject:** RE: Landmark zoning reg amendment application  
**Importance:** High

\*EXTERNAL EMAIL\*

Good Morning Attorney Hollister,

The Zoning Commission has two scheduled meetings in September, one on September 3 and one on September 17.

Your application, received on July 9, would need to be scheduled for public hearing no later than September 12, 2020.

We respectfully request an extension of time to hold the public hearing, with the intention of holding a **LIVE** public hearing on October 1, 2020, provided we are able to do so.

If this is agreeable, please provide the extension approval in writing (email is fine).

Thank you,  
Jenn

*Jennifer Lindo  
Administrative Assistant, Land Use  
Town of East Lyme  
108 Pennsylvania Ave  
PO Box 519  
Niantic, CT 06357  
(860) 691-4114  
Fax: (860) 691-0351*

**From:** Hollister, Timothy <THollister@goodwin.com>  
**Sent:** Monday, July 27, 2020 1:37 PM  
**To:** Jennifer Lindo <jlindo@eltownhall.com>  
**Subject:** Landmark zoning reg amendment application

Hi Jen - do we have a September date for this hearing? Thanks

# Town of

P.O. Drawer 519  
Zoning Commission



# East Lyme

108 Pennsylvania Ave  
Niantic, Connecticut 06357  
Phone: (860) 691-4114  
Fax: (860) 860-691-0351

September 15, 2020

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TOWN OF EAST LYME

**ZONING COMMISSION**

**Notice of Public Hearing**

The East Lyme Zoning Commission will hold a Public Hearing on October 1 2020, at 7:30 p.m., via Zoom virtual meeting, (meeting instructions below) to consider the following:

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.

Join Zoom Meeting

<https://us02web.zoom.us/j/82995050759?pwd=a3cvaEJMTzNQdHpQcFQ1WUFHTkpVQT09>

Meeting ID: 829 9505 0759 Passcode: 586123 Call: +1 646 558 8656 US (New York)

A copy of the proposed text amendment is available for public viewing on the East Lyme Website, at [eltownhall.com](http://eltownhall.com), Government, Board Commissions, Zoning Commission, Zoning Commission 2020 Materials, Zoning Commission October 1, 2020.

Copies of the Agenda and related materials are also available on the East Lyme Website for review.

<https://eltownhall.com/government/boards-commissions/zoning-commission/zoning-commission-2020-materials/zoning-commission-2020-materials-october-1/>

Terence Donovan, Secretary

**FILED**

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TOWN OF EAST LYME  
ZONING COMMISSION  
Notice of Public Hearing

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Join Zoom Meeting  
<https://us02web.zoom.us/j/82995050759?pwd=a3cvaEJMTzNQdHpQcFQ1WUFHTkpVQT09>

Meeting ID: 829 9505 0759 Passcode: 586123 Call: +1 646 558 8656 US (New York)

A copy of the proposed text amendment is available for public viewing on the East Lyme Website, at [eltownhall.com](http://eltownhall.com), Government, Board Commissions, Zoning Commission, Zoning Commission 2020 Materials, Zoning Commission October 1, 2020.

Copies of the Agenda and related materials are also available on the East Lyme Website for review.

<https://eltownhall.com/government/boards-commissions/zoning-commission/zoning-commission-2020-materials/zoning-commission-2020-materials-october-1/>

Terence Donovan, Secretary

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**SOUTHEASTERN CONNECTICUT COUNCIL OF GOVERNMENTS**

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**(860) 889-2324/Fax: (860) 889-1222/Email: [office@seccog.org](mailto:office@seccog.org)**

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**(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 17<sup>th</sup>.

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](mailto: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

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*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](mailto:office@seccog.org).*

# Town of

P.O. Drawer 519

Department of Planning &  
Inland Wetlands

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



# East Lyme

108 Pennsylvania Ave

Niantic, Connecticut 06357

Phone: (860) 691-4114

Fax: (860) 860-691-0351

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 blue ink that reads "Michelle Williams" followed by a stylized flourish that appears to be "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.

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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 mark<sup>1</sup>:

- 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.

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<sup>1</sup> 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.

**APPLICATION OF LANDMARK DEVELOPMENT  
GROUP LLC AND JARVIS OF CHESHIRE LLC  
FOR AMENDMENT TO EAST LYME  
ZONING REGULATIONS § 32,  
AFFORDABLE HOUSING DISTRICT**

**Applicant's Supplemental Materials  
September 29, 2020**

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2. Zoning Commission minutes, 2013, regarding Gateway Site Plan
3. Zoning Commission minutes, 2015, regarding Landmark Preliminary Site Plan
4. Zoning Commission action on Preliminary Site Plan
5. Superior Court Brief of Zoning Commission and Intervenors, 2019

# **Tab 1**

**EAST LYME ZONING COMMISSION  
PUBLIC HEARING I  
Thursday, JANUARY 17th, 2008  
MINUTES**

The East Lyme Zoning Commission held a Public Hearing on the Application of Theodore A. Harris for Gateway Development/East Lyme LLC to amend the East Lyme Zoning Regulations to add proposed Section 11.A.9 to serve as an alternative to the existing Zoning regulatory guidelines in the Gateway Zoning District and which would establish Zoning requirements for development under a set of 'Master Development Plan' regulations providing specific criteria for mixed-use development, building sizes, eligibility, submission requirements, approval criteria, implementation phasing and public improvements, on Thursday, January 17 2008 at the East Lyme Middle School, 30 Society Road, Niantic, CT. Chairman Nickerson opened the Public Hearing and called it to order at 7:32 PM.

**PRESENT:** Mark Nickerson, Chairman, Rosanna Carabelas, Secretary,  
Norm Peck, Steve Carpenteri, John Birmingham, Alternate, William  
Dwyer, Alternate

**ALSO PRESENT:** Attorney Theodore Harris, Representing Gateway Dev/EL LLC  
Jay Fisher, Principal SK Properties Development  
Chris Knisley, Principal, KGI Properties LLC  
Michael Wang, Architect, Arrowstreet  
John Mancini, Engineer, BL Companies  
Bill Sweeney, Planner, TCORS  
Donald Klepper-Smith, Chief Economist DataCore Partners LLC  
Bob Bulmer, Alternate  
William Mulholland, Zoning Official

FILED IN EAST LYME TOWN  
CLERK'S OFFICE  
Jan 24 20 08 at 10:25 <sup>AM</sup> <sub>PM</sub>  
Esther B. Williams  
EAST LYME TOWN CLERK

**ABSENT:** Ed Gada, Marc Salerno

**PANEL:** Mark Nickerson, Chairman, Rosanna Carabelas, Secretary,  
Norm Peck, Steve Carpenteri, John Birmingham, Alternate,  
William Dwyer, Alternate

**Pledge of Allegiance**

The Pledge was observed.

**Public Hearing I**

1. Application of Theodore A. Harris for Gateway Development/East Lyme LLC to amend the East Lyme Zoning Regulations to add proposed Section 11.A.9. This proposal serves as an alternative to the existing Zoning regulatory guidelines in the Gateway Zoning District and would establish Zoning requirements for development under a set of 'Master Development Plan' regulations. The proposal provides the specific criteria for mixed-use development (retail & residential), building sizes, eligibility, submission requirements, approval criteria, implementation phasing and public improvements.

Mr. Nickerson welcomed everyone and noted that the legal ad had run in The Day on January 4, 2008 and January 14, 2008. He then asked Ms. Carabelas, Secretary to read the correspondence into the record.

Ms. Carabelas, Secretary read the following correspondence into the record:

- ◆ Letter dated 1/16/08 to Mark Nickerson, Chairman, Zoning Commission from Francine Schwartz, Secretary, EL Planning Commission – Re: Application of Theodore Harris for Gateway Development/East Lyme LLC to amend the Zoning Regulations to add new Section 11.A.98 to allow development under a set of “Master Development Plan” regulations – finding the application CONSISTENT with the recommendations in the Plan of Conservation & Development and Yale Charrette Report to channel future commercial growth toward the Rte/ 161/I-95 interchange.
- ◆ Letter dated 11/20/07 to EL Zoning Commission from Ed Shapiro, EDC Chairman – Re: The Gateway Project – finding the latest Gateway submission with its’ extensive redesign of the I-95 North and Southbound exits and entrances a major plus for the Town
- ◆ Email Letter dated 1/10/08 to Zoning Commission C/o Bill Mulholland from Marcy Balint, OSLIP - Re: Zone Change to add Proposed Section 11.A.9 to the Zoning Regulations – finding that the site under discussion is located outside of the coastal boundary.
- ◆ Letter dated 11/20/07 from Theodore Harris to Bill Mulholland, ZO – Re: Gateway Development East Lyme LLC – supplying text amendment and clients’ fund check of \$230.00.

Mr. Nickerson noted that the Regional Planning Commission did not meet in December so there was no report from them.

Mr. Nickerson then called upon the applicant or their representative for their presentation.

Attorney Theodore Harris, representing the applicant synopsised the history of this text amendment and the subsequent variety of meetings and events which brought them to this evolution in the plans. He said that the criterion is based on broad goals and that it is a modified regulation that they are bringing forth this evening. He noted as they have stated, that the Planning Commission has found this proposal consistent with the Plan of Conservation and Development goals and that it was felt that this plan would help ease the tax burden of the Town and concentrate the commercial district in the Route 161 area. The Plan focused specifically on that area and the Gateway is located in that area of the Town. He said that the residential was placed west of the Pattagansett to go along with what is located in that area currently. The practical difficulties of the area and the site (ie. Infrastructure, I-95) are the reason why there is a need for a special regulation for this site. The magnitude of the infrastructure work makes it extremely expensive and there is a need for flexibility in the use of the site. The POCD suggested that they should petition the State to get I-95 upgraded however; they all know that the State is not about to move quickly to get all of this work done and that money is also an object for the State. They feel that they now have the framework to be able to move forward with this project and that the two developers own a substantial portion of the zone such that the project is viable. The Master Development Plan is based on a form-based concept of Zoning and it protects the Town by giving extraordinary discretion to the Town. He said that he and Bill Sweeney have worked on this plan for a long period of time and they believe that it promotes a flexible, creative design. It provides for the maximum use of the parcel while minimizing the impact. He introduced Bill Sweeney to explain the specifics of the flowchart of this project.

Bill Sweeney, Certified Land Planner with TCORS said that he has been working for about two (2) years on this Gateway project proposing an alternate process to develop the Gateway District. The plan is extremely flexible and comprehensive and is based on form and aesthetics. He said that it is an alternative process that is not mandatory and is for the developer to apply under should they so desire. The Master Development Plan allows for development in phases over a number of years with one of the benefits being the flexibility and comprehensiveness that it provides. It is a modified form-based regulation and this is the direction that modern Zoning is moving in and it is a cutting edge, innovative way to develop. He passed out a flowchart which outlines the sequential steps that are to be taken during this process. This was entered into the record as **Exhibit 1**. (Copy attached at end of Minutes) He explained the flowchart steps noting that Step 2 will result in architectural standards that come out of this as booklets that become regulatory documents for the project. The Master Development Plan sits as an umbrella approval over all of this governing it as it is built out. He said that they are here tonight to approve the MDP process. He then explained the MDP Text Amendment which was entered as **Exhibit 2**. He explained that the changes are a result of the meetings that were held with the neighborhood people, staff and others since the last time that they presented the first MDP. He said that they removed the reference to Section 25 as this is not a Special Permit and they wanted to make sure that they could move and act on this.

Attorney Harris noted that the section on retail use was revisited and that they have provided for a maximum of 425,000 sq. ft. of retail space with a specific breakdown.

Mr. Sweeney said that the uses that are outlined are absolutely necessary to this project.

Mr. Nickerson asked about the R-40 zone as the last application had them going into that area and this one does not.

Mr. Sweeney said that was correct and that Jay Fisher of SK Properties Development would explain that aspect a bit later. He noted that one of the issues at the workshops and meetings that they held was that of the tax impact and analysis and that they have Don Klepper-Smith of the Governor's Council of Economic Advisors and Chief Economist with DataCore Partners LLC present this evening to provide that information to them.

Don Klepper-Smith said that DataCore Partners LLC has been asked by Mr. Fisher and Mr. Knisley to conduct an impact analysis. They have compiled a 70 page report and have condensed it to a six (6) page synopsis. This summary was entered into the record as **Exhibit 3**. He said that they have conducted many of these types of studies and that he would hit only on the key concepts this evening. He explained that the data inputs are common to all fiscal impact studies and that they include the local budget, debt, spending and that they look at 100% of the Town's non-educational budget. They work with the Assessor on projected mill rates and utilize the Rutgers Study as it has a new multiplier set that is based on the 2000 census. The fiscal impact study does not have indirect impacts. All estimates are based on conservative estimates and are baseline estimates which in all probability are likely to be much higher in the end product. At full build out they are looking at a little over \$2.1M in tax revenue for the commercial aspect and another \$500,000 for the residential. He summed up that this project makes good sense.

Ms. Carabelas said that she is not sure that he answered the right question and asked about the type and need of a 140,000 sq. ft. anchor store.

Mr. Klepper-Smith said that was not a part of the study that he was commissioned to do.

Mr. Fisher said that Ms. Carabelas has asked a question that they do not have an answer to or an application for because they do not have a text amendment to file under. With respect to the 140,000 sq. ft. anchor store size – this allows them to be able to negotiate with a wide range of potential users which are necessary to make this a viable project. The size provides the ability to bring in people to the other stores and the area.

Ms. Carabelas said that if they are comparing this to the Evergreen shops that they do not have that size store in the Evergreen shops.

Mr. Fisher said that while that is true that they do have many areas of shopping surrounding the Evergreen shops and those additional shopping areas draw the people in. He added that they are also putting in a 220,000 sq. ft. Wal-Mart on the hill over in that area. And, this plan, without the 140,000 sq. ft. anchor store – does not happen.

Mr. Nickerson asked Mr. Klepper-Smith about the education budget/monies and the \$7808 per student that we spend plus the \$3000 per student that the State supposedly pays and if that actually is so.

Mr. Klepper-Smith said that he could not answer that as it is a conflict of interest for him. However, there is a report that they can view that will answer that for them.

Mr. Carpenter asked what kind of impact this would have on the local businesses.

Mr. Klepper-Smith said that there is no model to compare it to and that they are really talking goods and services that are like no other in the Town. There is no quantitative model that can be used to speculate and they would get as many different answers as there are economists.

Mr. Fisher said that what they are planning to have are concept national stores and none that would be competing with the shops in Niantic or Flanders Four Corners.

Chris Knisley, Co-Developer, KGI Properties LLC said that is a good question regarding the impact to the other businesses in the Town. He said that they met with the Niantic Merchants Group in Town also and that they were extremely well received and the meetings well attended and the people were very positive about

what this could do for downtown Niantic. It is seen as a complimentary use as each of them has different draws.

Mr. Nickerson commented that there was also some discussion with the EDC regarding a Tourist Information Center possibly being located here.

Mr. Peck asked if the total net tax income is combined.

Mr. Klepper-Smith said that \$2.1M would be from the commercial and \$565,800 would come from the residential for a combined total of \$2.6M.

Mr. Peck noted that they had evaluated the residential component and asked how it calculated out.

Mr. Klepper-Smith said that the multiplier is driven by the Rutgers Study Report and that it would come out to around 53 additional school age children although all of them may not be 'new' as some people may move within the Town to this area.

Mr. Peck asked if when they were figuring for Police if they figured the retail component would have its' own Police.

Mr. Klepper-Smith said that the build out is such that the formulas reflect municipal factors and it was estimated for the commercial side. It assumes that Public Safety will be increased to the extent that it exists in the Town.

Mr. Fisher added that in addition there would be private security on the premises. He said that he also contacted three (3) other Towns Police Departments that have shopping malls located in them and that they faxed over their crime statistics. Out of all three of them there was one assault and other issues were employees inadvertently setting off the alarm systems and some fender benders. He said that the report and the respective Town Police Departments are available to be called should they desire to speak with them.

Mr. Dwyer noted the population number of 18,000 and asked if that included the institutional prison population.

Mr. Klepper-Smith said that they used the population statistic and that it excludes the prison population.

Mr. Nickerson noted that at this time that they would break from tradition as Mr. Klepper-Smith has a broken arm and some distance to travel and that he would take comments from the public regarding the impact analysis only. He called for anyone from the public who wished to comment on this study or address the Commission with questions that they would like to have Mr. Klepper-Smith answer regarding the study.

Rocco Tricarico, 17 Rose Lane said that regarding the economics that he would like to know if they spoke with the Board of Ed at all on the trends they see and the number of children.

Mr. Klepper-Smith said that they did not ask them directly and that the information came from State reports on trends and other data. This data shows that by the year 2030 that the State expects the student population to decline by 17,000 children. He said that with 53 additional children that there are no capacity issues and that some of those children may already be in the system.

Mr. Tricarico said that he noticed that no special education costs were included here.

Mr. Klepper-Smith said that in the summary letter it details the school expenses and talks about the expenses for East Lyme. He noted that the East Lyme district information is in the report from the States' most comprehensive measures and that if anything; they have over-estimated special education spending.

Mr. Tricarico said that he has not had the opportunity to review the report prior to this meeting and that he is not able to say that he is comfortable with this information.

Mr. Nickerson said that if he wants to have a copy of the report that he could call the Zoning Office and request a copy of it.

Mr. Klepper-Smith said that the fiscal impact studies offer a full disclosure policy and that everyone is able to view the reports that were used, the flowcharts and information and that is why they provide a 70 page comprehensive report.

Mr. Fisher said that they will make the report available to the Zoning Office. He also reminded them that they are here tonight for the text amendment only and that all else that is being presented is just being used as an example. He then presented his slide presentation of the area that they own, the property that borders the Gateway and the topography of the site. He said that they own almost 200 acres. He explained the differences between the original plan from last spring and the new revised plan. He said that the R-40 area near the residential areas is being dedicated to open space provided the plan goes forward. This would provide a link to the Town area and the other open space. It is 900' to 1000' wide and heavily wooded with an elevation of up to 100', comprising roughly 30 acres. They will also have 225 apartments and 50 town homes and no single family houses. The number of residential units has gone from 400 to 275. They have kept the amenities such as the community center area and active and passive recreation areas. He noted that the gazebo area is approximately the size of a football field. He then showed examples of the facades and noted that on the main streets that all of the driveways are off the rear. He said that one of the Commissioners had previously asked them if they contemplated a true mixed use so they chose an area for office over retail. The streetscape is pedestrian friendly and depicts various architectural styles. There is also infrastructure connectivity for future use of the remaining property.

Ms. Carabelas said that if some of the junior stores could be 35,000 sq. ft. and if Barnes & Noble would be an example of that type of store – what type of store would fit the 140,000 sq. ft. format.

Mr. Knisley said that what the 140,000 sq. ft. does is to allow them to talk with a number of retailers but not with Wal-Mart as that is too small for them. This size is similar to the Home Depot stores, Lowe's, Costco and BJ's type of stores but they have repeatedly said that they have not envisioned a home improvement store for this area.

Mr. Fisher confirmed that there would not be a home improvement store here. He then explained the traffic pattern that currently exists and the upgrades that will be done which will make traffic flow better on Flanders Road as well as the I-95 ramps in that area. He noted that they have been working with the DOT on these changes. He then listed the benefits for the Town –

- ◆ Pedestrian-friendly streetscapes
- ◆ Vibrant open spaces
- ◆ Significant tax revenue
- ◆ Roadway improvements
- ◆ Market-rate apartments
- ◆ Open Space areas
- ◆ New Jobs
- ◆ New shopping, dining and entertainment opportunities

He then directed them back to the flowchart and said that they are still at the text amendment level noting that at this level the Town has the authority to review this at every step of the way.

Ms. Carabelas asked if the utilities would be underground.

Mr. Fisher said that they have not been designed yet and that it would need to be worked out with the utility and with staff.

Mr. Wang, Architect with Arrowstreet passed out copies of the Gateway Commons booklet of the slide presentation which was entered into the record as **Exhibit 4** along with a CD of the booklet.

Ms. Carabelas asked about the interconnectivity of the open space.

Mr. Fisher said that if the MDP goes through that would then get them to the next step. They would not be discussing deeding the land until they could get an application in under the MDP, anything otherwise would be premature.

Mr. Carpenteri asked what type of demands would be made on the water there.

Mr. Fisher said that they have been told by the Public Works staff that there is water available and that they will have it. However, they cannot go to the WPCA without the text amendment as that is what will allow an application and plan to be submitted. The Master Plan level will have a number of tweaks as necessary.

Mr. Nickerson noted that at this point they are only looking at the text amendment.

Mr. Peck asked what definition they were using for net floor area.  
Attorney Harris said that it is as defined in the Zoning Regulations and is basically the interior area.

Mr. Peck asked at what point do they decide on permitted uses.  
Mr. Fisher said that it is at the Master Plan level but this does not replace the permitted uses for the area.  
Mr. Sweeney noted that in the MDP that the uses are actually restrictive in nature (office, residential, retail).

Mr. Nickerson called for anyone from the public who wished to speak in favor of this application –  
He asked that they address the Commission and not the applicant and that there be no debates, accusations or finger pointing.

Mike Schultz, Lovers Lane said that as a resident and taxpayer of East Lyme that he has been looking forward to this project. He said that he sees it as a win – win for the Town and that it would tie the Town together and would help with the taxes. He is in favor of this application.

Bill Mulholland, 4 Bittersweet Drive said that he guesses that he is in favor of this as earlier Attorney Harris spoke of the benefit of having high density residential homes with appropriate buffers and he has to agree with that. He said that the developer met with the Rose Cliff Estates neighbors and that the revised plan that they are seeing tonight is a result of those meetings. The open space and buffer is great for their neighborhood. He said that his only concern is that the open space remains undeveloped as 900' to 1000' from their homes is a significant amount and they want to make sure that this remains in tact. He said that he understands that it gets done with the text amendment and speculates that the neighbors were satisfied with this remaining open space and that is why so few are present tonight – but – he wants to be sure that it will remain as open space and be deeded that way.

Mr. Mulholland, Zoning Official said that he is reassured that it would happen should this amendment go forward and that it is sufficient that it has been put into the record at this time.

Mark Bennett, 10 Bittersweet Drive asked if they will still leave this public hearing open this evening as he wants to see the fiscal study and may have a question about it and wants to know how to enter his comments into the record.

Mr. Nickerson said that he could just show up for the next meeting and speak there.

Mr. Mulholland said that they expect to continue the public hearing until the February 7, 2008 meeting of the Commission.

Rocco Tricarico, 17 Rose Lane said that as a Rose Cliff resident that he has been following this closely. He gave credit to the development team in trying to make a community effort to inform people. He said that while he conceptually supports the part of the project that was presented that he would like to see what permitted uses will be rolled out under the Master Plan and that he will have further comments then. He added that he thinks that the lack of people present tonight is due to them not knowing where the public hearing site was and not seeing an agenda or information about this on the website.

Mr. Mulholland noted that the site information was posted on the outer doors of the Town Hall and that it was also in the newspaper. He said that the lateness was due to the fact that they almost did not make a place change but as with any public hearing, it is a subjective issue and they do the best that they can with the information that they have.

Mr. Nickerson called for anyone from the public who wished to speak against or neutrally on this application-

Ben Gentile, 25 Rose Lane asked about the Hingham Mass building that was depicted in one of the slides and what the size of that facility was. He also asked what type of building would go in there since they have said that it would not be a lumber yard or a Sam's Club – he would like a list of what could go in there.

Mr. Mulholland said that he thinks that everyone is curious however legally they do not have to give them that information. It will occur at the proper time.

Mr. Fisher said that they cannot give that information as part of it is contingent on the market and the negotiations that will have to take place.

Michael Wang, Architect with Arrowstreet said that the Hingham, Mass model was set for 125,000 sq. ft.

Mr. Nickerson said that with respect to the type of retailers that Mr. Knisley has said that this was not going to be the typical ones but that they envisioned more upscale shops going in this area.

Mr. Knisley said that they envisioned specialty retail similar to what would be found at the Farmington Valley Shops and the Evergreen Shops, such as LL Bean, Black Market and Tulip along with local and national retailers.

Ms. Carabelas said to Mr. Mulholland that with reference to the title of the text amendment that she has some trouble with the square footage and asked if this will open up a can of worms and could relate to other areas of the Town.

Mr. Mulholland said that by its title 'Gateway' that it is specific to this area only.

Mr. Fisher noted that there are only about 20 acres left in the Gateway that they do not own.

Mr. Dwyer asked if they are eliminating the site plan in 11.A.9.4

Attorney Harris said that it is eliminated here for the initial master development but not for the next process.

Mr. Sweeney clarified that the site plan comes after the Master Plan and that it is in the fourth box on the flowchart and has not been eliminated.

Attorney Harris noted that all of the other things listed have to happen before the site plan happens.

Mr. Nickerson asked how a Town protects itself so that the development happens as it is supposed to and is not left half done – like a ghost town with nothing but the residential done.

Mr. Fisher said that he is not sure that it makes practical sense to do the residential early on as they have to do the infrastructure first and the exorbitant cost means that the retail has to be done first as they will be working for years only paying out and not getting anything in with the infrastructure work.

Mr. Carpenteri asked if this would really improve the traffic on Flanders Road from what it is today.

Mr. Fisher said yes.

John Mancini, Engineer with BL companies said that one of the reasons why the problem has not been addressed is because the State does not control enough real estate to fix the ramps and it would require a large undertaking to fix them. The ramps are also stuck too close to the bridge itself. It is a comprehensive project and the ramp system and frontage road system would have to go in and the developer owns the property that would have had to be 'taken' – so they as individuals can design and fund it faster than the State could possibly get it funded and acquire the land and get the project done. He said that they have been to the State four times to keep up on the discussions on what has to be done and what they have agreed upon being done.

Mr. Fisher summed that they have been consistent with their presentations regarding the open space in the R-40 zone. He said that they also sent notices of this meeting to all of the names that they had on the lists from all of the meetings that they held so those people were given notice and could attend. He added that they were asked about the fiscal impact on the shops in the area and that they have been asked to have another fiscal impact study done and that they have offered to pay for another one to be done.

Mr. Mulholland said that he thinks that the report will be ready for the February 7, 2008 meeting.

Mr. Fisher asked to see the report before that evening so that they can review it. He said that he would appreciate their promptness in getting a copy to him.

Attorney Harris thanked the Commission and public and reminded everyone that they are here only for the text amendment change.

Mr. Nickerson asked if the Commission had any other comments or questions –  
Hearing none –

Mr. Nickerson called for a motion to continue this Public Hearing.

**\*\*MOTION (1)**

**Ms. Carabelas moved that this Public Hearing be continued to the next meeting of the Commission.**

**Mr. Dwyer seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

Mr. Nickerson adjourned this Public Hearing at 10:40 PM and continued it to the next meeting of the Commission.

(Note: A break was taken here)

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary

**TEXT AMENDMENT**

*Only Allows dev. to move to next step*

**PUBLIC HEARING REQUIRED**

EFFECT: ALLOWS FOR THE SUBMISSION OF MASTER DEVELOPMENT PLAN FOR THE GPDD TO THE ZONING COMMISSION

SUBMISSION REQUIREMENTS:

- A. PROPOSED TEXT AMENDMENT

**MASTER DEVELOPMENT PLAN**

**PUBLIC HEARING REQUIRED**

EFFECT: ALLOWS FOR THE APPROVAL OF A COMPREHENSIVE DEVELOPMENT PLAN WITH DEFINED STANDARDS FOR THE GPDD BY THE ZONING COMMISSION SUBJECT TO COMMISSION SITE PLAN APPROVAL FOR EACH PHASE

SUBMISSION REQUIREMENTS:

- A. EXISTING CONDITIONS SURVEY
- B. CONCEPTUAL LAYOUT PLAN
- C. DEVELOPMENT STANDARDS
- D. ARCHITECTURAL STANDARDS
- E. TRAFFIC ANALYSIS

*collective effort*

**INLAND WETLANDS APPROVAL (EACH PHASE)**

**PUBLIC HEARING POSSIBLE**

EFFECT: ALLOWS FOR THE LOCAL WETLANDS APPROVAL OF CONSTRUCTION ACTIVITIES IN AND AROUND INLAND WETLAND AREAS BY THE CONSERVATION COMMISSION

SUBMISSION REQUIREMENTS:

- A. SITE PLAN AND DOCUMENTATION AS REQUIRED BY CONSERVATION COMMISSION REGULATIONS

**SITE PLAN APPROVAL (EACH PHASE)**

**NO PUBLIC HEARING**

EFFECT: ALLOWS FOR THE LOCAL ZONING APPROVAL OF CONSTRUCTION ACTIVITIES BY THE ZONING COMMISSION

SUBMISSION REQUIREMENTS:

- A. SITE PLAN AND DOCUMENTATION AS REQUIRED BY SECTION 24 AND MDP STANDARDS PREVIOUSLY APPROVED BY THE ZONING COMMISSION

**OTHER STATE AND FEDERAL PERMITTING (CTDEP, CTDOT, ACOE)**

**PUBLIC HEARING POSSIBLE**

EFFECT: ALLOWS FOR THE STATE AND FEDERAL TRAFFIC AND ENVIRONMENTAL APPROVAL OF CONSTRUCTION ACTIVITIES BY THE APPLICABLE AGENCY

SUBMISSION REQUIREMENTS:

- A. PLANS AND DOCUMENTATION AS REQUIRED BY EACH AGENCY

*Approvals required over each phase of the dev.*

*Required Approvals*

Proposed Zoning Text Amendment  
Gateway Planned Development District  
Master Development Plan

**11.A.9 Master Development Plan (MDP)**

*Ref to Sec. 25 removed*

As an alternative to the traditional parcel by parcel development of the GPDD Gateway Planned Development District under the preceding provisions, the Commission may, subject to a public hearing adopt a Master Development Plan (MDP) that modifies the zoning requirements of the District in accordance with the following standards.

**11.A.9.1 Purpose**

*Same*

The purpose of the MDP process is to encourage the comprehensive planning and coordinated mixed-use development of multiple parcels within the District, promote creativity and superior design through flexible and context-sensitive development standards, support significant economic investment, reduce impacts associated with large-scale development, and provide protection to adjoining neighborhoods.

**11.A.9.2 Effect**

The adoption of an MDP shall modify the zoning requirements of the GPDD Gateway Planned Development District as specified by the MDP and except as provided in Section 11.A.9.2.1 and 11.A.9.2.2 shall allow for deviation from the typical requirements for use, bulk, and other development standards. Any provision of the East Lyme Zoning Regulations applicable to the property and not specifically superseded by adoption of the MDP shall continue in full force and effect.

**11.A.9.2.1 Retail Use**

*Atty Harris explained*

To the extent that a MDP shall contain retail uses, such uses shall not exceed 425,000 square feet of net floor area in total, and shall be subject to the following bulk limitations:

- (A) Not less than twenty-five (25%) percent of all retail space in the MDP shall be contained in stores with less than 20,000 square feet of net floor area. *leaves 300,000 sf. for other uses*
- (B) Not more than one (1) anchor store, containing no more than 140,000 square feet of net floor area, shall be allowed. *leaves 180,000 sf for*
- (C) Not more than Five (5) junior anchor stores, typically ranging from 25,000 to 90,000 square feet shall be allowed, provided that no single store may exceed 90,000 square feet of net floor area, and not more than two (2) such stores may exceed 50,000 net floor area. *was 180,000 sf. near*

*Bill Secretary explained 30% decrease*

**11.A.9.2.2 Residential Use**

To the extent that a MDP shall contain residential uses on the west side of the Pattagansett River, such uses shall be subject to the following: *has been reduced significantly*

- (1) No single family detached unit shall be permitted.
- (2) Such uses shall be designed and located to minimize the impact on surrounding areas by incorporating one or more of the following:
  - (a) Buffers to adjoining residential uses.
  - (b) Locating the lower density uses in areas near existing residential uses.
  - (c) Providing open space and/or recreational areas.
  - (d) Providing architectural and lighting controls.
- (3) The total number of units shall not exceed 275.

**11.A.9.3 Eligibility**

*No changes to this section*

A MDP application must include at least 75% of the land within the GPDD Gateway Planned Development District. A MDP must provide for reasonable access and utility interconnections to any portion of the District not included within a proposed MDP. The uses and bulk contained in the MDP shall not be considered with respect to site plans for portions of the District outside the MDP.

**11.A.9.4 Submission Requirements**

An application for MDP adoption shall require public hearing and in lieu of a site plan as described in Section 24, shall include the following components:

- (a) Existing Conditions Survey prepared by a licensed surveyor showing:
  - (1) Existing topography with 5-foot contours showing the general gradient of the site, existing structures, existing roads and rights-of-way, easements, major topographic features, inland wetlands, watercourses and flood plains.
  - (2) Land uses, zoning and approximate location of buildings and driveways within 100 feet of the site.
  - (3) A-2 boundary survey.
  - (4) Location map.
- (b) Conceptualized Layout Plan prepared by a licensed engineer, architect and/or landscape architect showing:
  - (1) General location and nature of proposed land uses.
  - (2) Proposed public and private rights-of-way, parking areas, easements, and public and private open space areas.
  - (3) Proposed building footprints, floor areas, and building heights.
  - (4) Proposed location of landscaping, buffering, and screening.
  - (5) Utility and highway improvements.
  - (6) Construction phasing plan. *(new)*

- (c) Development Standards for the proposed development shall be provided in a narrative form including, but not limited to:
  - (1) Permitted uses subject to Site Plan approval in accordance with Section 24.
  - (2) Bulk and dimensional requirements.
  - (3) Parking and loading.
  - (4) Streets and sidewalks.
  - (5) Landscaping and screening.
  - (6) Lighting.
  - (7) Signage.
  - (8) Open space and conservation areas.
  - (9) Any other standards the Commission may reasonably require.
- (d) Architectural Standards for the proposed development provided in both narrative form and visual representations prepared by a licensed architect showing:
  - (1) Architectural styles.
  - (2) Massing and scale.
  - (3) Materials and colors.
  - (4) Roof lines and profiles.
  - (5) Typical building facades and elevations.
  - (6) Provisions which require large format stores to contain features calculated to minimize the appearance of bulk.
- (e) Traffic Analysis prepared by a professional traffic engineer including:
  - (1) A comprehensive traffic study detailing the impact of the proposed development.
  - (2) Improvement plan and the measures necessary to mitigate those impacts.

#### **11.A.9.5 Approval Criteria**

The adoption of a MDP shall require a public hearing with notice of the hearing made by publication. The Commission shall consider the following criteria in determining whether to adopt a proposed MDP:

- (1) Consistency with the Plan of Conservation and Development.
- (2) Consistency with the goal of the GPDD Gateway Planned Development District to broaden the Town's tax base while providing a coordinated development, in harmony with the underlying aquifer protection district, calculated to maximize the potential of the district.
- (3) Consistency with the purpose of the alternative MDP process.
- (4) Consistency with the orderly development of the istrict with provisions for necessary utility and traffic infrastructure and in harmony with the surrounding land uses.

The Commission shall reserve the right and discretion to deny the adoption of any MDP that, in the opinion of the Commission, fails to meet one or more of the above-mentioned criteria.

**11.A.9.6 Implementation**

*basically stages 3 and 4 in flowchart*

The implementation of the MDP shall be subject to Site Plan approval by the Commission pursuant to Section 24 of these Regulations. The Site Plan submission shall also contain the information required pursuant to Sections 11.A.8.1-11.A.8.4 and shall comply with the standards outlined in Section 11A.5 (Environmental Requirements). All applications for Site Plan approval under an adopted MDP shall conform to the modified Development and Architectural Standards of the MDP and substantially conform to the size and location of buildings and uses as shown on the Conceptualized Layout Plan. All applications for Site Plan approval shall illustrate the adherence the adopted MDP through plans, renderings, architectural elevations, and other materials. Any Site Plan Application that substantially conforms to an adopted MDP shall be approved by the Commission.

**11.A.9.7 Phasing and Public Improvements**

*reference same*

Implementation of an adopted MDP may be phased on the condition that all public infrastructure associated with each phase of the MDP shall be constructed prior to the issuance of Certificates of Occupancy for such phase or shall be bonded to the satisfaction of the Commission.

# DataCore Partners LLC

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1276 Arbutus Street, Suite 100  
Durham CT 06422  
Middletown Office/Fax: (860) 349-8221  
New Haven Office: (203) 782-4337  
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January 14, 2008

Mr. Jay Fisher  
Konover Properties  
342 North Main Street  
West Hartford, CT 06117

Mr. Chris Knisley  
KGI Properties LLC  
One Providence Washington Plaza, 9<sup>th</sup> floor  
Providence, Rhode Island 02903  
(401) 273-8600

Dear Mr. Fisher and Mr. Knisley:

Per your request, I would like to summarize my analysis of the net fiscal impacts from your proposed multi-use development as modified per the inputs from the Town and the neighborhood meetings in East Lyme, Connecticut.

It is my understanding that you have requested a text amendment to the zoning regulations and that the information that I have been provided is purely a concept plan with no current basis in zoning. In order to not overstate this opportunity, I have utilized a conservative set of assumptions. Therefore, my analysis, based upon those conservative economic assumptions, may understate the net fiscal benefits to the Town. I look forward to a more detailed site plan proposal at which time we can develop a much more refined analysis.

Conducting an analysis from a concept plan necessitates a significant number of assumptions, which I have attached as an exhibit. In summary, revenue assumptions are built on a projected mill rate of 18.55 in the coming fiscal year, extrapolated into the future based on the Town's historical growth rate of 4.2%, rather than the old mill rate of 28.39. Municipal expenses are allocated based on the per capita multiplier method for residential development, and the proportional valuation method for commercial development.

Exhibit 3 Zoning - JH E 1/17/08

In conclusion, based on my preliminary analysis of the proposed concept plan presented to me by the Konover/Koffler team, the calculated net fiscal impacts to the Town of East Lyme from the completion of this project would be as follows:

**A Positive Net Tax Impact of Approximately \$2.57 million dollars (2011).**

<b>Source/Use</b>	<b>Amount</b>
1- Year Gross Tax Revenue (2011)	\$3.960 Million
1- Year Municipal Expenses (2011)	\$0.823 Million
1- Year School Costs (2011)	\$0.528 Million
Current Tax Revenue from Unimproved Land (2011)	\$0.039 Million
1- Year Net Fiscal Impact (2011)	\$ 2.570 Million

Note: Above numbers are rounded

As previously expressed, this is a “proforma” estimate based upon a substantial number of assumptions that I would expect to be more fully developed at the Master Plan phase.

I reiterate my initial position that the more appropriate time for this analysis is during the Master Plan stage of application and program development when the actual development plan has been better refined and finalized.

Finally, I would like to thank Ms. Donna L. Price-Bekech, East Lyme’s Assessor, and her staff, as well as other municipal officials, who were very helpful in providing data for my analysis.

Please call me at my New Haven office, (203) 782-4337, if you have any additional questions at this time.

Sincerely,

Don Klepper-Smith  
Chief Economist and Director of Research  
DataCore Partners LLC

## ASSUMPTIONS

### 1. The commercial portion of our analysis works with the following assumptions:

Estimated buildout of 425,000 square feet. Multi-use development. Construction starts in 2009, with full buildout estimated in 2011. Full municipal expenses incurred as of 2008.

Total buildout: 3-5 years. Average annual buildout: 4 years.

Estimated market value of construction based on similar construction elsewhere; assessed values based on 70% of market values.

Estimated land values per Town Assessor: Market value of developed land: \$125,000 per acre; undeveloped: \$15,000 per acre.

Estimated market value of outbuildings: \$2,500 per parking space for 1,700 spaces.

3% annual inflation rates, applied to municipal expenses, current property taxes on the property, and construction costs.

Personal property to real property ratio of 11% based on similar local commercial construction in the region.

Historical mill rates per Town Assessor. Projections per Town Assessor. Current mill rate of 18.55 extrapolated at its historical growth rate of 4.2% after revaluation.

Current assessment on current parcel: \$1,799,300

Analysis assumes loss of existing tax revenue to the Town (opportunity cost); property transfer in 2008.

Analysis assumes buildout of 45 acres of out 54.3 acres. 9.3 acres on commercial portion to remain undeveloped.

40-year depreciation schedule on commercial construction, 15-year depreciation on outbuildings.

Analysis assumes that full municipal expenses start being incurred as of 2009.

Analysis excludes impacts from consumption of goods and services from future employees.

Analysis excludes impacts from future revaluations.

Any required infrastructure is the responsibility of the developer, not the town.

### 2. The residential portion of our analysis works with the following assumptions:

275 residential units/market pricing: 50 townhomes (35 2-BR units prices at \$318,750(2008 dollars), 15 3-BR units priced at \$383,500 (2008 dollars); 225 apartments: 22 1-BR units renting for \$1080/month (2008 dollars); 192 2-BR units renting for \$1,620/month (2008 dollars), and 11 3-BR units renting at \$1,800/month (2008 dollars).

Construction starts in 2010, with full buildout in 2013.

Total buildout: 3-5 years. Average annual buildout: 4 years.

No age restrictions; full student impacts on school system

3% annual inflation rate

Personal property taxes (motor vehicles) per household per Assessor's data: \$325.19

Projected municipal expenses from 2007-2008 Approved Town Budget

Most comprehensive measures of municipal expenses considered (Entire non-education budget)

Public Safety per capita expense for East Lyme in 2007-08: \$133.14

Public works per capita expense for East Lyme in 2007-08: \$147.68

General Local Govt. per capita expense for East Lyme in 2007-08: \$385.17

Miscellaneous municipal per capita expense for East Lyme in 2007-08: \$317.46

Demographic multipliers per Urban Land Institute Development Impact Assessment Handbook, New Fiscal Practitioner's Handbook, and June 2006 Update to Fiscal Practitioner's Handbook (Rutger's Center for Urban Policy Research)

Current per person household ratio for all East Lyme households as of 2006: 2.93; population of 18,808; households of 6,416 (CT Economic Resource Center)

Historical mill rates per Town Assessor. Projections per Town Assessor. Current mill rate of 18.55 extrapolated at its historical growth rate of 4.2% after revaluation.

Excludes stimulative impact on local spending via consumption of trade and services.

Excludes impact of revaluation .

Data on Student Expenses per 2005-06 Strategic Profile: East Lyme School District, issued by State of CT

East Lyme School Expense per student: \$10,740 (Total); Local Portion 72.7%, or \$7,808 (ESC Grants)

Current student per household ratio is .50 students per household (3,239 students in 6,416 households)

Analysis assumes 139 acres of land will be dedicated for residential development: 35.7 acres of wetlands; 73.3 acres for apartments and townhomes; 30 acres of public areas.

**DONALD KLEPPER-SMITH**  
**Chief Economist and Director of Research**  
**DataCore Partners LLC**  
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### **1. Biography**

Don Klepper-Smith is Chief Economist and Director of Research for DataCore Partners LLC, a Connecticut based professional services firm. A professional researcher for over twenty years, Don develops and directs strategic planning initiatives on behalf of clients in order to help them make better business decisions.

Don was previously Chief Economist and Director with Scillia Dowling & Natarelli Advisors in New Haven between April 2003 and May 2004, and has also served as Executive Director of the New Haven Regional Data Cooperative, helping grow Connecticut non-profit institutions. Between 1982 and 1996, Don was Corporate Economist with Southern New England Telephone in New Haven, providing economic analysis and forecasts of national and state business conditions for use in forecasting growth of SNET telephones, toll calling and revenues.

Don has been a long-time observer of the region's economy, developing both quantitative and qualitative projections based on various market and demographic factors. He is regularly quoted by various media sources for his perspective and insights on the domestic and Connecticut economies. He is a frequent Economics Commentator on WTNH Television in New Haven, Connecticut, and is a member of the National Association of Business Economists.

With respect to the U.S. economic picture, Don is often looked to for his perspective on Federal Reserve policy, examining the future course of interest rates and their subsequent impacts on domestic and regional expansion. He is a specialist in assessing the "microeconomic" impacts of "macroeconomic" events, helping businesses chart out future strategies that best leverage the constantly changing economic landscape. Don specializes in evaluating consumer markets, providing assessments of where employment is growing and declining. A technician by trade, Don's reliable forecasts of the changing U.S. and New England economic landscapes have kept him in demand. He's often seen on WTNH television in New Haven as an Economics Commentator, offering his perspective and insights.

Don has also chaired numerous economic outlook conferences held jointly by the Economic Club of Connecticut and the Hartford Area Business Economists in recent years. In January 1992, Don was elected President of the Economic Club of Connecticut, which explores economic issues of importance to Connecticut with a focus on business,

government and education. He also served as an Economic Advisor to the Governor of the State of Connecticut during the Weicker and Rell Administrations.

Don earned his Masters Degree in Public Administration at S.U.N.Y. at Stony Brook, New York, in 1978 focusing on economics, econometric modeling, statistics and forecasting theory. In 1975, he received his B.S. in Applied Mathematics at Stony Brook.

Don lives in Durham with his wife Marcia and their two daughters, Lee and Dana.

EAST LYME ZONING COMMISSION  
PUBLIC HEARING I  
Thursday, MARCH 6th, 2008  
MINUTES

L. Blaw, etc  
EAST LYME TOWN CLERK

The East Lyme Zoning Commission held a Public Hearing on the Application of Theodore A. Harris for Gateway Development/East Lyme LLC to amend the East Lyme Zoning Regulations to add proposed Section 11.A.9 to serve as an alternative to the existing Zoning regulatory guidelines in the Gateway Zoning District and which would establish Zoning requirements for development under a set of 'Master Development Plan' regulations providing specific criteria for mixed-use development, building sizes, eligibility, submission requirements, approval criteria, implementation phasing and public improvements, on Thursday, March 6 2008 at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson opened the continued Public Hearing and called it to order at 7:32 PM.

**PRESENT:** Mark Nickerson, Chairman, Rosanna Carabelas, Secretary,  
Norm Peck, Steve Carpenteri, Marc Salerno, Ed Gada

**ALSO PRESENT:** Attorney Theodore Harris, Representing Gateway Dev/EL LLC  
Jay Fisher, Principal SK Properties Development  
Chris Knisley, Principal, KGI Properties LLC  
Brian Miller, Sr. Vice President, AICP, PP Turner Miller Group  
Max Stach, Principal Planner, Turner Miller Group  
Donald Klepper-Smith, Chief Economist DataCore Partners LLC  
Bill Sweeney, Planner, TCORS  
William Dwyer, Alternate  
William Mulholland, Zoning Official  
Rose Ann Hardy, Ex-Officio, Board of Selectmen

**ABSENT:** John Birmingham, Alternate, Bob Bulmer, Alternate

**PANEL:** Mark Nickerson, Chairman, Rosanna Carabelas, Secretary,  
Norm Peck, Steve Carpenteri, Marc Salerno, Ed Gada

**Pledge of Allegiance**

The Pledge was observed.

**Public Hearing I**

- 1. Application of Theodore A. Harris for Gateway Development/East Lyme LLC to amend the East Lyme Zoning Regulations to add proposed Section 11.A.9. This proposal serves as an alternative to the existing Zoning regulatory guidelines in the Gateway Zoning District and would establish Zoning requirements for development under a set of 'Master Development Plan' regulations. The proposal provides the specific criteria for mixed-use development (retail & residential), building sizes, eligibility, submission requirements, approval criteria, implementation phasing and public improvements.**

Mr. Nickerson welcomed everyone and noted that this was a continuation of the Public Hearing as they have the information from an economic impact analysis report that they requested.

Mr. Salerno and Mr. Gada said for the record that they have reviewed the record/tapes of the previous Public Hearing and are up to speed with this application.

Mr. Nickerson then called upon the applicant or their representative for their presentation.

Attorney Theodore Harris, representing the applicant introduced Brian Miller, Vice President of Turner Miller Group and Max Stach, of Turner Miller Group who were retained to do a fiscal and economic impact study of the proposed Zoning Amendment to the Gateway Planned Development District Regulations.

Brian Miller, VP of Turner Miller Group, Cheshire, CT said that they were engaged to analyze the proposed Zoning Amendment for the Gateway Planned Development District with respect to the Niantic and Flanders retail areas of the Town. He passed out the complete report to the Commissioners. He said that they looked at the roles of the two distinct areas of the Town with respect to the fiscal impacts from the proposed text amendment utilizing some main criteria – there would be a maximum of 425,000 sq. ft. of commercial floor area; a maximum of 275 residential units and no single-family detached residences would be permitted. He said that the downtown area has a tourism component to it and that the people, who go there, do come back and have dinner there. It is comprised of small scale businesses and is a typical downtown center that fell out of fashion and then came back into vogue with the Niantic Main Street and Merchants Association. The Flanders area has a diverse mix of business and industry. He said that they made assumptions based on various levels of build out for the project and those can be found in the report.

The potential impact on downtown Niantic would be small as the people who go to downtown Niantic like to walk along the waterfront and enjoy that type of environment. The tourist oriented businesses of Flanders would most likely be enhanced – such as the hotels which would see more business as well as the restaurants which would see more business and have more competition. He said that generally when more traffic is generated to one area that it is good for all of them. Some businesses may find themselves in competition, which is unavoidable; however there is room for them to co-exist. He then introduced Max Stach to present the financial impact.

Max Stach, Principal Planner, Turner Miller Group, Cheshire, CT said that the report that had been passed out was the revised report showing the revised figures. He said that the economic impact is that of the impact on the businesses in the area. Fiscal impact is more of a direct impact on the budget/financial impact to the Town. He said that they gathered information and broke it out based on build out and the cost based on the services. It was found that the flats would have a deficit by themselves, to the Town. If everything were in place today, the Town (conservatively) would get \$1.7M more in revenues and while the residential element would be negative, the commercial portion would so far outpace it that it becomes negligible. If the project were only developed to 25% of its' potential, that would leave a negative figure, however that is not the intent of the developers. He continued that the impact on Town services is small except possibly for police services. He contacted the Town of Clinton as they have the Clinton Crossing outlet and the Town of Waterford as they have the Crystal Mall and other retail areas. The Town of Clinton said that 30% of the total incidents in Clinton can be attributed to the shops. In Waterford, retail areas account for 9% of the police activity. From this he said that they looked at it in terms of the 425,000 sq. ft. and found that the calls could be increased by some 550-600 per year. With this, they recommend that the Town work with the Resident State Troopers and ask them what they feel their need might be.

Mr. Salerno asked if this report includes all the police services for the Town.

Mr. Stach said that it represents them based upon Town totals for residential and non-residential by computation and co-efficient. He explained that whereas there may be demands on the Police from this; there would not be demands on Senior Services – so there are off-setting effects.

Ms. Carabelas asked if the fiscal impact was a net revenue income of \$1.7M.

Mr. Stach said yes.

Ms. Carabelas asked if the police cost would be included or would have to be taken from that figure. She said that she could envision it costing over \$100,000 more to add police officers.

Mr. Stach said that the police costs were already taken out but added that he has suggested that they also speak with the State Troopers regarding what the needs might be.

Mr. Peck asked if Fire services were figured in.

Mr. Stach said yes.

Mr. Peck asked about the 8-mile radius that was used for the marketing plan and what if the theme of this center was a 30-mile radius instead.

Mr. Miller said that the population of an area that size has to be 1M people and that he doubts that it would be that large of an area that would be affected by this as they would be going into Hartford and New Haven.

Mr. Peck said that he wanted to know what the effect would be on the local businesses – just short of the Hartford and New Haven areas.

Mr. Miller said that he would reason that the local businesses would benefit positively as they would be bringing more people to them and that it would be new business for the Town. They call this 'positive spillover'.

Mr. Nickerson asked about this 'positive spillover' effect and where they are going with this, and what does it all mean.

Mr. Miller said that it means that once you drive somewhere to go shopping that you also go to a restaurant in that area or make other stops along the way. He said that he thought that this might have a positive effect with people staying in and around the Flanders area on Flanders Road and frequenting the eating or overnight establishments in the area.

Ms. Carabelas said that the report also alluded to the fact that some of the businesses might be hurt. She said that she is concerned about downtown Niantic.

Mr. Miller said that he has been doing these studies for some 30 years and that there was a concern over many of the older downtowns and some of them were impacted. However; downtowns have come back and with the type of shops, such as major retailers – they will not be replicated in the downtown Niantic area. The downtown will remain the boutique type of shoreline area that it is with the smaller shops and restaurants and the theater. The Flanders area might be more impacted.

Mr. Salerno asked if an improved intersection could have an impact on public safety there.

Mr. Miller said that the less accidents that they have, the less strain they would see on the police services. He suggested that it would maximize itself for the Flanders area and the spillover will be positive as it would enable people to get in and out of the area easier.

Mr. Peck asked if they had noticed increased police calls throughout the Town after the center has been completed – in terms of if it brought more types of crime to the area.

Mr. Miller said that he has not done that study but he would guess that police activity outside of the mall area is related to a lot of the demographics of the area and community changes.

Mr. Salerno asked if Mr. Miller has any knowledge of that impact.

Mr. Miller said that the impact has been positive and that school enrollments are on the downturn. He said that he does not want to suggest that there would be a decrease in taxes as there would be an increase, however, it will be offset greatly by the revenues that will be generated.

Mr. Gada asked about the casinos and if there are impacts there for additional police calls and if that was considered.

Mr. Miller said that Southeastern Connecticut has had huge impacts as a result of the casinos and that East Lyme is impacted by this due to the area and the proximity to the casinos. Whatever bad effects the Town is getting from the casino traffic; at least they can try to get some of the positive from it also.

Mr. Stach said that the Clinton Police Department was very helpful and they detailed the police calls. They were not anything that you would not expect from a mall – shoplifting, writing bad checks, kids, store alarms, and fender benders.

Mr. Nickerson asked Attorney Harris if he had other information to present.

Attorney Harris introduced Don Klepper Smith, Chief Economist with DataCore Partners to review the impact analysis that he had previously presented with respect to this study.

Don Klepper Smith said that he has respect for Mr. Miller and his study as he uses them a lot for various projects. He said that he came up with a \$2.5M revenue figure for the Town versus the \$1.7M of Mr. Miller as

he was figuring it based on the year 2010 when it would perhaps be built. The mill rate would be higher and capitalization of 6% was used whereas Mr. Miller used 7%. They both came up with 53 students from the residential build out. He said that the studies are very similar if they adjust for the differences. They both have found that there are very real and tangible benefits for the Town from this. He said that in his study that he accounted for the increased police services and that they feel that the net fiscal impact is positive and that they have used the most comprehensive measure on Town spending including capital and debt.

Jay Fisher, Principal, SK Properties thanked Don Klepper Smith and Mr. Miller and Mr. Stach for doing the fiscal impact analysis. He noted that alternative scenarios of reducing the build out had been mentioned however the practical aspect is that they will build the entire 425,000 sq. ft. as otherwise the project does not work. The spillover effect does work and they have said that they will work with both downtown Niantic and Flanders on this. He recalled to them that there is a letter from the Downtown Merchants Association endorsing this project and pledging their support.

Chris Knisley, KGI Properties said that they realize that police coverage is important and that in addition to the Towns' Police Department that there will also be a private detail within the mall area and that they will further define that when they get to that stage. With respect to Mr. Peck's question on the malls, Farmington Valley, Evergreen Shops and Mashpee Commons are the type that they are relating to. The 550-600 police calls per year, if broken down on a daily basis, is 1½ service calls per day and the majority of the calls were shoplifting, inadvertent alarms being set off by store employees and minor traffic accidents. He said that this seems to be a manageable number.

Mr. Nickerson entered the Police Reports for Clinton and Waterford into the record as **Exhibit 5** and the Turner Miller Group Fiscal and Economic Impact Study into the record as **Exhibit 6**.

Ms. Carabelas noted that they had said that the higher end shopping malls bring in the better clientele. She then asked about the ramps that were going to be re-configured and if that would require the ramp system being shut down.

Mr. Fisher said that the ramps do not get shut down. The new ones would be built in stages and phases and the old continue to operate until the changeover. The north side would be the first part and the south is something that is done in conjunction with the DOT.

Mr. Nickerson noted that this application is for a text amendment only and that some of this discussion is way beyond the scope of this application. He asked that they stick to the text amendment. He asked if Attorney Harris had other items to present.

Attorney Harris said that he did not and said that they were ready to hear from the public.

Mr. Nickerson noted the rules for public comment and asked that speakers address the Commission and not the applicant. He then called for anyone from the public who wished to speak in favor of this application –

Mike Schulz, Lovers Lance said that he is a small business owner in Flanders and that he gets business from New Hampshire, Providence and outside of Hartford. He said that his business is destination based and that he does not see where the Gateway would have a negative impact on his business. He sees this as positive and also does not see 50 kids as a negative. He does not think that the businesses that could be drawn into this area would bring adverse people in and cited the fact that both houses that he has lived in have been broken into without the Gateway area developed. They have a good developer here who is concerned for the Town and he said that he sees this as a win-win situation. With respect to the water and sewer, that will come at a later stage and no matter what goes there, that will be necessary.

Chris Miner, 16 Laurelwood Drive South said that he is not sure if he is in favor of this or not. It seems that the fiscal impact is good but he said that he is not sure that all of it will accrue to East Lyme. He has looked at the types of businesses that we have and feels that some would be impacted. He asked that in the Zoning regulations that they restrict the type of usage so that they will not wipe out the existing businesses. He said that he understands that some of the businesses will come and go and that they cannot protect all of them. He said that he thinks that the developer could donate say \$50,000 to the downtown area.

Steve Rebelowski, 24 Higganum Place said that he lives one-quarter of a mile from the Gateway and that he has worked for the East Lyme & Waterford Police Departments for his entire career. He recently retired from the Waterford Police Department. He said that in 1985 Waterford had 43 police officers and that today they still have 43 police officers. People complain about the Crystal Mall but all of the other shopping areas have come in since then and the 43 officers have never changed and they make it work. So, they too - can make it work. He said that he has a concern with the on and off ramp to I-95 and asked if it is going to come from Rte. 161 thru to the State and if the Town would have to control the traffic lights in that area. He said that they need more than one way in and one way out and that they would need to consider that. He said that he would be more concerned with the fire and ambulance rather than the police as alarm calls are a strain on the fire and ambulance people who do not have a full complement of 20, 30 or 40 people working with them like the police do.

Paul Formica, First Selectman said that he is speaking in favor of the text amendment and that he would take his First Selectman hat off and speak on this from the 'business hat' perspective. When new businesses come in, and; they have had 10 national chains come in within the last five (5) years; they can bet that it has affected the dining establishments in the area. It has made them change their business and how they do business and it has made them better. Flanders is still growing and Niantic is changing. He said that he has met with the casino managers and that they have picked up the slack from the downsizing of Pfizer. The new MGM Grand Hotel that is being built up there is a good example. He said that he asked them how they could do this, considering the economic climate and they told him that they appeal to a whole different demographic of people in the 25-55 year old age range with an income of \$90,000+. The casino will spend over \$21M advertising to get that demographic there and these people will drive right through us to get there. He said that Niantic is making a comeback – they have received one STEAP Grant and have applied for another. With the demographic, this will continue to grow and a tourist dollar is spent between one (1) and 50 times. He said that there are 12 restaurants on Flanders Four Corners and here they are talking about a unique parcel of property and the developer is entitled to make a profit on his development of that parcel. The 1997 Yale Charrette calls for exactly this type of development on this parcel – and if not this, then what? He said that he thinks that the Gateway is the host to the Mystic Coast and Country area, and that the Town could certainly use the tax revenue. They have heard talk about services; Police, Water and Sewer, Fire, etc. but the fact is that they will need these anyway and they will also need to increase the tax dollar. Only 3% of the property in this Town is zoned for commercial development and they need to have the commercial areas humming as best as possible. He said that water and sewer is working on drilling a new well and chlorinating the water as the State is pressing in on the Town to chlorinate the water and for a water regionalization system. He said that he would like us to be a water seller rather than a water buyer and that regardless, they need to do this. They are also looking into taking the salt water and turning it into drinking water. This is the last piece to the puzzle in the commercial zone. He said that he thinks that the developer has been a good listener, has adapted to work with us and the neighbors and that they need to think win-win and long-term and this; creates solutions.

Steve Rebelowski, 24 Higganum Place said that he wanted to add that in 1983 that the City of New London was paying money to have the Crystal Mall put in so that they could get the increased traffic from it.

Mr. Nickerson then called for anyone from the public who wished to speak against this application – Mark Van Wart, 49 Corey Lane said that he has been here for over 40 years and that he is concerned over the text amendment change as it would add to congestion and accidents on I-95. He said that safety should be more important to them than tax dollars. He said that he is not going to make a penny from this and that he would rather work the extra days per year and pay the extra taxes. The low paying jobs that this would bring would put a tax burden on them. He asked if the market analysis was done for things other than the retail.

Mr. Nickerson responded that what is being proposed is retail and that it has been changed from office and that the applicant is not responsible for coming up with all sorts of scenarios.

Barbara Johnston, 35 Sea Crest Ave. said that she has heard a lot of speaking tonight, but not to address the text amendment. She asked if it could be an 'umbrella' for the whole Town.

Mr. Nickerson said that it is defined for the 'Gateway' area only.

Ms. Johnston said that with respect to the traffic study that she heard that 'in the 1990's' and that she does not think that is valid now. She asked what the build out time frame was and where the minutes were from the neighborhood meetings that the developer held and if any were taken. She said that they used 18,000 as the population figure and asked about the summer population and if that was used. She said that she did not see any improvements to Rte. 161 and asked if there were any. They had mentioned market-rate apartments and not Affordable Housing. Would there be any Affordable Housing units and if not, why not – as the Town needs them. She said that the underground utilities should be in the text amendment. She asked why this is not office or light industry. She asked if the R-40 area near the neighborhoods has been deeded to the Town. She said that she is against the text amendment as proposed and they should deny the change. Regarding the comments on the spillover from the casinos – she said that she does not think that this will happen at all as she has worked at the casinos and the people will just drive right through here and not stop. She submitted her comments for the record. They were entered as **Exhibit 7**.

Bob Gadbois, 358 Boston Post Road said that when he was growing up that he took the bus to New London and it was a thriving Town. Then they built the New London Mall and the people went there and then the Crystal Mall was built and the people went there and all of this affected downtown New London. This will affect downtown. Regarding the school kids, he said that he went to a meeting and Dr. Smotas said that there are some 80 kids that are coming from the Sea Spray development and that this does have an effect on them.

Dave Carlson, 9 Wells Street said that he thinks that if this can be put into law that it can also be taken out. He said that he stays here because of Niantic and Flanders and that he does not want to live in a Town that has a mall. Barnes & Noble and Bed, Bath & Beyond mean nothing to him as he can go to the Book Barn and soap is easy to come by anywhere. There has to be more of a driving force than money and he chooses not to live near Target and such stores.

Kevin Regan, 12 Luce Ave. said that he was concerned with the proposed text amendment and feels that the POCD controls should be adopted. If the tax dollars would be the same for other than retail, he said that he would prefer that it be non-retail. He also submitted one sheet of signatures representing residents against this application. This was entered as **Exhibit 8**.

John Wagner, 45 Walnut Hill Road said that he is against the developer driven text amendment changes and that he thinks that 'we can decide for ourselves' and the developer can follow with what we decide. 'We' can change the regulations and not the developer. He also asked if this would change the ISO rating and if so – how. He said that they should know that the occupancy rate of most of these retail areas is only at 80%.

Bart Pacekonis, 39 Blue Ridge Drive, South Windsor, CT said that he is a Planning & Zoning official in South Windsor and that the larger retail brings in low-paying jobs and housing that tax the services of the community such as police and fire. They would also need 50% of the proposed residential housing to be Affordable Housing to accommodate these jobs. Regarding police, two cops go on calls and it would cost over \$100,000 for the cops so it will tax services. He cited Evergreen Walk where he lives and said that it is mixed use and that they asked the developer to tailor it to how they wanted it built as they wanted the best shops and high end shops. To that end, it has medical and office space and shops such as LL Bean and also fitness. He said that they had a concern with the buildings and had the developer finish the sides to give a better appearance as they would not be hidden by landscaping. He said that the examples of the shops that were given are not high end. He said that as he reads it that there is no public hearing involving this site plan and he thinks that the public should be involved in the approval process. He said that he thinks that they can design what they want better than the developer.

Mr. Nickerson asked Mr. Pacekonis what percentage of the property in South Windsor was devoted to commercial development.

Mr. Pacekonis said that South Windsor was 17% industrial however through the efforts of an aggressive Town Leader, they are now at 30% commercial/industrial and this brings in the tax dollars. He said that they also picked up retail from the Buckland shops which have fanned out to their doorstep.

Mr. Nickerson said to Mr. Pacekonis that they are talking about two very different universes as East Lyme has only 3% commercial/industrial land.

Ms. Carabelas asked is he has seen the preliminary pictures that they have here depicting what this might look like.

Mr. Pacekonis said that the pictures are great but they are one thing and the development is another.

Mr. Nickerson asked Mr. Pacekonis if he was present for the first part of this public hearing and the PowerPoint presentation.

Mr. Pacekonis said no, but added that he did pick up a copy of the disk presentation.

Mr. Salerno asked if the office and other area were sold that way.

Mr. Pacekonis said that they were conceptual and that there was a conceptual for the bike paths and band shells however they never materialized as they were a carrot that was out there that did not happen. He said that he is now in favor of the true mixed use. He lastly added that he may not have mentioned it before; but he is speaking on behalf of 30 carpenters as he is also a Carpenter's Union representative.

Bob Gadbois, 358 Boston Post Road said that this is located over the aquifer and that the asphalt does not allow the water in. He said that the First Selectman spoke on a de-salination plant and that those plants do not come cheap as if they did, you would see them up and down the coast.

Barbara Johnston, 35 Sea Crest Ave. complimented the man coming from South Windsor and said that Rocky Hill also did different things with their commercial areas. She suggested that they take a ride out to look and see what was done so they will have more ideas.

(Note: A brief break was taken here)

Mr. Nickerson called for any other public comments –

Robert Corriveau, 296 Millstone Road East said that he represents the carpenters and about 30 of his fellow members. They heard about the aquifers and the run-off will go into detention ponds; some wells could also be drawn down in other areas from this. And – when they open and then some of the stores go vacant – what is to stop an unsavory store from going into the vacant area.

Mr. Nickerson noted for the record that they have a subcommittee hard at work on 'adult uses'. He added that they are also very well aware of the aquifer.

Attorney Harris said that they have heard a variety of comments and that what they are talking about here is a 'text amendment only' and that it is only at the next stage that they would begin to deal with the other items that have been mentioned. He also recalled that the Planning Commission unanimously endorsed this text amendment on referral as being consistent with the Plan of Conservation & Development and the Yale Charrette report to channel future commercial growth toward this area. He asked that they move forward on this so that they can get to the next phase.

Mr. Salerno said that he is a proponent of office space and that he does not see where it is exempted here. Attorney Harris said that it is not exempted – the items listed such as retail and residential are there because they have limits on them – there is no exemption of office space.

Mr. Salerno said that he would like insurance that office space would be a component.

Mr. Fisher said that they have that power at the MDP stage and that they do not really want to be dictating to the market what it would be as that is the way that this 'Gateway' has been for many years and the demand is not there for it and that is why it has not been developed over so many years.

Mr. Salerno said that maybe not in terms of square feet – but just in terms that there will be an office component.

Mr. Nickerson clarified to Mr. Salerno that Mr. Fisher has just said that you would 'hand cuff' the project by making a requirement for an office component.

Bill Sweeney, Certified Land Planner, TCORS explained that the criterion states that it must be a 'mixed use'.

Mr. Fisher said that they had said at the prior public hearing that they would do some office component and that they are committed to it as part of the project. He said that it would be a mistake to make it required in the text amendment.

Mr. Sweeney said that this leaves the door open for creativity as it is a very strong amendment.

Mr. Carpenteri asked if they are proposing any Affordable Housing.  
Attorney Harris said no.

Mr. Nickerson commented that they would be market rate apartments.

Attorney Harris said that the Planning Commission unanimously found this text amendment to be consistent with the Plan of Conservation and Development.

Mr. Salerno asked Mr. Mulholland if it would be taken off of the original area if a hotel wanted to be put here – would they be able to re-configure the retail and make those decisions and still have office space.  
Mr. Mulholland said that would come at a later time as this is only the text amendment stage.

Mr. Fisher said for the record that they will very strongly consider having some office space there.

Attorney Harris explained that if you mandate it that you stick yourself with something that you may not want or even worse that would not work.

Mr. Gada noted that someone out there had suggested that this would allow someone to come forward with something unique. He said that he would like to see that happen.

Attorney Harris said to Mr. Gada, 'exactly' and this allows that to happen.

Mr. Nickerson asked if the Commission had any other comments or questions –  
Hearing none –

Mr. Nickerson called for a motion to close this Public Hearing.

**\*\*MOTION (1)**

**Ms. Carabelas moved that this Public Hearing be closed.**

**Mr. Gada seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

Mr. Nickerson closed this Public Hearing at 10:15 PM.

(Note: A brief break was taken here)

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary

Proposed Zoning Text Amendment  
Gateway Planned Development District  
Master Development Plan

**11.A.9 Master Development Plan (MDP)**

As an alternative to the traditional parcel by parcel development of the GPDD Gateway Planned Development District under the preceding provisions, the Commission may, subject to a public hearing, adopt a Master Development Plan (MDP) that modifies the zoning requirements of the District in accordance with the following standards.

**11.A.9.1 Purpose**

The purpose of the MDP process is to encourage the comprehensive planning and coordinated mixed-use development of multiple parcels within the District, promote creativity and superior design through flexible and context-sensitive development standards, support significant economic investment, reduce impacts associated with large-scale development, and provide protection to adjoining neighborhoods.

**11.A.9.2 Effect**

The adoption of an MDP shall modify the zoning requirements of the GPDD Gateway Planned Development District as specified by the MDP and except as provided in Section 11.A.9.2.1 and 11.A.9.2.2 shall allow for deviation from the typical requirements for use, bulk, and other development standards. Any provision of the East Lyme Zoning Regulations applicable to the property and not specifically superseded by adoption of the MDP shall continue in full force and effect.

**11.A.9.2.1 Retail Use**

To the extent that a MDP shall contain retail uses, such uses shall be subject to the following bulk limitations:

- (A) Not more than one (1) anchor store, containing no more than 140,000 square feet of net floor area, shall be allowed.
- (B) Not more than Five (5) junior anchor stores, typically ranging from 25,000 to 90,000 square feet shall be allowed, provided that no single store may exceed 90,000 square feet of net floor area, and not more than two (2) such stores may exceed 50,000 net floor area.
- (C) Notwithstanding Subsections (A) and (B) above, not less than twenty-five (25%) percent of all retail space in the MDP shall be contained in stores with less than 20,000 square feet of net floor area.

*Attachment RHI Zoning 3/6/08*

- (D) In no event shall the total retail space within the portion of the District subject to the MDP exceed 425,000 square feet of net floor area.

#### **11.A.9.2.2 Residential Use**

To the extent that a MDP shall contain residential uses on the west side of the Pattagansett River, such uses shall be subject to the following:

- (1) No single family detached unit shall be permitted.
- (2) Such uses shall be designed and located to minimize the impact on surrounding areas by incorporating one or more of the following:
  - (a) Buffers to adjoining residential uses.
  - (b) Locating the lower density uses in areas near existing residential uses.
  - (c) Providing open space and/or recreational areas.
  - (d) Providing architectural and/or lighting controls.
- (3) The total number of units shall not exceed 275.

#### **11.A.9.3 Eligibility**

A MDP application must include at least 75% of the land within the GPDD Gateway Planned Development District. A MDP must provide for reasonable access and utility interconnections to any portion of the District not included within a proposed MDP. The uses and bulk contained in the MDP shall not be considered with respect to site plans for portions of the District outside the MDP.

#### **11.A.9.4 Submission Requirements**

An application for MDP adoption shall require public hearing and in lieu of a site plan as described in Section 24, shall include the following components:

- (a) Existing Conditions Survey prepared by a licensed surveyor showing:
  - (1) Existing topography with 5-foot contours showing the general gradient of the site, existing structures, existing roads and rights-of-way, easements, major topographic features, inland wetlands, watercourses and flood plains.
  - (2) Land uses, zoning and approximate location of buildings and driveways within 100 feet of the site.
  - (3) A-2 boundary survey.
  - (4) Location map.
- (b) Conceptualized Layout Plan prepared by a licensed engineer, architect and/or landscape architect showing:
  - (1) General location and nature of proposed land uses.
  - (2) Proposed public and private rights-of-way, parking areas, easements, and public and private open space areas.
  - (3) Proposed building footprints, floor areas, and building heights.

- (4) Proposed location of landscaping, buffering, and screening.
  - (5) Utility and highway improvements.
  - (6) Construction phasing plan.
- (c) Development Standards for the proposed development provided in a narrative form including, but not limited to:
- (1) Permitted uses subject to Site Plan approval.
  - (2) Bulk and dimensional requirements.
  - (3) Parking and loading.
  - (4) Streets and sidewalks.
  - (5) Landscaping and screening.
  - (6) Lighting.
  - (7) Signage.
  - (8) Open space and conservation areas.
  - (9) Any other standards the Commission may reasonably require.
- (d) Architectural Standards for the proposed development provided in both narrative form and visual representations prepared by a licensed architect showing:
- (1) Architectural styles.
  - (2) Massing and scale.
  - (3) Materials and colors.
  - (4) Roof lines and profiles.
  - (5) Typical building facades and elevations.
- (e) Traffic Analysis prepared by a professional traffic engineer including:
- (1) A comprehensive traffic study detailing the impact of the proposed development.
  - (2) Improvement plan and the measures necessary to mitigate those impacts.

#### **11.A.9.5 Approval Criteria**

The adoption of a MDP shall require a public hearing with notice of the hearing made by publication. The Commission shall consider the following criteria in determining whether to adopt a proposed MDP:

- (1) Consistency with the Plan of Conservation and Development.
- (2) Consistency with the goal of the GPDD Gateway Planned Development District to broaden the Town's tax base while providing a coordinated development, in harmony with the underlying aquifer protection district, calculated to maximize the potential of the district.
- (3) Consistency with the purpose of the alternative MDP process.
- (4) Consistency with the orderly development of the District with provisions for necessary utility and traffic infrastructure and in harmony with the surrounding land uses.

The Commission shall reserve the right and discretion to deny the adoption of any MDP that, in the opinion of the Commission, fails to meet one or more of the above-mentioned criteria.

#### **11.A.9.6 Implementation**

The implementation of the MDP shall be subject to Site Plan approval by the Commission pursuant to Section 24 of these Regulations. The Site Plan submission shall also contain the information required pursuant to Sections 11.A.8.1-11.A.8.4 and shall comply with the standards outlined in Section 11A.5 (Environmental Requirements). All applications for Site Plan approval under an adopted MDP shall conform to the modified Development and Architectural Standards of the MDP and substantially conform to the size and location of buildings and uses as shown on the Conceptualized Layout Plan. All applications for Site Plan approval shall illustrate the adherence to the adopted MDP through plans, renderings, architectural elevations, and other materials. Any Site Plan Application that substantially conforms to an adopted MDP shall be approved by the Commission.

#### **11.A.9.7 Phasing and Public Improvements**

Implementation of an adopted MDP may be phased on the condition that all public infrastructure associated with each phase of the MDP shall be constructed prior to the issuance of Certificates of Occupancy for such phase or shall be bonded to the satisfaction of the Commission.

FILED IN EAST LYME  
Mar 11, 2008 AT 3:45 M

**EAST LYME ZONING COMMISSION  
REGULAR MEETING  
Thursday, MARCH 6th, 2008  
MINUTES**

*J. A. Blais*  
EAST LYME TOWN CLERK

The East Lyme Zoning Commission held a Regular Meeting on March 6, 2008 at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, CT.

**PRESENT:** Mark Nickerson, Chairman, Rosanna Carabelas, Secretary,  
Marc Salerno, Ed Gada, Norm Peck, Steve Carpenteri

**ALSO PRESENT:** William Dwyer, Alternate  
William Mulholland, Zoning Official

**ABSENT:** John Birmingham, Alternate, Bob Bulmer, Alternate

**1. Call to Order**

Chairman Nickerson called this Regular Meeting of the Zoning Commission to order at 10:31PM after the two previously scheduled Public Hearings. The Pledge had been previously observed.

**Public Delegations**

Mr. Nickerson called for anyone from the public who wished to address the Commission on subject matters not on the Agenda.

There were none.

**Regular Meeting**

- 1. Application of Theodore A. Harris for Gateway Development/East Lyme LLC to amend the East Lyme Zoning Regulations to add proposed Section 11.A.9. This proposal serves as an alternative to the existing Zoning regulatory guidelines in the Gateway Zoning District and would establish Zoning requirements for development under a set of 'Master Development Plan' regulations. The proposal provides the specific criteria for mixed-use development (retail & residential), building sizes, eligibility, submission requirements, approval criteria, implementation phasing and public improvements.**

Mr. Nickerson said that they had just closed this Public Hearing and that he felt that he can vote tonight on this. He asked the Commissioners how they felt as there had been a lot of public testimony.

Mr. Carpenteri said that he thinks that they could do a lot worse at this site as it was originally zoned as industrial.

Ms. Carabelas said that she is comfortable with the text amendment and that a lot of her questions have been answered tonight.

Mr. Carpenteri said that he thinks that this is fine and that they have heard the information that they were waiting on.

Mr. Salerno said that he still thinks about the office component.

Mr. Nickerson said to Mr. Salerno to suppose some two (2) years from now that office space is just not viable and if is in here, they have handcuffed the developer to it. This can be dealt with at the next level beyond the text amendment.

Mr. Salerno said that he thinks that if there is office space there that they would have a living center. He said that he would make an amendment to the motion to add office space to this.

Mr. Nickerson asked and recognized Attorney Harris to comment on the office space and what said previously about it during the public hearing.

Attorney Harris said that as they have stated previously, office space would be strongly considered.

Ms. Carabelas said that she is happy with that statement as it is as she does not want to limit this.

Mr. Peck said to Mr. Salerno, that it is pointed out in the amendment that there will be mixed use and that the Commission reserves the right to deny it if it does not meet one or more of the criteria. He said that they can talk about it at that time, during that phase.

Mr. Gada said that he could vote this evening and added that he would be pleasantly surprised to see some Affordable Housing here.

Ms. Carabelas said that the developer has said that they have made a lot of concessions with the housing and to make this work Affordable Housing is just not viable and should not be on the table.

Mr. Peck said that if it were to have Affordable Housing that it would require another Public Hearing.

Mr. Nickerson said that he thinks that the developer has put forth a good amendment for a Master Development and that the idea as a Gateway was to get the parcels to come together and finally someone came forth with it. This developer, with the housing, has given open space and devoted a 1000 foot buffer to the bordering residential property. With the retail, they have promised a lot and he thinks that they as a development company are responsible and dedicated. He continued that he cannot imagine the mountains that they will have to climb to get into the next phase of this project. He said that he would vote to the affirmative as this is the right thing to go here and a great improvement from the earlier application.

Mr. Salerno said that he thinks that this is a great improvement from the last and that he will table his previous idea and will vote to the affirmative. He commended the developer for holding public forums and seeking public input to get to this text amendment.

Mr. Peck said that his concerns are the mechanical ones of water and sewer and that they would be addressed later on in the process. He said that he understands where the opposition is coming from and that he would like to see the Town stay the same as it is today but he knows that it won't and this is the best of the day – the best that they can do as they have tested this area in the greatest retail market in the country and failed and could not get anyone to take it. Here they have a great developer willing to take it on and make it happen.

Mr. Carpenteri said that he was ready to vote this evening and that he sees this as a great asset to and for the Town.

Mr. Nickerson called for a motion.

**\*\*MOTION (1)**

**Ms. Carabelas moved to approve the Application of Theodore A. Harris for Gateway Development/East Lyme LLC to amend the East Lyme Zoning Regulations to add proposed Section 11.A.9 to serve as an alternative to the existing Zoning regulatory guidelines in the Gateway Zoning District and to establish Zoning requirements for development under a set of "Master Development Plan" regulations.**

**Mr. Salerno seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

Mr. Nickerson said that this decision would publish on 3/13/08 and become effective on 3/14/08

**2. Application of Richard McFadden d/b/a The Eclectic Chef for a Special Permit for Outdoor Dining at 281 Main Street, Niantic, CT.**

Mr. Nickerson called for a motion for discussion.

**\*\*MOTION (2)**

**Mr. Salerno moved to approve the Application of Richard McFadden d/b/a The Eclectic Chef for a Special Permit for Outdoor Dining at 281 Main Street, Niantic, CT.**

**Mr. Carpenteri seconded the motion.**

Mr. Nickerson called for discussion or a vote on the motion.

**Vote: 6 – 0 – 0. Motion passed.**

Mr. Nickerson said that this decision would publish on 3/13/08 and become effective on 3/14/08.

**3. Zoning Fees**

Mr. Nickerson said that they would table this until the next meeting due to the lateness of the hour.

**4. Approval of Minutes – Public Hearing I, Public Hearing II, Public Hearing III and Regular Meeting Minutes of February 7, 2008; and Public Hearing I, Public Hearing II, Public Hearing III, Public Hearing IV and Regular Meeting Minutes of February 21, 2008.**

Mr. Nickerson called for discussion on, or corrections to the Public Hearing III Minutes of February 7, 2008.

Mr. Salerno asked that on Page 2 in the second line of the third paragraph where he is speaking that the word 'pu6t' be changed to read: 'put'.

**\*\*MOTION (3)**

**Mr. Salerno moved to approve the Public Hearing III Minutes of February 7, 2008 as amended.**

**Ms. Carabelas seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

Mr. Nickerson called for discussion on, or corrections to the Public Hearing I, Public Hearing II and Regular Meeting Minutes of February 7, 2008.

**\*\*MOTION (4)**

**Mr. Salerno moved to approve the Public Hearing I, Public Hearing II and Regular Meeting Minutes of February 7, 2008 as presented.**

**Ms. Carabelas seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

Mr. Nickerson called for discussion on, or corrections to the Public Hearing I, Public Hearing II, Public Hearing IV and Regular Meeting Minutes of February 21, 2008.

**\*\*MOTION (5)**

**Mr. Salerno moved to approve the Public Hearing I, Public Hearing II, Public Hearing IV and Regular Meeting Minutes of February 21, 2008 as presented.**

**Mr. Gada seconded the motion.**

**Vote: 4 – 0 – 2. Motion passed.**

**Abstained: Ms. Carabelas, Mr. Carpenteri**

Mr. Nickerson called for discussion on, or corrections to the Public Hearing III Minutes of February 21, 2008. (Note: Mr. Dwyer, Alternate replaced Mr. Peck at the table for this vote)

**\*\*MOTION (6)**

**Mr. Salerno moved to approve the Public Hearing III Minutes of February 21, 2008 as presented.**

**Mr. Dwyer seconded the motion.**

**Vote: 4 – 0 – 2. Motion passed.**

**Abstained: Ms. Carabelas, Mr. Carpenteri**

**Old Business**

**1. Stormwater**

There was nothing new to report.

**2. Subcommittee – Niantic Village – CB Zones (Mark Nickerson, Marc Salerno & Norm Peck)**

Mr. Nickerson said that they are working on this.

**3. Subcommittee – Adult Uses (Rosanna Carabelas)**

Ms. Carabelas said that this is in progress.

**4. Transitional Zones Subcommittee – (Marc Salerno & Norm Peck)**

There was no report.

**New Business**

**1. Application of Theodore A. Harris for Village Crossing of Niantic LLC for approval of an Affordable Housing Development and Site Plan for property identified in the Application as Park Place; Assessor's Map 11.1, Lot 19.**

Mr. Nickerson asked Mr. Mulholland to schedule this for Public Hearing.

Mr. Nickerson also asked Mr. Mulholland to schedule the Application of Leo Roche for Black Sheep LLC for a Special Permit under Section 25.5 for Public Hearing.

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

There was none.

**3. Zoning Official**

Mr. Mulholland reported that they have asked Starbucks to address the flood lighting at night and to post do not enter signs from Flanders Road. They were told that if they did not address this that they would be closed on Monday and they have come forth with a plan to address these issues.

Mr. Peck asked about the Hope Street project and how it was going.

Mr. Mulholland said that it is up and running and that Mr. Frey and the other project managers have come forward stating that they are all ready to push forward.

**4. Comments from Ex-Officio**

Ms. Hardy was not present and there was no report.

**5. Comments from Zoning Commission liaison to Planning Commission**

There was no report.

**6. Comments from Chairman**

Mr. Nickerson thanked everyone for their work this evening.

Mr. Mulholland reminded them that they do not have a second meeting this month due to the school vacation and Easter holiday. They will resume the first week of April.

**7. Adjournment**

**\*\*MOTION (7)**

**Mr. Carpenteri moved to adjourn this Regular Meeting of the East Lyme Zoning Commission at 11:00 PM.**

**Mr. Salerno seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary

May 15, 2008 AT 3:00 M

*L. Blais arc*  
EAST LYME TOWN CLERK

**EAST LYME ZONING COMMISSION  
SPECIAL MEETING  
Thursday, MAY 8th, 2008  
MINUTES**

The East Lyme Zoning Commission held a Special Meeting on Thursday May 8, 2008 at the Town Hall, 108 Pennsylvania Avenue, Niantic, CT.

**PRESENT:** Mark Nickerson, Chairman, Rosanna Carabelas, Secretary, Norm Peck, Marc Salerno, Steve Carpenteri, Bob Bulmer, Alternate

**ALSO PRESENT:** Attorney Theodore Harris, representing the Applicant  
Chris Knisley, KGI Properties  
David Yetton, KGI Properties  
Brad Parsons, BL Companies  
John Mancini, BL Companies  
Warren Baethge, BL Companies  
Bill Sweeney, TCORS  
Michael Wang, Arrowstreet  
David Greene, David Greene Associates, Inc.  
Nancy Loader, David Greene Associates, Inc.  
Jay Fisher, SK Properties  
William, Dwyer, Alternate  
William Mulholland, Zoning Official

**ABSENT:** Ed Gada, Gregory Massad, Alternate

Chairman Nickerson called this Special Meeting of the East Lyme Zoning Commission to order at 7:13 PM.

**Pledge of Allegiance**

The Pledge was observed.  
Mr. Nickerson seated Bob Bulmer, Alternate at the table.

**Public Delegations**

Mr. Nickerson called for any comments from the public regarding matters not on the agenda.

There were none.

**Special Meeting**

**1. A workshop for purposes of conducting a pre-application review of a Master Development Plan for the Gateway Planned Development District.**

- A. Introduction of Gateway Development East Lyme LLC**
- B. Discussion and questions by Commission**

Mr. Nickerson explained the purpose of holding this special meeting – a workshop discussion of the Master Development Plan and asked Attorney Harris for his comments.

Attorney Harris said that this is a workshop, pre-application review of some developmental and architectural standards for the Gateway Commons Master Development Plan. This is an open workshop discussion to present some possible development and architectural design standards that could be employed under the scope of this project. He said that they anticipate that there would be another workshop to further fine tune

the standards. He suggested that Jay Fisher from Konover give them an introduction and that he introduce the people present this evening.

Jay Fisher, Konover Properties laid out a visual of the Gateway area on the table, introduced the people who would present and be available for any questions, and asked them to keep in mind that most of the components that they are speaking about here are flexible. This is a question and answer workshop and not a public hearing. He explained that the site has been dormant for many years and that the existing zoning under the GPDD was unable to respond to the current needs of the market and the zoning difficulties of the site are exacerbated by the extraordinary site costs that are associated with it. To be able to carry those costs, there was a need to be able to assemble all the pieces of the property in the zone to do any lasting development of it. This is one of the last remaining areas of the Town for commercial development. The land is at an exit, fronts on a highway, has great visibility and does not require extensive travel on local roads to get into or out of it. The front 45-50 acres is level/flat, great for retail development while the back area is steeper and has proximity to neighbors and needs a different type of development. He explained the areas of housing, the large area that would be left as a buffer from the housing and as open space and the public areas including a soccer field.

Mr. Bulmer asked about the lighting and the noise that would come from the soccer field and its usage and said that he was concerned with that.

Mr. Nickerson asked if they would be going back to the neighborhoods for further discussion amongst those groups regarding what is being proposed; as they would have input on the soccer field.

Ms. Carabelas asked if she heard correctly that this was a gift and why we would want this gift – does the Town need it.

Mr. Nickerson said yes, the Town does need it.

Mr. Mulholland asked about the potential for another road to the soccer field from the main road.

Mr. Fisher said that they may not see a soccer field in the next round of workshop discussion.

Mr. Mulholland noted that there could be another rendition on this that addresses the ideas that are brought up tonight and that again tightens the standards. He passed out a preliminary development and architectural standards booklet done by KG Properties and SK Properties Development.

Bill Sweeney Land Planner with TCORS said that the text amendment process is a collaborative process and that what they are doing here is going through the high points of the standards that are in the booklet that was passed out earlier.

Mr. Nickerson asked that he present an overview of it.

Mr. Sweeney noted as an example that landscaping regulations are found in both places, the MDP and in the zoning regulations and that this process is meant to try to merge the both of them. He added that it does not replace the zoning regulations. He explained that as part of the development standards there are permitted uses for the project and that they are listed as items A – O in the booklet. They are all subject to the limits of the approved text amendment. He noted that business offices is included in the list and recalled that was a topic of discussion during previous meetings. He also noted that they have standard and fast food restaurants listed and said that Panera Bread with no drive through or small coffee shops might be an example of that. He asked what their opinion was of having some drive-thrus if they were tastefully done.

Mr. Nickerson said that he did not want any drive-thrus and added that even the bank, in his opinion lessens the value of the property. He noted that this was sold as being pedestrian driven.

Ms. Carabelas said that she would think that they would want people to walk around to the shops, etc.

Chris Knisley, KGI Properties said that he thinks that there are some areas that are more prone to possibly having a drive-thru – for example near the entrance – perhaps a coffee shop that is tied to the entranceway rather than to Flanders Road.

Mr. Sweeney said that no matter who owns this; that it is still subject to the site plan approval. These are only preliminary workshop discussions.

Mr. Bulmer said that he is opposed to drive-thru service as they would also be competing with other places in Town that have drive-thru service and he sees this as unfair competition.

Mr. Peck asked if Panera Bread and that type of customer base – such as the Waterford Commons customer base – are going to be the type that they are looking to attract.

Mr. Knisley said that to some extent that would be true as they do have some of the higher end profile shops however; there would also be higher tier stores here.

Mr. Carpenteri noted that they had originally said that they were looking for local chains at the higher end.

Mr. Sweeney continues that page 3 of the booklet lists the bulk dimensional requirements. He said that he does not expect it to be a large percentage. He suggested that rather than to go in-depth here that as they had just received this booklet that they take it home and review it and note any questions that they might have so that they can ask them at the next workshop.

Ms. Carabelas asked how tall the tower is for the retail.

Michael Wang, Arrowstreet said that it is around 50' to 55'.

Mr. Sweeney said that they tried to stick with a 50' height restriction.

Ms. Carabelas said that she would object to 55'.

John Mancini, BL Companies noted that there are certain architectural elements that are needed to make the project work and that there would not be any large area of a building that would be that high.

Mr. Mulholland cited Crescent Point at about 42' and Wynwood at 48' – both in downtown.

Mr. Sweeney noted the parking and loading specs and said that they do not want to over park the project but will have enough for the busy times and seasons. He said that they used urban land use information to accomplish this.

Ms. Carabelas asked if they looked into using 'green' types of materials for the parking areas.

Mr. Sweeney said that they have to be concerned with the aquifer underneath and the impervious area would allow water to run through when using 'green' materials which is not what they want. He said that they are looking to cut down on the impervious drainage to the surrounding area.

Mr. Mancini, BL Companies explained that from Flanders Road to the ramp is State highway and the rest are considered private driveways or 'glorified private driveways' to encourage safe movement.

Mr. Salerno said that he would like to see 'raised' walkways to slow down the traffic.

Mr. Peck said that with regard to the landscaping plan that he likes evergreens and that he likes how they look along the highway; especially the cedar and pine as the fill in and look really nice.

Mr. Sweeney said that he would certainly look to strengthen the regulations if they want certain types of trees.

Mr. Peck said that he would like to see areas of evergreens at the old and new interchange sites.

Mr. Mancini said that the DOT would weigh in on the new highway area and that he thinks that they do like evergreens.

Mr. Sweeney noted that the booklet contains a number of diagrams and visuals of what has been talked about and moved on to the Lighting section indicating that they have a 'dark sky provision' or 'cut-off' lighting provision sp as to not blind other properties and reduce glare into the evening sky.

Mr. Mulholland asked if the base is included in the height – he noted that the lights at the Stop & Shop are about 33' high but that includes a base.

Mr. Sweeney said that these lights should be a good 8' shorter than those. He added that the signage standards that are listed incorporate a lot of the regular regulation standards. He noted that nominally, 2 square feet of signage per linear foot along that length of building. It was noted that the non-residential building signs may be illuminated utilizing external, backlit or with the Commission's approval, internal light fixtures. He also said that they understand that a signage permit must be obtained from the Zoning Official for each non-residential building's signage.

Mr. Nickerson suggested that they think about this and get a good grip on it in relation to how they want to direct people to this mall.

Mr. Sweeney said that there are some 'primary' and 'secondary' facades that can be done on the fronts and backs of the buildings to be creative and that work well with the project.  
Michael Wang, Arrowstreet presented a number of boards depicting the various types of lighting and facades that could be employed within the scope of this project.

Ms. Carabelas asked if they would have to be approved by Mr. Mulholland.  
Mr. Mulholland said that yes, each package would have to be approved.

Mr. Sweeney noted that there were also a number of miscellaneous provisions that are contained in the booklet and that involve just cleaning up the language. He suggested that they review them for the next workshop.

Mr. Wang presented various boards depicting architectural standards and styles in scale with the rest of the building.

Mr. Bulmer noted that he wants to see a New England motif.

Mr. Wang noted that the intent is to join together different types of roofs so that they give the building interest. He showed the various façade styles that could be used with the different components.

Mr. Salerno said that he likes the pictures but would want to see pictures of the sidewalks and curbing.  
Mr. Sweeney noted that they could not show everything at this time and that these were just prototypes for now. When an actual application was submitted they would have to conform to the MDP standards.

Mr. Peck said that he would like to have anything that faces the street be finished off architecturally as he thinks that it would be nice to look at something other than a brick wall.

Mr. Sweeney said that they could add language that the sides, etc. with views that face the public shall be finished appropriately.

Mr. Wang added that they would also be addressing the entrances and those sides.

Mr. Sweeney said that there was a sheet with materials and colors that lists various items.

Mr. Bulmer said that it seems to him that they are open to interpretation and that he would like to see it tightened up more.

Mr. Mulholland asked that 'metal panel' be removed from the list as they do have vinyl products which are not the old vinyl of yesterday.

Mr. Salerno asked what EIFS was.

Mr. Wang said that it stands for Exterior Insulation Finishing System and likened it to a stucco type finish.

Mr. Mulholland asked what unit masonry is.

Mr. Wang said that it is not cinder blocks and that he would get more clarification on it for the next workshop.

Mr. Peck summed up that he thinks that what they are looking for is something that will still look 'current' and 'fresh' 20 years from now rather than 'dated'.

Mr. Sweeney said that they would come back again and address the items that were mentioned this evening and any others that they might come up with from reviewing the booklet.

Mr. Bulmer asked for more specifics and that it is more finely tuned.

Mr. Fisher and Mr. Sweeney noted that they have to follow the Master Plan standards and that guidelines have to be conformed to by tenants or they would have to come back here to the Commission.

Mr. Nickerson said that this has to be a quality project and that it is his opinion that this Commission is going to be tight on the master plan as it is the last commercial area in this Town and it has to work.

Attorney Harris said that they would like to come back for another workshop and asked for discussion on when an appropriate time would be.

Mr. Mulholland noted the upcoming schedule for the next two to three regular meetings that are packed with public hearings and suggested May 29, 2008 – Thursday for another Special Meeting of the Commission.

After discussion the Commissioners agreed to hold a Special Meeting on Thursday, May 29, 2008 at 7PM for the purposes of holding another workshop on the Master Development Plan for the Gateway Planned Development District.

#### New Business

1. **Application of Jeffrey A. McNamara for a Text Amendment to the East Lyme Zoning Regulations Section 4.1.3 "Nursery or Green house provided they are not less than 100 feet from any lot line."**

Mr. Nickerson asked that Mr. Mulholland schedule this for a Public Hearing.

2. **Application of Seymour Kessler of 51 Hope Street for a Special Permit under Section 9.3.3 for construction of a two-car garage.**

Mr. Nickerson asked that Mr. Mulholland schedule this for a Public Hearing.

3. **Application of Thames River Fencing School for a Special Permit to operate a commercial indoor recreation facility at 11 Freedom Way.**

Mr. Nickerson asked that Mr. Mulholland schedule this for a Public Hearing.

4. **Application of Bobby DeMarinis for a Special Permit to operate an outdoor dining facility at 11 East Pattagansett Road, Niantic, CT.**

Mr. Nickerson asked that Mr. Mulholland schedule this for a Public Hearing.

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

There was none.

#### **6. Zoning Official**

Mr. Mulholland reported that he has been attending some mandatory training with the DEP on aquifer protection and the Level A mapping that is up for approval in June. He passed out some preliminary information that he received from this program and suggested that they review it as they are the aquifer protection agency for the Town. He said that it was stressed during this training that when they act as the aquifer protection agency for the Town that they are NOT acting under the Zoning Commission. They are to wear two (2) separate and distinct hats. He said that in reading the information that he has given them that they would see that there are many misconceptions regarding the aquifer area and they would find that the area will shrink dramatically as it is more well head protection. They will also have to adopt the model ordinance from the State. He noted that they would also have to be very careful regarding the issues as this does not really prohibit many uses and they need to be aware of these things in order to function properly in their role as the aquifer protection agency for the Town.

#### **7. Comments from Ex-Officio**

There were no comments.

#### **8. Comments from Zoning Commission liaison to Planning Commission**

There were no comments.

#### **9. Comments from Chairman**

There were no comments.

#### **10. Adjournment**

Mr. Nickerson called for a motion to adjourn.

**\*\*MOTION (1)**

**Mr. Salemo moved to adjourn this Special Meeting of the East Lyme Zoning Commission at 9:30 PM.**

**Ms. Carabelas seconded the motion.**

**VOTE: 5 – 0 - 0. Motion passed.**

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary

*Aug 4 20 08 at 10* a  
AM  
PM

**EAST LYME ZONING COMMISSION  
PUBLIC HEARING I  
Friday, JULY 25th, 2008  
MINUTES**

*Esther B. Williams*

EAST LYME TOWN CLERK

The East Lyme Zoning Commission held a Public Hearing on the Application of Theodore A. Harris for Gateway Development/East Lyme LLC, for approval of a Master Development Plan in accordance with Section 11.A.9 of the East Lyme Zoning Regulations for property identified in the Application as: 284 Flanders Road, East Lyme Assessor's Map 31.3, Lot 1; Flanders Road, East Lyme Assessor's Map 31.0, Lot 1; 294-2 Flanders Road, East Lyme Assessor's Map 31.3, Lot 5; 282 Flanders Road, East Lyme Assessor's Map 31.3, Lot 2; 286 Flanders Road, East Lyme Assessor's Map 26.0, Lot 2; Ancient Highway, East Lyme Assessor's Map 25.0, Lot 35; Flanders Road, East Lyme Assessor's Map 31.1, Lot 9; Boston Post Road, East Lyme Assessor's Map 31.1, Lot 8.1; 4 Church Lane, East Lyme Assessor's Map 31.1, Lot 11; and 138 Boston Post Road, East Lyme Assessor's Map 31.1, Lot 7 on Friday July 25, 2008 at the Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson opened the Public Hearing and called it to order at 7:35 PM.

**PRESENT:** Mark Nickerson, Chairman, Rosanna Carabelas, Secretary, Norm Peck, Marc Salerno, Ed Gada, Bob Bulmer, Alternate

**ALSO PRESENT:** Attorney Theodore Harris, Representing the Applicant  
Jay Fisher, SK Properties  
Chris Knisley, KGI Properties  
Brad Parsons, BL Companies  
John Mancini, BL Companies  
Bill Sweeney, TCORS  
Michael Wang, Arrowstreet  
William, Dwyer, Alternate  
William Mulholland, Zoning Official

**ABSENT:** Steve Carpenteri, Gregory Massad, Alternate

**PANEL:** Mark Nickerson, Chairman, Rosanna Carabelas, Secretary,  
Norm Peck, Marc Salerno, Ed Gada, Bob Bulmer, Alternate

**Pledge of Allegiance**

The Pledge was observed.

**Public Hearing I**

1. Application of Theodore A. Harris for Gateway Development/East Lyme LLC, for approval of a Master Development Plan in accordance with Section 11.A.9 of the East Lyme Zoning Regulations for property identified in the Application as: 284 Flanders Road, East Lyme Assessor's Map 31.3, Lot 1; Flanders Road, East Lyme Assessor's Map 31.0, Lot 1; 294-2 Flanders Road, East Lyme Assessor's Map 31.3, Lot 5; 282 Flanders Road, East Lyme Assessor's Map 31.3, Lot 2; 286 Flanders Road, East Lyme Assessor's Map 26.0, Lot 2; Ancient Highway, East Lyme Assessor's Map 25.0, Lot 35; Flanders Road, East Lyme Assessor's Map 31.1, Lot 9; Boston Post Road, East Lyme Assessor's Map 31.1, Lot 8.1; 4 Church Lane, East Lyme Assessor's Map 31.1, Lot 11; and 138 Boston Post Road, East Lyme Assessor's Map 31.1, Lot 7

Chairman Nickerson opened this Public Hearing and called it to order at 7:35 PM. He noted that Mr. Carpenteri was not present this evening and that he had seated Bob Bulmer, Alternate at the table. He explained how the Public Hearing process works, apologized for the clerical error that brought them there on

a Friday evening and thanked the Board of Ed and Mr. Smotas for covering part of the costs of having the facility open this evening and staffed with custodial personnel who otherwise would not be there with the schools closed during the summer. He then said that First Selectman Paul Formica was present this evening and that he has invited him to first say a few words on the water issues that have been in the news recently.

Paul Formica, First Selectman thanked the Commission for having him and said that he would like to say a few words as Chairman of the Water & Sewer Commission. He said that he would first speak on the Water Moratorium and explain how it works and how water is distributed. The Town has seven (7) wells that pump from aquifers and that are permitted by the DEP. The Town uses approximately 3M gpd (gallons per day) and they have two (2) water tanks that hold 1.5M gallons of water each. Two of the wells are controlled by DEP permit and when the stream flows become low, the DEP kicks in and does not allow pumping from them. These two wells provide 900,000 gpd of water and the only times that they have trouble with water in Town has habitually been in the end of July and sometimes in early August and then the problem goes away.

The DEP restrictions that have been put in have been in place for at least 12 years now and the Town has acted accordingly. What has not been done has been to address this problem. They currently have two wells being replaced and expect to gain some 150,000 gpd just by doing this. Some of the other efforts that are being worked on are 200,000 gallons as a reserve from another water source and a regionalization plan to Waterford or Montville which appears to be the way to go. However, that does not come cheaply. Last week they went out for some bonds and they are paying 1.66% so, if they must bond for this, it is a good time to do so. The State is forcing us to regionalize however, we must also be chlorinated and that is also in progress and being worked on. By the time next July comes around, he said that he hopes to have an emergency reserve in place. Along with this, everyone will have to change their habits a bit and develop good conservation efforts. Last Sunday, they had the highest water demand in the history of the Town at 3.5M gpd and they turned on the two wells that had been turned off to meet this demand. They average 2.6M gpd Monday thru Thursday – with the call for conservation efforts out to the public; they went to 2.3M gpd and then 2.1M gpd by midweek. These conservation efforts combined with the increased supply will allow them to continue to do business as usual in East Lyme. He said that they also still have a good argument with the DEP on the stream flow concept regarding the fish going back up in July as many environmentalists have also weighed in on this and feel that it does not happen.

Mr. Bulmer asked if they tie into another water system how much more water they would be able to get. Mr. Formica said that there are millions of gallons available once they are connected regionally. For the long term, a desalination plant at Camp Rell would really be the answer as they would rather be a water seller than a water buyer.

Mr. Nickerson said that if this project is some three to four years in build out at minimum, and while this is not a topic for them tonight, it seems that they should be ahead of the curve when this comes on-line. Mr. Formica said that what Water & Sewer asks when people come forward is how much water they will need and there is plenty of opportunity between now and then to move on other resources.

Ms. Carabelas asked when it is the proper time for Water & Sewer to ask the developer to have their own wells on-site.

Mr. Formica said that they have been asking that all along – that developments have their own on-site wells to use for irrigation, flower watering, etc. He added that they have also divided the Conservation Commission and that they now have a branch of it that can take up the 'green' initiative.

Mr. Nickerson thanked Mr. Formica for coming and providing them with information and called upon the Applicant's representative for their presentation.

Attorney Theodore Harris, place of business 351 Main Street asked that Mr. Nickerson note that the legal ad had run.

Mr. Nickerson said that the Legal ad had run in the Day. (on July 11, 2008 and July 21, 2008)

Attorney Harris continued that they were here for the Master Development approval – the second step in a process which started well over two (2) years ago. During this process they have had several meetings with the neighborhoods and community groups as well as the downtown merchants and business groups – all of which participated in making the Plan what it is today. This is the second phase and there is an extensive list

of items that have to occur in this process. They just heard the Chairman of Water & Sewer talk about water and they are aware that this property is served by public water and sewer and that the availability is there. The earliest demand would be late 2010 or early 2011 and that would be a minimal demand that would only gradually increase over time. With respect to irrigation of the green areas; they will irrigate with their own on-site well and not with Town water. They are also looking towards the possibility of a well on their site that could turn water over to the Town. Regardless they know that water & sewer is available to the site and they know that they have to work with Water & Sewer on it. He then introduced Brad Parsons from BL Companies to present the existing conditions.

Brad Parsons, BL Companies presented **Exhibit 1** for the record - a site plan board depicting the Existing Conditions plan dated 7/24/08. He noted that what he was submitting comprised 90% of the Gateway Development District.

Michael Wang, Principal with Arrowstreet presented **Exhibit 2** for the record - SK Dev. Properties Gateway Commons Concept Plan dated 6/4/08. This conceptual layout plan works according to the test amendment depicting the retail space for the one large and other junior anchors and the 20,000 sf of office space on the second floor as requested by Mr. Salerno at the workshop. It also shows the removal of 125 residential units leaving 275 units and freeing up open space to the Rose cliff residential area which will remain as open space. He also noted that there was a reconfiguration of the greenway shopping area as the Commission had requested in the workshop. He then presented **Exhibit 3** for the record depicting the Retail Open Space Plan dated 11/15/07. He said that they also studied the public open space and designed it to be user friendly. There will also be the office space over the retail and the five junior anchors have been changed to four junior anchors.

Brad Parsons presented **Exhibit 4** for the record - the Overall Transportation Improvements Plan dated 7/24/08. He noted the infrastructure and phasing issues and said that the plan shows:

- ◆ The relocated Exit 74
- ◆ The frontage road improvements to Rte. 161
- ◆ The connection to Rte. 1
- ◆ Rte. 1 and Rte. 161 improvements and interconnection
- ◆ Site frontage road with connection to East Society to Dean Road

Jay Fisher, Principal with SK Properties explained that at this point they will connect out to and through East Society and improve this road to road standard.

Mr. Mulholland said that this gives four points of access and egress to the property.

Mr. Fisher said yes.

Mr. Bulmer asked about access to Route 1.

Mr. Fisher said that they are working on that as one of the possible legs of this development.

Mr. Parsons submitted **Exhibit 5** for the record - the Construction Phasing Plan dated 7/24/08.

Mr. Gada asked about the access road to Exit 74 and Exit 73 and if they are only connections or if they would have businesses on them.

Mr. Fisher said that there would not be any businesses on them - they are strictly access/egress roads.

Mr. Parsons explained the construction phasing plan noting that the Exit 74 interchange is Phase 1 which would include the large format retail while Phase 1A would have the junior anchors and some smaller shops. Phase 2 would be the apartment areas and some housing and Phase 2A would be the rest of the housing.

Mr. Nickerson asked if they would start Phase 1A prior to Phase 1 being completed.

Mr. Parsons said no, they need the infrastructure in place first before they do anything else.

Mr. Nickerson said that he wanted to make sure that the houses do not come before everything else.

Bill Sweeney, Certified Land Planner with TCORS said that phasing makes it clear that the project will be phased and that the developer is responsible for the infrastructure at each phase and if it deviates they would have to come back for approval of the Commission to do so.

Attorney Harris said that Phase 1 could start (although it is premature at this point) in the late summer of 2009 and would take more than a year to complete.

Mr. Bulmer asked about the living units and if that has changed or if it is the same.

Mr. Fisher said that there are 275 residential units (down from 400) and that they are comprised of 225 apartments and 50 town homes.

Mr. Bulmer asked according to the Rutgers study – how many children they would anticipate.

Mr. Sweeney said that nothing has changed from the time of the Klepper-Smith study and he believes that said that there would be 43. He continued that the architectural standards document has been revised many times and changed and that it is key to the MDP project as it becomes the guidebook and tool of control. The standards are what the submissions are judged by. These regulations take the place of the Zoning regulations for the purposes of this project and only where necessary for this project. The standards are also binding on whoever occupies the properties. The standards discussed in the submitted binder are:

- ◆ Permitted Uses
- ◆ Bulk and Dimensional requirements
- ◆ Parking & Loading
- ◆ Streets & Sidewalks
- ◆ Landscaping & Screening
- ◆ Lighting – Night sky provision
- ◆ Signage – Indirect, backlit or no lighting
- ◆ Open space & Conservation areas
- ◆ Miscellaneous Provisions – utility lines, aquifer protection, etc.
- ◆ Architectural Styles – Michael Wang of Arrowstreet submitted the following Exhibits for the record on architectural styles: **Exhibit 6 – Gateway Commons Architectural Styles; Exhibit 7 – Massing & Scales; Exhibit 8 – Materials & Colors; Exhibit 9 – Rooflines & Profiles and Exhibit 10 – Three pages of Materials & Colors** providing requirements and samples of materials – masonry, glass fiber materials etc.
- ◆ Massing & Scale
- ◆ Materials & Colors
- ◆ Rooflines & Profiles
- ◆ Typical Building Facades & Elevations

Mr. Sweeney noted that the designs are only samples.

John Mancini, Principal Engineer with BL Companies explained the detailed traffic study which was a requirement of this phase and which was submitted with the application. He said that the report is an executive summary and that the purpose is to provide an acceptable level of service and that they have met or exceeded those levels of service. He said that while left turns are the most difficult to make anywhere that they will pursue a light as has been requested by Mr. Mulholland and Mr. Scheer.

(Note: a brief break was taken here)

Attorney Harris suggested that they take questions from the Commission and then hear from the public.

Mr. Peck asked about the frontage road and if in passing through the residential units will any of them be accessed from the main drag.

Mr. Wang said that the quick answer is that they are all accessed off of the secondary roads and that they do not have any direct access.

Mr. Peck asked under building materials what the definition of 'finished masonry' was.

Mr. Wang said that term was used to insure there would not be just plain concrete units and that they would be brick-faced and mixed.

Mr. Peck asked about the traffic and said that in the interests of simplicity if they could take the different sections and provide some traffic counts as his concern was the term 'acceptable condition'.

Mr. Mancini said that the information is summarized in the charts in the report that they were provided with the application. The term 'acceptable' is appropriate when discussing traffic and the level of service

measures the delay by use of nationally understood standards. Most of the roads that they are dealing with are State roads so they are dealing with the terms as they are written. The only local road is East Society.

Mr. Nickerson asked if the traffic study considered the fact that Exit 75 might be closed down.

Mr. Mancini said that this traffic study did not take that into account as the DOT would NOT accept it that way. He noted that in reference to Mr. Peck's question that the information presented in the traffic study is at 2012 full build out projected traffic and that the measure is of peak time hour Friday afternoon and for Saturday mid-afternoon.

Mr. Bulmer said that we normally call for the parking areas to be 10' x 20' and that they had them cited a bit smaller at 9' x 18'.

Mr. Sweeney said that 9' x 18' is design size in many communities and works in trying to conserve impervious area. They used urban land use standards and they are actually providing more than enough residential spaces.

Mr. Bulmer asked if the area that lets out on Route 1 is near the school and the buses.

Mr. Mancini said no, it is across from the vacant land that the Town owns.

Mr. Nickerson asked if there would be any issue of eminent domain here.

Attorney Harris said no.

Mr. Nickerson asked if the issue of the facades on the four exposed sides of buildings is in the regulations.

Mr. Wang said that point #3 of Architectural Styles states that there are appropriate levels for front and back sides.

Mr. Sweeney added that point #4 states that there would be no blank walls.

Mr. Nickerson said that he does not find the Stop & Shop design that is in the book to be acceptable.

Mr. Mulholland noted that it reads representative examples of . . .

Mr. Sweeney said that the intention is that some aspects of a lot of these samples may come together. While they are representative samples only – it does not relieve them from the obligation to meet the architectural standards. He said that they would have no objection to striking that line.

Mr. Nickerson said that he does have a problem with the drive-thrus even though he knows that they have only defined two areas for them.

Mr. Sweeney said that where there is a concern that they felt it prudent to leave it in only in the event that someone does come and propose some unique, flexible idea on it – and – at the end of the day, the Commission can still say no.

Mr. Mulholland added that it does state that it is subject to the approval of the Commission.

Mr. Sweeney agreed that the discretion is left with the Commission.

Mr. Nickerson noted the buffer/screening of the off-ramps/highways and said that while he knows they need exposure, was it necessary to see the parking lots.

Mr. Sweeney said that there is a significant grade difference between the highway area and their property and they have preserved a lot of areas and some are wetlands. There is a narrow window on visibility there.

Mr. Mancini said that DOT approval required information and environmental review with the Army Corps of Engineers. In the very large infield area and the bank, the DOT requires the adding of landscaping for a headlight buffer so there is the opportunity for plantings. There is also a good greenbelt in that area.

Mr. Nickerson asked where the 50' high proposed highway sign was to be installed.

Mr. Sweeney said that it has to be adjacent to I-95 and that they do not have a standard on exactly where.

They are dealing with topography issues and do feel that they need to get the 50'. The Flanders Road signs are only 15'.

Mr. Salerno asked if they are proposing to connect and pave East Society Road.

Attorney Harris said that they are committed to the items that they have cited on the plan.

Mr. Salerno said that under Materials & Colors that he is not comfortable with vinyl siding in a commercial development and that he would propose to strike that out.

Mr. Fisher said that vinyl siding comes in a wide variety of shapes and sizes that do not even look like vinyl and that it is long-lasting and durable.

Mr. Salerno said that it is listed in both places and that he would be okay with it for residential but not for the commercial buildings.

Mr. Sweeney said that he understands where he is coming from however they make some very high grade vinyl and it might be useful in some of the smaller stores in certain instances.

Mr. Mulholland noted that there are some good vinyl products out there and that they might want to keep their options open.

Mr. Wang agreed and added that it is also appropriate to use in certain areas.

Mr. Salerno asked about the 50' height for the residential apartments.

Mr. Sweeney said that due to the topographic details that some of them would be built into the hillside and would not appear to look like 50' in height.

Mr. Wang noted that the end result of a lower height may be larger footprints and less green area.

Mr. Sweeney said that the apartment style buildings are four stories and that they need the 50' to have the peaked roof and that it is a critical issue to this project. He added that if they measure any four-story building that it is pretty high – well over 40'.

Mr. Mulholland noted that they are in 200 acres and that they might want to allow the flexibility.

Mr. Salerno said that he does not want to see them from the highway.

Mr. Sweeney said that they are in the lowest area of the land.

Mr. Wang noted that in the interest of smart growth that they want to have these units around the green.

Mr. Fisher said that there are no more than four livable stories.

Mr. Sweeney said that the overflow parking was taken out as they said that they did not want it and the neighbors said that they did not want the soccer field so that also came out.

Mr. Salerno said that he does not want stamped sidewalks and that he still wants to see variety in pavers.

Mr. Sweeney said that he agrees that they want variety however he does not want to restrict this as they have not reached that level of detail here and they want to keep this flexible so that they can integrate things. Attorney Harris explained that this would appear at the site plan stage.

Ms. Carabelas asked if they considered going green with some of these environmentally.

Mr. Wang said that he is a lead process professional and involved with measures that include the rating of the energy conservation of buildings and that they would contemplate this once they are in the building design process.

Mr. Gada asked if they would see the traffic and exactly where the cemetery is in relation to this.

John Mancini pointed out the cemetery and Church Lane.

Mr. Gada asked if they were the people responsible for building Mashpee.

Mr. Fisher said no.

Mr. Wang said that Arrowstreet is working on the Sharon project.

Mr. Nickerson called for anyone from the public who wished to speak for, against or neutrally regarding this application –

Bob Gadbois, 358 Boston Post Road said that he would like the Commission not to close this Public Hearing tonight as this is not their regular meeting night and people go away on the weekend and cannot make it here. He said that he also finds it hard to believe that there would only be 43 kinds with 200 units of housing; especially since there are 83 kids coming from Sea Spray per the superintendents' figures. He also thinks

that traffic is an issue and that there are always problems on I-95. Recently he could not get out onto Boston Post Road when he went to the convenience store there.

Mr. Nickerson said that he has written correspondence from Mrs. Gadbois of 358 Boston Post Road noting Minutes dated 7/12/07 in which Mr. Peck made comments regarding the need for an economic impact study on the businesses in the area and a crime study. She also asked if three or more of the Commissioners had attended any of the neighborhood or business meetings that the developer had held and if so, where were the minutes of those meetings.

Mr. Nickerson said for the record that they did have an independent study done on the economic impacts of the downtown and Flanders area businesses (Don Klepper Smith) and a study on the effects on crime and Town services as well as the net tax advantage to the Town from this project. He asked for a show of hands from the Commissioners who had attended the neighborhood and other meetings. There were none.

Mr. Nickerson asked if the Commissioners had any other questions – Hearing none – he asked the applicant if they would like to comment.

Mr. Sweeney thanked them, said that he would review the criteria briefly and asked that the Public Hearing be closed this evening as this project was found to be consistent with the POCD, fixing the road infrastructure will be a benefit to the Town and the Gateway project will be an asset to the Town. He also submitted a summary of the Data Core study on the net tax dollars of over \$2M per year that would be realized. He added that those tax dollars come early in the development with the retail stores. There will be no changes to the aquifer protection regulations and the uses are provided for within the regulations. This is a mixed use development and they have millions of dollars in infrastructure costs that will be paid for by private funds. They have a unified planned development for a parcel that has sat vacant for many years and this is a signature project that they are all proud of and have been working on for over two years now.

Attorney Harris said that this has been a long process and that he truly believes that this difficult site was meant for these developers who are anxious to move forward. He said that he would urge the Commission to approve this application and move this project forward as they are under some stringent time frames on this.

Mr. Fisher expressed his gratitude to the Commission, the public, and the neighbors particularly for their thoughtfulness and effort on this project. He thanked staff for their many hours spent reviewing this project.

Mr. Nickerson noted that Exhibit 11 submitted for the record is the Traffic Study by BL Companies dated June 2008 and Exhibit 12 submitted for the record is the DataCore Partners LLC Economic Impact Study Summary dated 1/14/08.

Hearing no further comments –

Mr. Nickerson called for a motion to close this Public Hearing.

**\*\*MOTION (1)**

**Mr. Gada moved that this Public Hearing be closed.**

**Mr. Salerno seconded the motion.**

**VOTE: 6 – 0 - 0. Motion passed.**

**Mr. Nickerson closed this Public Hearing at 10:30 PM.**

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary

**EAST LYME ZONING COMMISSION  
SPECIAL MEETING  
Friday, JULY 25th, 2008  
MINUTES**

The East Lyme Zoning Commission held a Special Meeting on Friday July 25, 2008 at the East Lyme Middle School, Society Road, Niantic, CT.

**PRESENT:** Mark Nickerson, Chairman, Rosanna Carabelas, Secretary, Norm Peck, Marc Salerno, Ed Gada, Bob Bulmer, Alternate

**ALSO PRESENT:** Attorney Theodore Harris, Representing the Applicant  
Jay Fisher, SK Properties  
Chris Knisley, KGI Properties  
Brad Parsons, BL Companies  
John Mancini, BL Companies  
Bill Sweeney, TCORS  
Michael Wang, Arrowstreet  
William, Dwyer, Alternate  
William Mulholland, Zoning Official

FILED IN EAST LYME TOWN  
CLERK'S OFFICE

July 29 20 08 at 11:00 <sup>AM</sup> <sub>PM</sub>

*Esther B. Williams*

EAST LYME TOWN CLERK

**ABSENT:** Steve Carpenteri, Gregory Massad, Alternate

Chairman Nickerson called this Special Meeting of the East Lyme Zoning Commission to order at 10:31 PM after the previously scheduled Public Hearing.

**Pledge of Allegiance**

The Pledge was previously observed.

Mr. Nickerson noted that he had seated Bob Bulmer, Alternate at the table.

**Public Delegations**

Mr. Nickerson called for any comments from the public regarding matters not on the agenda.

There were none.

**Special Meeting**

**1. Application of Theodore A. Harris for Gateway Development/East Lyme LLC, for approval of a Master Development Plan in accordance with Section 11.A.9 of the East Lyme Zoning Regulations for property identified in the Application as: 284 Flanders Road, East Lyme Assessor's Map 31.3, Lot 1; Flanders Road, East Lyme Assessor's Map 31.0, Lot 1; 294-2 Flanders Road, East Lyme Assessor's Map 31.3, Lot 5; 282 Flanders Road, East Lyme Assessor's Map 31.3, Lot 2; 286 Flanders Road, East Lyme Assessor's Map 26.0, Lot 2; Ancient Highway, East Lyme Assessor's Map 25.0, Lot 35; Flanders Road, East Lyme Assessor's Map 31.1, Lot 9; Boston Post Road, East Lyme Assessor's Map 31.1, Lot 8.1; 4 Church Lane, East Lyme Assessor's Map 31.1, Lot 11; and 138 Boston Post Road, East Lyme Assessor's Map 31.1, Lot 7.**

Mr. Nickerson noted that they had just closed this Public Hearing and that they were under a time factor with the use of the school facility. After discussion it was decided that they would set a Special Meeting for Thursday, July 31, 2008 at 7:30 PM at the Town Hall for the purposes of making a decision on this application and any other time sensitive application that might be before them.

**Adjournment**

Mr. Nickerson called for a motion to adjourn.

**\*\*MOTION (1)**

**Mr. Bulmer moved to adjourn this Special Meeting of the East Lyme Zoning Commission at 10:40 PM.**

**Ms. Carabelas seconded the motion.**

**VOTE: 6 – 0 - 0. Motion passed.**

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary

FILED IN EAST LYME  
*Aug 6, 2008 AT 10:00* <sup>a</sup> M

EAST LYME ZONING COMMISSION  
SPECIAL MEETING  
Thursday, JULY 31st, 2008  
MINUTES

*Z. Blain ATC*  
EAST LYME TOWN CLERK

The East Lyme Zoning Commission held a Special Meeting on Thursday July 31, 2008 at the East Lyme Town Hall, 108 Pennsylvania Ave., Niantic, CT.

PRESENT: Mark Nickerson, Chairman, Rosanna Carabelas, Secretary, Norm Peck,  
Marc Salerno, Ed Gada, Steve Carpenteri

ALSO PRESENT: Attorney Theodore Harris, Representing the Applicant  
Jay Fisher, SK Properties  
Chris Knisley, KGI Properties  
John Mancini, BL Companies  
Bill Sweeney, TCORS  
Bob Bulmer, Alternate  
Gregory Massad, Alternate

ABSENT: William Dwyer, Alternate

Chairman Nickerson called this Special Meeting of the East Lyme Zoning Commission to order at 7:32 PM.

**Pledge of Allegiance**

The Pledge was observed.

**Public Delegations**

Mr. Nickerson called for any comments from the public regarding matters not on the agenda.

Mark Butterfield, 6 Upper Walnut Hill Road said that he wanted to speak regarding the Walnut Hill Country Club –

Attorney Theodore Harris objected and said that it is not appropriate to discuss a pending application that is to come before them.

Mr. Nickerson said to Mr. Butterfield that what Attorney Harris said was correct in that they cannot take public comment on pending applications.

**Special Meeting**

1. Application of Theodore A. Harris for Gateway Development/East Lyme LLC, for approval of a Master Development Plan in accordance with Section 11.A.9 of the East Lyme Zoning Regulations for property identified in the Application as: 284 Flanders Road, East Lyme Assessor's Map 31.3, Lot 1; Flanders Road, East Lyme Assessor's Map 31.0, Lot 1; 294-2 Flanders Road, East Lyme Assessor's Map 31.3, Lot 5; 282 Flanders Road, East Lyme Assessor's Map 31.3, Lot 2; 286 Flanders Road, East Lyme Assessor's Map 26.0, Lot 2; Ancient Highway, East Lyme Assessor's Map 25.0, Lot 35; Flanders Road, East Lyme Assessor's Map 31.1, Lot 9; Boston Post Road, East Lyme Assessor's Map 31.1, Lot 8.1; 4 Church Lane, East Lyme Assessor's Map 31.1, Lot 11; and 138 Boston Post Road, East Lyme Assessor's Map 31.1, Lot 7.

Mr. Nickerson noted that some of them may have been instructed that this was a public hearing in which they would be able to speak. He apologized that they may have been so misinformed and said that both of the

applications under discussion this evening are for Commission discussion and decision only as public testimony has already been taken.

Mr. Nickerson then called for discussion from the Commissioners on the Application of Theodore Harris for Gateway Development/East Lyme LLC noting that they had heard considerable testimony the previous week as well as in many workshops.

Ms. Carabelas said that she would like to address the issue of the height of the apartments that would be built. She said that she is uncomfortable with the height even though she knows that they meet the regulations to the roof line.

Mr. Gada said that he has a problem with the in and out roadway discussion from the last meeting where they come out somewhere near the Fire department and the cemetery.

Mr. Nickerson asked that they stay with one item at a time and said that they do have other buildings in Town that are that high/tall – such as Windward Apartments, Sea Spray and he has heard that Hope Street is even taller at 52' whereas these are only 50'. He said that he does not have a problem with the height as the buildings are being put in an area where the elevation is lower and they will not stick out. Also, they are lowering the number of residential units from 400 to 275 and by doing that, this can create more open space area and larger buffer zones rather than more buildings and impervious area.

Ms. Carabelas said that she does know that the neighbors are much happier with the number and type of units going there.

Mr. Salerno said that he has tossed that question around and asked himself if he would want taller buildings in the lower topographical area or more buildings spread out over more area.

Mr. Peck said that he does not have a problem with the height and that when it gets to the site plan approval stage that he wants to see the buildings in the lower area.

Mr. Nickerson asked Mr. Gada about his concern regarding the exit to Route 1.

Mr. Gada asked if it was pointed out that it is across from the entrance to the High School.

Mr. Salerno said that it is not there, it is across from the empty lot next to the pizza place.

Mr. Nickerson said that the exit comes out on the other side of the fire house and that the big plan is to move the High School entrance and make it a four-way intersection with a light and turning lanes to make the entire area safer.

Mr. Salerno said that makes sense and that they would have more say at the site plan stage.

Mr. Nickerson said that they do not have any say on a State Road anyway as the State will make that decision and the applicant has volunteered to widen the road and put in the turning lanes. Also, regarding the land on the sides, some of it belongs to the DOT as a right of way anyways – such as the area in front of where the new CVS will be in the Flanders Plaza.

Mr. Gada noted that he was satisfied at this point.

Mr. Salerno said that in looking over the materials that if they were proposing changes that he does not want to see vinyl sided commercial buildings and suggested that they add that the use of vinyl siding shall be limited as it would give them some flexibility without tying their hands. He would also like the grade of the vinyl siding to be subject to Commission approval. Regarding masonry he said that he also does not want to see a complete masonry building.

Mr. Peck suggested that they add a line under Item #1 as letter 'e' that states that these items may be limited or adjusted by the Zoning Commission. He said that he thinks that they already have this ability but he would suggest they add it as that would take care of the trim and siding etc.

Mr. Carpenteri noted that it would give them a say on the grade of the siding, etc. however he suggested that they should remain open to the use of siding as they make high grade products that do not even look like siding.

Mr. Salerno agreed that adding the statement as 'e' would work.

Mr. Peck said that he was concerned with the section of road south of I-95 to King Arthur Drive as they currently have around 25,000 cars per day passing through and the area is not surpassed except by Groton. On a peak Saturday they currently have 21,900 cars passing through and they project 28,010 after the project is done which by his calculations is a 28% increase. However, he said that he does not think that this includes the Rte. 1 mitigation/access plan or the light near the Shack and that mitigation plan.

Mr. Salerno said that the report shows the level of service.

Mr. Peck said yes, it does and that it is rated acceptable.

Mr. Nickerson asked what the level of service was in terms of present and going to –

Mr. Salerno said that the frontage road level at peak hours goes from B to C; the redone exit ramps for I-95 south stay at level A on Friday peak hour and goes from a level A to B on Saturday peak hour. The I-95 North goes from a level B to a level C during the peak times.

Mr. Nickerson said that the applicant is volunteering to do these improvements at their own cost and that they involve State roads.

Ms. Carabelas said that the State has to approve this anyway.

Mr. Peck said that he is also concerned with the setbacks on Page 3 and the buffers on Page 6 and that he has a specific situation in mind here with respect to the cemetery. The 6' and 10' with respect to the cemetery make it so that they can be right next to it. He said that he would like to see a larger buffer or setback in that area and the possibility of adding more trees so that people visiting the cemetery are not looking out on buildings.

Mr. Salerno noted that it is site plan specific.

Mr. Peck said that this was an after thought of his from one of the workshops as the cemetery is in a commercial zone.

Mr. Salerno said that it has to be a 10' buffer and that could be two rows of pine trees wide placed so that you could not see through them.

Mr. Peck said that his thoughts were that they could increase the setback or the buffer and double the evergreens for the winter landscape. He suggested that after Item #3 on Page 3 that they might add: 'Unless otherwise approved or required by the Zoning Commission.'

Mr. Nickerson said that they have a staff of architects and that they should know how to do this and to come in with a good plan for this.

Mr. Peck suggested that they change it to 100'.

Mr. Salerno, Mr. Nickerson and Mr. Carpenteri said that they would not be in favor of that.

Mr. Carpenteri suggested that on Page 6 that they change the buffer from 10' to 20' and that the Zoning Commission may choose to make it a landscape buffer.

Mr. Peck suggested that it be 20' unless otherwise approved by the Commission.

Mr. Peck said that on Page 7 in Item #8 on Irrigation that it states that it should not be supplied by the public water system without prior approval of the Water & Sewer Commission.

Mr. Salerno suggested that they add that they can use 'gray' water.

Mr. Peck noted that the next item number under 8 should be changed to number 9 as there are two 8's.

Mr. Salerno asked that they remove the word 'acceptable' where it appears and relates to 'representative samples'. He cited pages 5, 6, 8, 11, 15, 19 and 23 and noted that any other pages where it might appear should also be included.

Mr. Peck asked that about Item #4 on Page 14 regarding the sale of alcoholic beverages not being subject to any Town separation requirements.

Mr. Carpenteri said that the State follows the Town on these requirements and that historically liquor establishments have to be so many feet from each other.

Ms. Carabelas said that they are talking about ONLY within this development here.

Mr. Salerno said that he did not think that it should be different from the Town.

Mr. Peck said that he did not want to give unfair advantage to this.

Mr. Nickerson said that the point of putting it in here is that they are building a mini-Town and that this is the only area that it would apply to.

The Commission decided that they would strike Item #4 under Miscellaneous Provisions and move all the following numbers up.

Mr. Nickerson said that he would address the drive-thrus at a later time when and where they were being proposed. He noted that he would like the Commission to take control of primary and secondary free-standing signs and asked that on Page 10 in Item #2 b that the last line be changed to read: . . . 'adjacent to each access to a State highway or State road.'

Mr. Nickerson asked if they were ready to make a motion.

**\*\*MOTION (1)**

Mr. Salerno moved to APPROVE the Application of Theodore A. Harris for Gateway Development/East Lyme LLC, for a Master Development Plan in accordance with Section 11.A.9 of the East Lyme Zoning Regulations for property identified in the Application as: 284 Flanders Road, East Lyme Assessor's Map 31.3, Lot 1; Flanders Road, East Lyme Assessor's Map 31.0, Lot 1; 294-2 Flanders Road, East Lyme Assessor's Map 31.3, Lot 5; 282 Flanders Road, East Lyme Assessor's Map 31.3, Lot 2; 286 Flanders Road, East Lyme Assessor's Map 26.0, Lot 2; Ancient Highway, East Lyme Assessor's Map 25.0, Lot 35; Flanders Road, East Lyme Assessor's Map 31.1, Lot 9; Boston Post Road, East Lyme Assessor's Map 31.1, Lot 8.1; 4 Church Lane, East Lyme Assessor's Map 31.1, Lot 11; and 138 Boston Post Road, East Lyme Assessor's Map 31.1, Lot 7; with the following modifications: Remove the word 'acceptable' where it appears and relates to 'representative samples' (pgs. 5, 6, 8, 11, 15, 19 & 23); Page 6, Item 2b change the buffer from 10' to 20' and add 'unless otherwise approved by the Zoning Commission'; Page 14 – Strike Item #4 and renumber accordingly; Page 10 on signage, Item 2b change the very last line at the end to read: 'state highway or state road'; Page 21 – Add a line that states: 'All materials may be limited or adjusted by the Zoning Commission' and regarding irrigation water – 'acceptable 'gray' water may be used'.

Ms. Carabelas seconded the motion.

Vote: 6 – 0 - 0. Motion passed.

(Note: Copy of MDP Standards showing above changes is filed with the Town Clerk)

It was noted that this would publish on 8/7/08 and become effective on 8/8/08.

**2. Application of Frances and Robert Mattison for a Special Permit under Section 3.2.3 to operate a dog kennel at property identified in the Application as 98 Grassy Hill Road, East Lyme, CT.**

Mr. Nickerson called for discussion on this application.

Mr. Salerno said that he took a look at the acoustical report/study and that while studying electrical engineering, he studied acoustics and that he now does underwater acoustics. He looked at the report and while the math is 'dead on' and correct some of the assumptions are incorrect. 'Shadowing', the absorption of trees which was mentioned – he said that he was not sure how much sound is absorbed but there are not a lot of trees in certain areas there. The study was done for 300' from the closest property and the attenuation distances were based on grade. He said that he was not sure if that was totally correct and that the fence material would have to be heavy and vinyl would not be able to achieve this and for the study to be accurate – they would have to have a concrete block. Considering this, he said that he does think that the noise would be a nuisance. Also, the regulations state a 'kennel' and he said that doggie daycare is not a kennel as it would mean more vehicle trips per day for people dropping off and picking up rather than with a kennel where people would be leaving their pets for a week or two. He said that he could to approve this with the doggie daycare and that he thinks that based on the acoustic report that there would be a problem up there with the kennel.

Mr. Carpenteri said that this is a large property and that there could be another area on it where the kennel could go so that it is farther from the neighbors so that the noise would be less of a problem to them.

Mr. Gada said that he has trouble with the doggie daycare and all of the traffic that would be generated by it and that he agrees with what his fellow Commissioners have said.

Mr. Peck said that he finds it difficult in trying to support someone who wants to do business in Town when they have to consider a number of things so that they have orderly development. He said that he drove up to this area and that he can hear the birds and it is very quiet and that this would upset this quiet corner. He

said that he also considered that there are people who ride horses up there and that horses are 'strange' animals and could be spooked by dogs barking and someone could get hurt. He said that the opposition from the neighbors was one of the strongest that he has seen and that is what drove him to go up to check out the area. He said that he does not think that this fits in with the harmony of the neighborhood.

Ms. Carabelas said that she did the same thing that Norm did and went up to check out the area and that she had to agree with what her fellow Commissioners have already said.

Mr. Salerno said that he also drove up there and that he was also concerned with the sharp curve in the road.

Mr. Nickerson asked if they were ready to make a motion on this application.

**\*\*MOTION (2)**

**Ms. Carabelas moved to DENY the Application of Frances and Robert Mattison for a Special Permit under Section 3.2.3 to operate a dog kennel at property identified in the Application as 98 Grassy Hill Road, East Lyme, CT.**

**Mr. Salerno seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

It was noted that this would publish on 8/7/08 and become effective on 8/8/08.

**Adjournment**

Mr. Nickerson called for a motion to adjourn.

**\*\*MOTION (3)**

**Mr. Salerno moved to adjourn this Special Meeting of the East Lyme Zoning Commission at 9:35 PM.**

**Mr. Carpenteri seconded the motion.**

**VOTE: 6 – 0 - 0. Motion passed.**

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary



# **GATEWAY COMMONS**

## **MASTER DEVELOPMENT PLAN**

### **DEVELOPMENT & ARCHITECTURAL STANDARDS**

**KGI Properties / SK Properties Development**

**June 2008**

*Remenick*  
*Attachment to Zoning Spec. Mtg. 7/31/08*

# Introduction

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Section 11.A.9 of the East Lyme Zoning Regulations allows for the adoption of a Master Development Plan (MDP) as an alternative to the traditional parcel by parcel development of the GPDD Gateway Planned Development District. The East Lyme Zoning Commission may, subject to a public hearing, adopt an MDP that modifies the zoning requirements of the District and allow for deviation from the typical requirements for use, bulk, and other development and architectural standards.

**Any provision of the East Lyme Zoning Regulations applicable to the District and not specifically superseded by adoption of the MDP shall continue in full force and effect.**

The following Development and Architectural Standards for the Gateway Commons Master Development Plan are submitted pursuant to Section 11.A.9.4, subsections (c) & (d), of the East Lyme Zoning Regulations.

These Development and Architectural Standards shall be binding upon all future development within the MDP area unless formally modified by the East Lyme Zoning Commission.

# Permitted Uses

## **Purpose:**

*To provide for categories of permitted uses allowed, subject to Site Plan Approval, within the Gateway Commons Master Development Plan.*

## **Standards:**

- 1) The following shall be permitted uses subject to Site Plan Approval:
  - a) Retail stores subject to the restrictions of Section 11A.9.2.1.
  - b) Multifamily and townhouse residential dwellings subject to the restrictions of Section 11A.9.2.2.
  - c) Standard and fast-food restaurants without drive-thru facilities.
  - d) Business, professional, and medical offices.
  - e) Business and personal service establishments.
  - f) Health clubs and recreational facilities.
  - g) Day care centers.
  - h) Hospitals and clinics.
  - i) Hotels and conference centers.
  - j) Research, design, and development facilities.
  - k) Trade and technical schools and facilities of higher learning.
  - l) Corporate headquarters.
  - m) Parking garages, utility infrastructure, and other accessory uses customary and incidental to any of the foregoing principal uses.

## **Regulations Superseded:**

Section 11A.1 (Permitted Uses)  
Section 11A.2 (Special Permit Uses)

# Bulk & Dimensional Requirements

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## **Purpose:**

*To provide tailored standards for the development of lots within the Gateway Commons Master Development Plan.*

## **Standards:**

- 1) Lot Size. The minimum lot size shall be 20,000 square feet.
- 2) Frontage. The minimum street frontage shall be 75 feet.
- 3) Setback. No building or structure shall be placed less than 10 feet from a street line or less than 20 feet from other property lines unless otherwise approved by the Commission.
- 4) Coverage. The total area covered by all buildings and structures, excepting parking garages and other parking and access infrastructure, shall not exceed 40 percent of the lot area.
- 5) Height. No non-residential building or structure shall exceed 40 feet in height and no residential building or structure shall exceed 50 feet in height unless otherwise approved by the Commission.
- 6) Height Limitation. Spires, cupolas, towers, chimneys, flagpoles, solar panels, ventilators, tanks and other similar architectural features may be erected to a reasonable and necessary height as approved by the Commission to achieve the architectural standards of the MDP.

## **Regulations Superseded:**

Section 11A.3 (Dimensional Requirements)  
Section 20.12 (Height Limitation)

# Parking & Loading

---

## **Purpose:**

*To provide flexible parking requirements based on the mix of potential uses within the Gateway Commons Master Development Plan which both limit the unnecessary construction of impervious surfaces and are appropriate for the associated peak hours of demand.*

## **Standards:**

- 1) **Parking Space Dimensions.** Each standard vehicle parking stall shall contain a rectangular area not less than 9 feet by 18 feet. No more than 25% of the vehicle parking stalls on any lot may be designated as compact spaces which shall contain a rectangular area not less than 8 feet by 16 feet.
- 2) **Off-Street Parking Space Requirements.** Multiple mixed uses shall be encouraged to share off-street parking spaces. The total number of shared parking spaces required shall be calculated using the Urban Land Institute's Shared Parking (2<sup>nd</sup> Edition) and Parking Requirements for Shopping Centers, or acceptable equivalent, noting the proposed mix of potential uses and the peak hours of demand for each use. A Shared Parking Analysis, substantiating the number of parking spaces provided and prepared by a qualified professional, shall be submitted with the MDP for review and approval by the Commission.
- 3) **On-Street and Overflow Parking.** The Commission shall consider the availability of on-street parking along public streets and private driveways as well as provisions for overflow parking facilities in their review and approval of the Shared Parking Analysis.
- 4) **Pedestrian Access.** Parking areas shall be located and designed to encourage safe and convenient pedestrian and handicap access to multiple mixed uses.
- 5) **Residential Parking.** Parking spaces for residential uses may be designated in surface parking areas and garages as well as driveways for individual units.
- 6) **Loading Spaces.** Nonresidential uses greater than 20,000 square feet in floor area shall provide one (1) paved off-street loading space not less than 10 feet in width, 30 feet in length, and with 14 feet of vertical clearance. Sharing of loading spaces among uses shall be permitted.

## **Regulations Superseded:**

Section 11A.3.5 (Off-Street Parking and Loading Space)  
Section 22 (Off Street Parking and Loading)

# Streets & Sidewalks

---

## Purpose:

*To provide standards for the construction of safe and convenient vehicular and pedestrian access within the Gateway Commons Master Development Plan.*

## Standards:

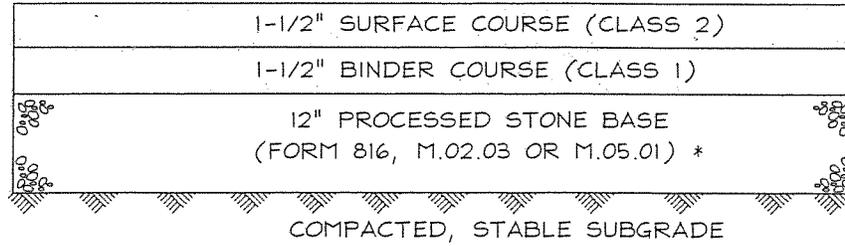
- 1) **Access Points.** A minimum of at least two potential access points to an approved public street or highway shall be identified for the development. The sequence of construction of these access points shall be clearly identified in the phasing plan for the development and approved by the Commission.
- 2) **Town Roads.** Town roads within the development shall have a minimum roadway width of 24 feet and a 50 foot right-of-way and shall conform to the other requirements of the East Lyme Subdivision Regulations unless otherwise approved by the Town Engineer. Where possible, town roads may consist of a boulevard design consisting of two 16 foot wide lanes with an 8 foot median.
- 3) **Private Driveways and Parking Areas.** Private driveways and parking area aisles designed for vehicular traffic shall have a minimum width of 15 feet for one-way traffic and 22 feet for two-way traffic. Private driveways and parking areas shall not be required to conform to town road standards. See attached Fig. 1 for pavement structure specifications for private driveways and parking areas.
- 4) **Sidewalks.** All sidewalks within the development shall be constructed of concrete or other material approved by the Commission. Sidewalks, no more than five (5) feet wide and located within the public right-of-way where possible, shall be provided along at least one side of every town road. Sidewalks, no less than four (4) feet wide, shall be provided along private driveways and within parking areas as necessary to encourage safe and efficient pedestrian movement. The construction or extension of sidewalks shall not be required offsite or outside of the MDP area. See attached Fig. 2 for construction specifications for sidewalks.
- 5) **Curbing.** Curbing within the development shall be located and selected by type as necessary for safety and storm water design and shall be constructed of materials selected as appropriate for visual appearance, level of traffic, and tenant needs.
- 6) **Crosswalks.** All crosswalks within the development shall be located to maximize the safety and convenience of pedestrian movements. Crosswalks may be painted on pavement or constructed of another material as approved by the Commission. See attached Fig. 3 for construction specifications for raised crosswalks where required.

## Regulations Superseded:

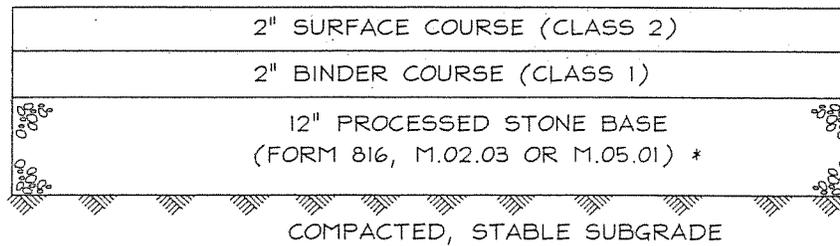
Section 11A.4 (General Requirements)  
 Section 20.23 (Private Driveways)  
 Section 24.6(A) (Surfacing and Drainage\*)  
 Section 24.6(B) (Driveways)  
 Section 24.6(C) (Sidewalks)

\*(provisions for requiring private driveways to be constructed to town standards only)

A: STANDARD DUTY PAVEMENT SECTION  
[PRIVATE DRIVEWAYS/ROADWAYS]



B: HEAVY DUTY PAVEMENT SECTION  
[PRIVATE DRIVEWAYS/ROADWAYS]



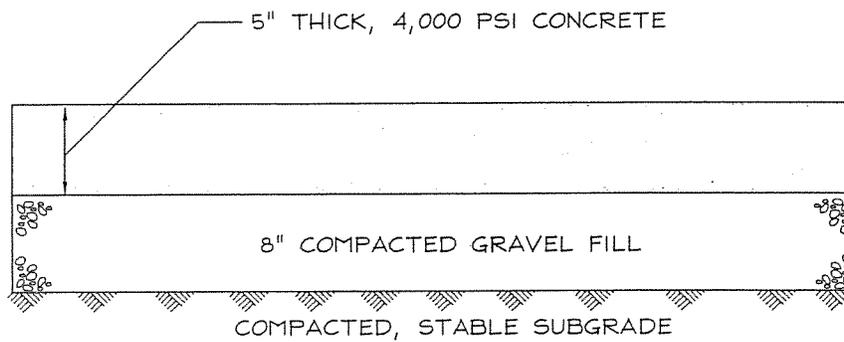
NOTES:

\* THE ACTUAL THICKNESS OF THE PAVEMENT COURSES AND BASE MATERIAL MAY BE ADJUSTED BY THE GEOTECHNICAL ENGINEER AFTER THE EVALUATION OF THE ACTUAL SITE SUBGRADE CONDITIONS AND THE TENANT/OWNER REQUIRED PAVEMENT LIFE.

FIGURE 1

BITUMINOUS ASPHALT PAVEMENT SECTIONS

CONCRETE SIDEWALK SECTION \*

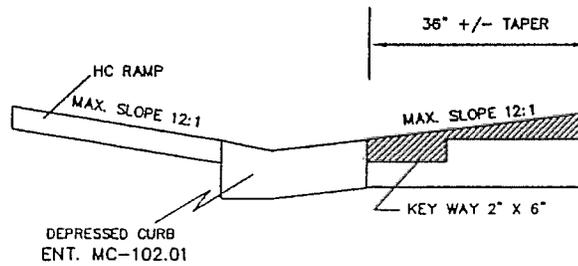
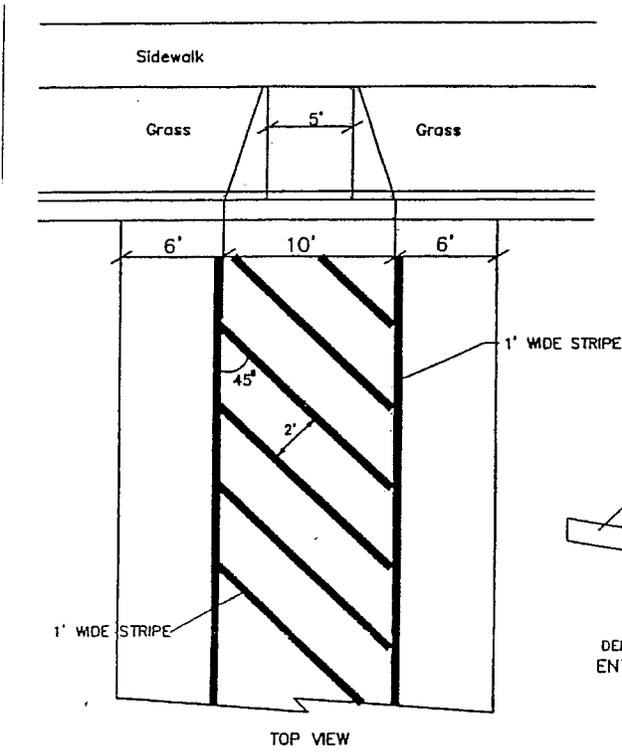
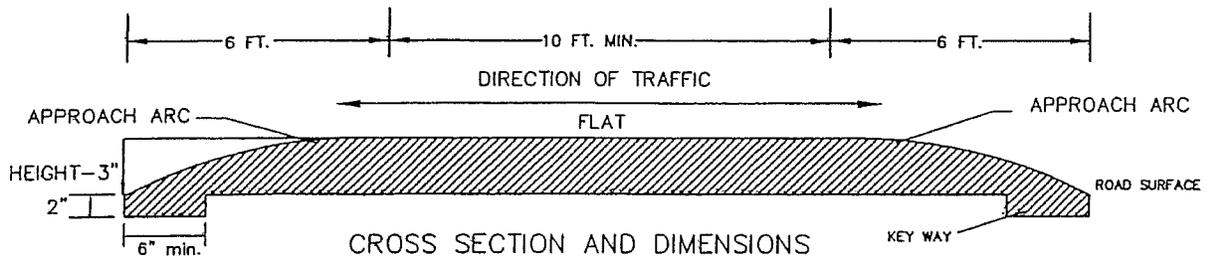


NOTES:

\* WIDTH OF SIDEWALK TO BE A MINIMUM OF 4-FEET WITHIN THE GPDD SITE AND ALONG PRIVATE DRIVEWAYS, AND A MAXIMUM OF 5-FEET WITHIN PUBLIC STREET RIGHTS-OF-WAY. LOCATION OF SIDEWALK WITHIN PUBLIC STREETS TO BE DETERMINED BY UTILITIES AND WIDTH OF RIGHT-OF-WAY WITH APPROVAL OF THE TOWN ENGINEER. SIDEWALK IN PUBLIC RIGHTS-OF-WAY SHALL BE REQUIRED ON ONLY ONE SIDE. LOCATION OF THE SIDEWALK ALONG PRIVATE DRIVEWAYS AND WITHIN THE GPDD SITE SHALL BE DETERMINED BY GRADE AND ACCESS REQUIREMENTS

FIGURE 2

CONCRETE SIDEWALK SECTION



	REVISED	
		RAISED CROSSWALK
		GUIDELINE

# Landscaping & Screening

---

## Purpose:

To provide requirements for necessary buffers, screening, and landscape plantings as integrated components of the development within the Gateway Commons Master Development Plan.

## Standards:

- 1) Landscaped Buffer Requirement. A landscaped buffer consisting of native evergreen and deciduous species shall be required along the outer perimeter of the MDP area to provide suitable visual screening. See attached Fig. 2 for details. Suitable and healthy existing trees and other vegetation may be preserved to satisfy this buffer requirement. See Appendix B, Fig. 1, for tree preservation detail. Where appropriate the Commission may waive this buffer requirement or allow substitution with an earthen berm, wall, or decorative fence not less than 6 feet in height. All landscaping shall be arranged in a manner that does not obstruct visibility required for traffic safety.
- 2) Landscaped Buffer Width. The minimum width of the required landscaped buffer shall be:
  - a. Six (6) feet along any public street or highway
  - b. <sup>20</sup>10 feet along any abutting nonresidentially zoned property, unless otherwise approved by the Zoning Commission.
  - c. 50 feet along any abutting residentially zoned property

The 10 foot nonresidential buffer requirement shall be reduced to six (6) feet if supplemented with appropriate fencing, wall, or berm wall not less than six (6) feet in height located with adequate separation from the property line for maintenance access. Where designated open space is located within an abutting residential zone, the width of this open space area may be used to satisfy the 50 foot residential buffer requirement. See attached Fig. 2 for details.

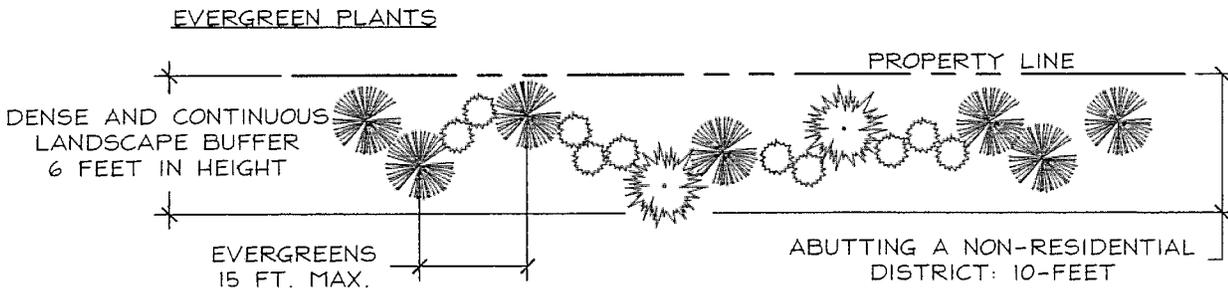
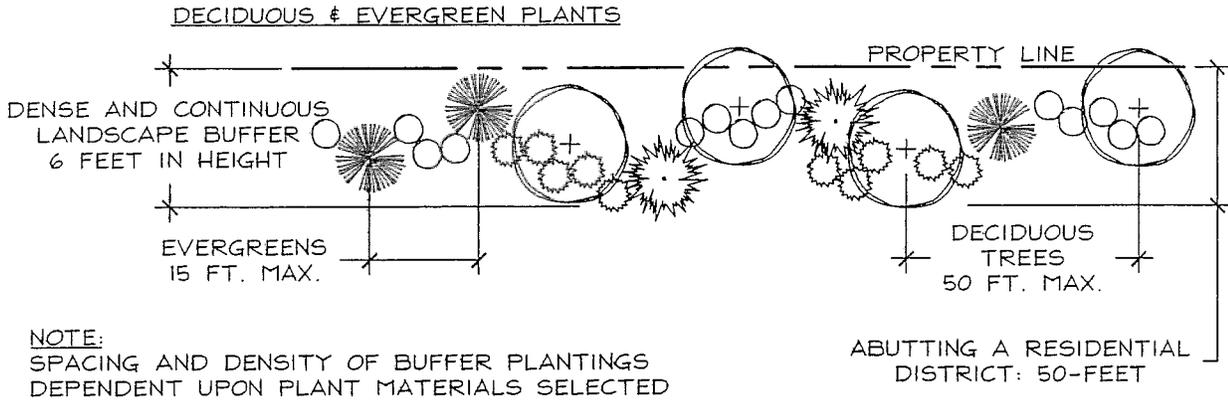
- 3) Parking Area Landscaping. A minimum of three (3) canopy trees, two (2) under story trees, and six (6) shrubs, consisting of native evergreen and deciduous species, shall be required within each parking area for every 30 parking spaces. Landscaping will be contained in curbed islands and along perimeter of parking lot, located to aid in the safe and efficient channelization of both pedestrian and vehicular traffic and to separate the major access ways through the parking area from the parking aisles. Each separate landscaped area will contain a minimum of 100 square feet, will have a minimum dimension of six (6) feet, will be planted with grass, ground cover, and/or shrubs, and will include at least one deciduous shade tree of not less than two (2) inch caliper, at least six to eight (6 - 8) feet in height at time of planting. The minimum landscaped area throughout all parking lots within the development shall be no less than ten percent (10%) of the total paved parking area (parking stalls and aisles only) within the development. Planted or natural landscaped areas located within 10 feet of the perimeter of parking areas, except those as required around the perimeter of the development, shall be counted toward satisfying this requirement. See attached Fig. 5 for details. Landscaping shall be protected from vehicular damage per details shown in Appendix B, Fig. 6.
- 4) Additional Landscaping. Additional landscaped areas shall be encouraged throughout the development within planters, planting beds surrounding buildings, plazas, courtyards, and along private driveways as necessary for aesthetic interest.

- 5) Street Trees. Street trees, consisting of native evergreen and deciduous species, shall be required along all public streets unless they conflict with necessary sight lines or utility infrastructure. The trees shall be spaced at an interval no more than of 50 feet on center and placed within the public right-of-way where possible. Where a median is proposed, the median shall be a minimum of 8 feet wide and planted with street trees spaced 25 to 35 feet on center.
- 6) Screening. Outside storage areas, loading bays, machinery and equipment, and disposal containers shall be screened from view from any public street or public plaza by buildings, fences, walls, plantings, or embankments as necessary. See Appendix B, Fig. 3 for details.
- 7) Invasive Species. No invasive plants as listed in the Connecticut Invasive Plant List shall be used in any landscape design for the development. The use of drought tolerant, native plants shall be encouraged throughout the development.
- 8) Irrigation. Irrigation for the development shall not be supplied by the municipal water system without prior approval of the Water & Sewer Commission. *Acceptable 'gray' water may be used.*
- 8) Maintenance and Replacement. All plantings shown on an approved Site Plan implemented under the MDP will be maintained and replaced on an ongoing basis.

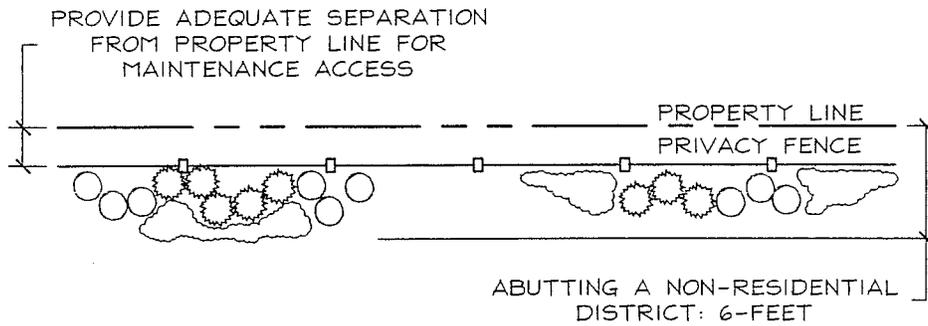
**Regulations Superseded:**

Section 11A.7 (Landscape Requirements)  
 Appendix B (Standard Landscaping Details – Figures 2, 4, 5)  
 Section 24.6(E) (Landscaping and Buffers)

A: WITHOUT FENCING



B: WITH PRIVACY FENCING



NOTES:

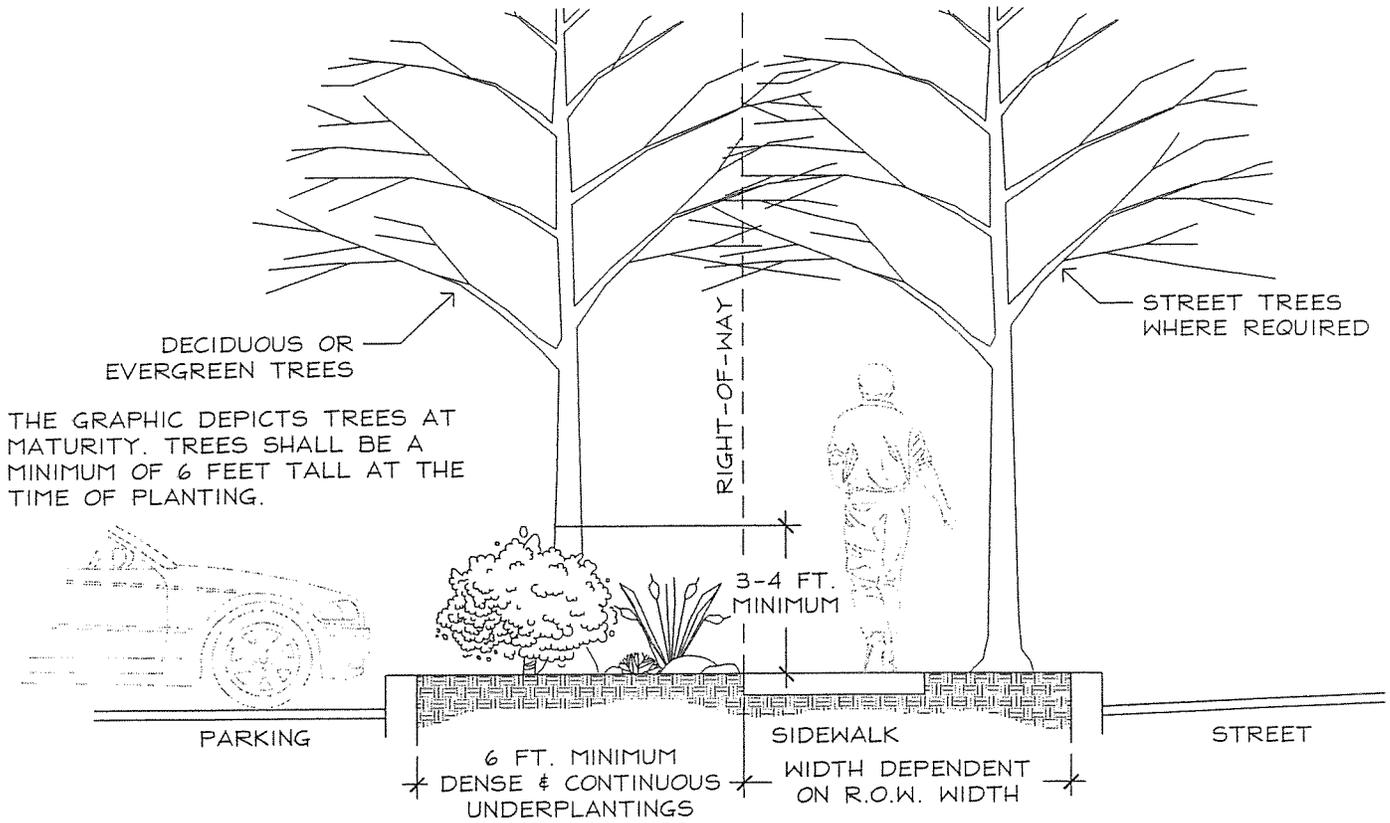
FENCE SHALL BE 6 FEET TALL WITH SOLID PICKETS (PRIVACY STYLE) DECORATIVE IN NATURE.

PLANTINGS MAY BE INCORPORATED ALONG FENCE. PLANTS SHOULD BE SELECTED FOR THERE AESTHETIC NATURE AND LOW GROWTH HABIT. THERE SHALL BE NO HEIGHT REQUIREMENT FOR PLANTINGS WHEN A 6 FOOT FENCE IS PROVIDED.

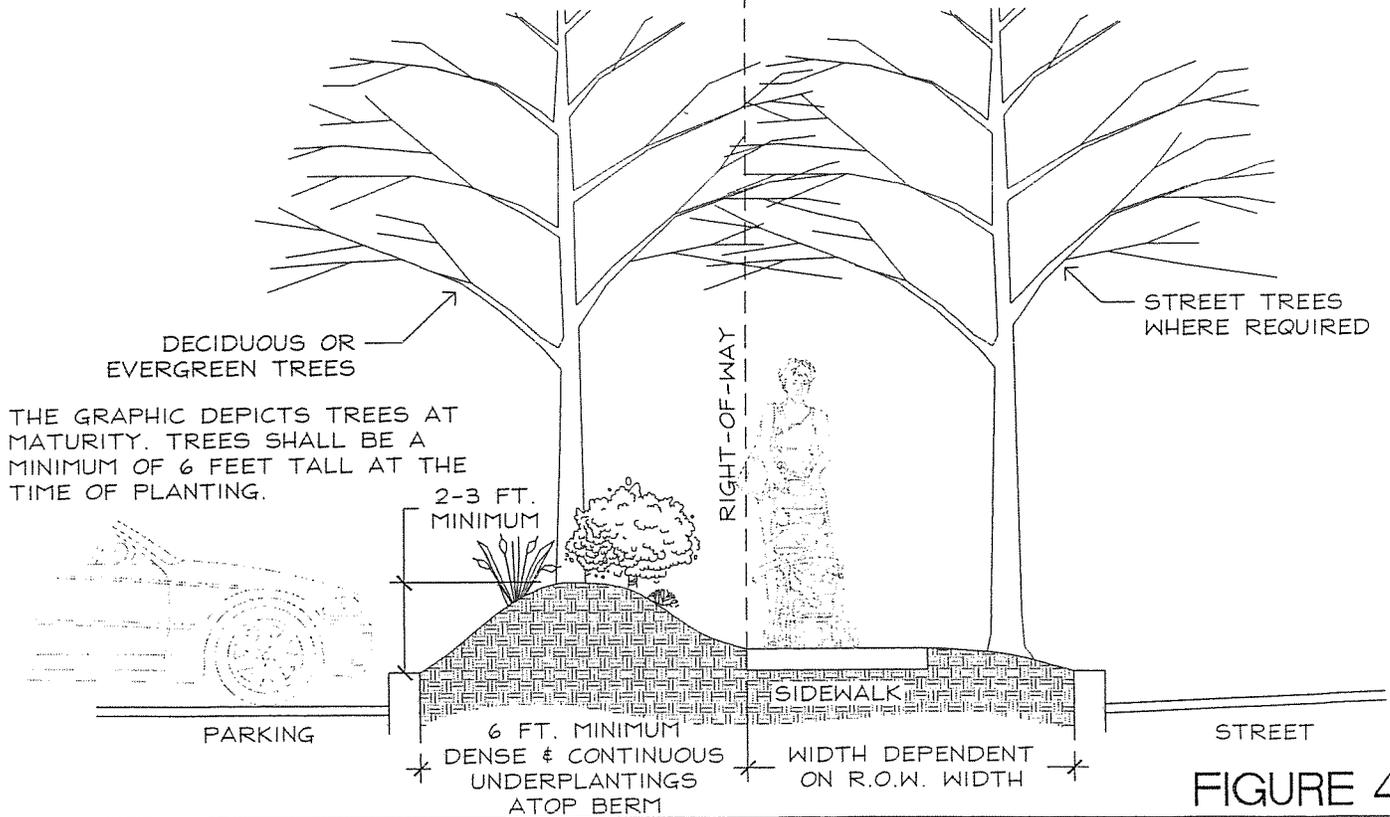
FIGURE 2

BUFFERING ALONG MDP PERIMETER

A: SCREENING FROM STREET WITHOUT BERM (SECTION)



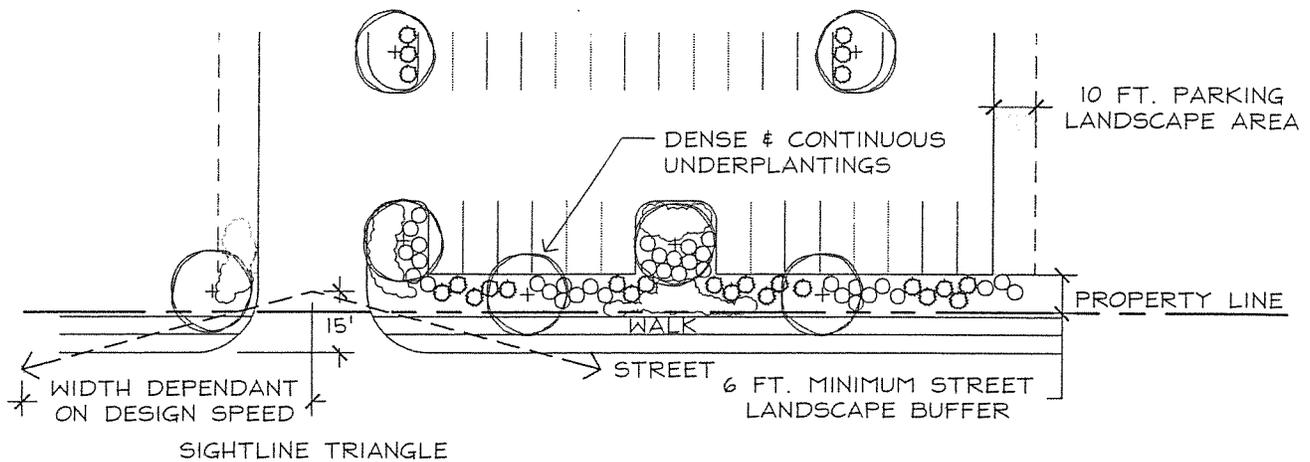
B: SCREENING FROM STREET WITH BERM (SECTION)



**FIGURE 4**

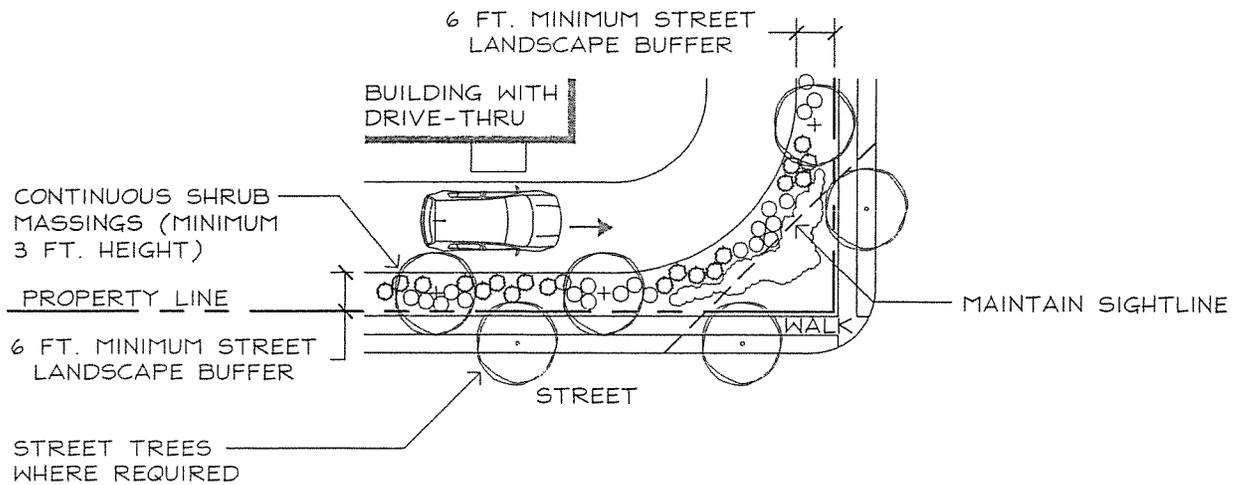
PARKING LOT SCREENING

C: SCREENING FROM STREET (PLAN)



NOTE:  
REFER TO CONNECTICUT DOT HIGHWAY DESIGN MANUAL,  
SECTION: INTERSECTIONS AT-GRADE FOR SIGHT TRIANGLES AND DISTANCES

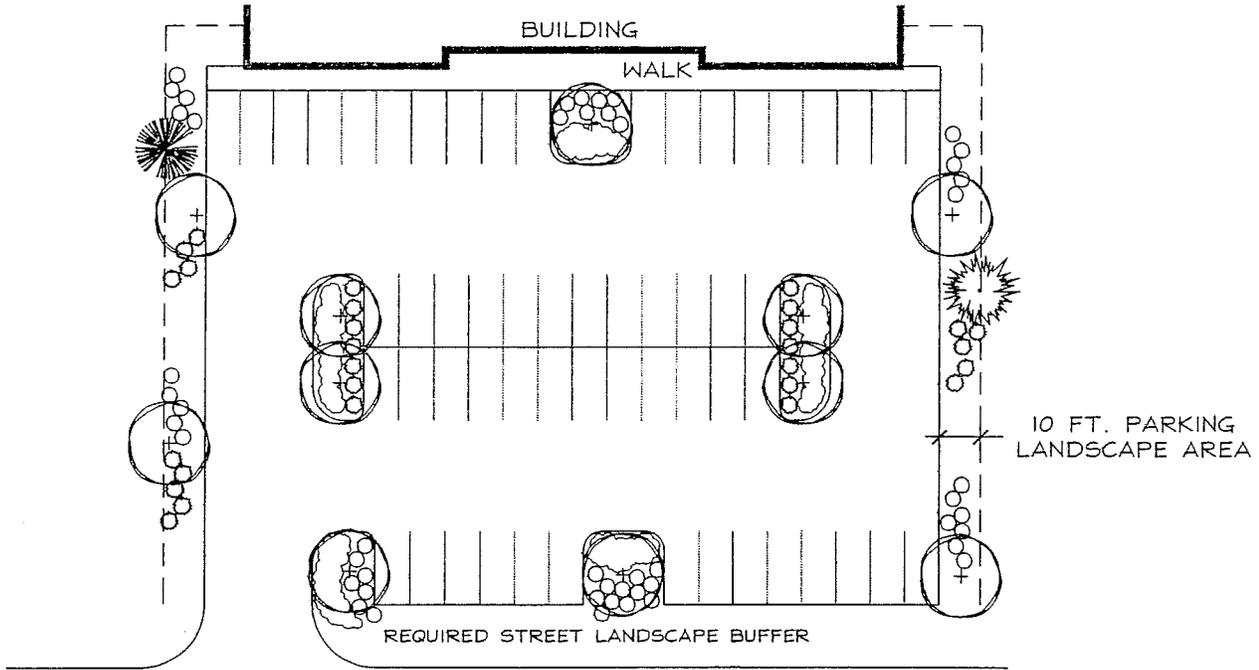
D: SCREENING FROM DRIVE-THRU (PLAN)



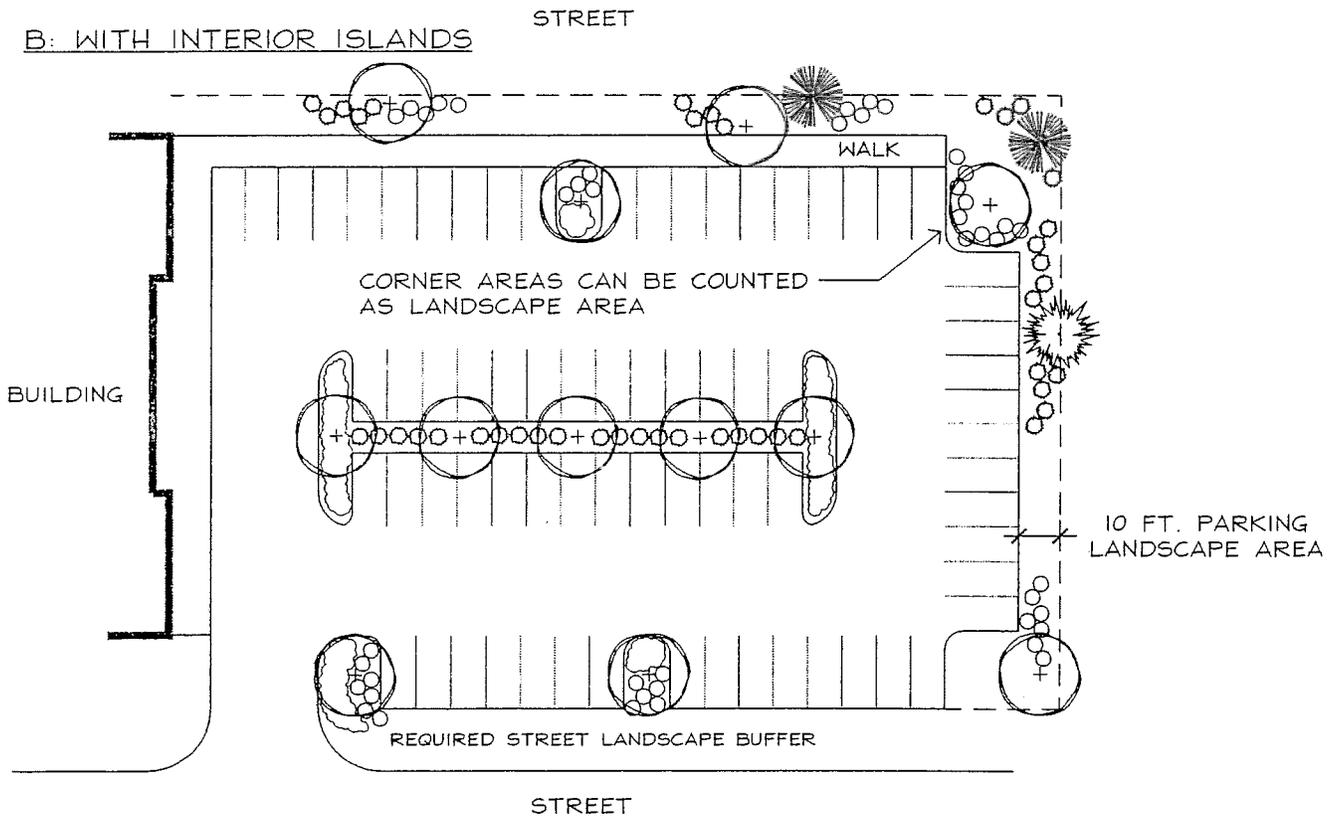
NOTE:  
REFER TO CONNECTICUT DOT HIGHWAY DESIGN MANUAL,  
SECTION: INTERSECTIONS AT-GRADE FOR SIGHT TRIANGLES AND DISTANCES

FIGURE 4  
PARKING LOT SCREENING

A: NO INTERIOR ISLANDS



B: WITH INTERIOR ISLANDS



NOTES:

ALTERNATE SKETCHES DEPICTING WAYS TO PROVIDE PARKING LOT LANDSCAPING.

THE MINIMUM LANDSCAPED AREA SHALL BE NO LESS THAN TEN PERCENT (10%) OF THE TOTAL PAVED PARKING AREA. THE LANDSCAPE AREA SHALL BE CALCULATED 10 FEET BEYOND THE PARKING LOT PERIMETER AND ALL INTERIOR LANDSCAPE AREAS WITHIN EACH PARKING AREA. NO REQUIRED MDP PERIMETER BUFFER AREA SHALL BE COUNTED IN THE LANDSCAPE AREA CALCULATION. MINIMUM OF THREE (3) CANOPY TREES, TWO (2) UNDER STORY TREES, AND SIX (6) SHRUBS SHALL BE REQUIRED FOR THE PARKING AREA FOR EACH 30 PARKING SPACES.

FIGURE 5  
PARKING LOT LANDSCAPING

# Lighting

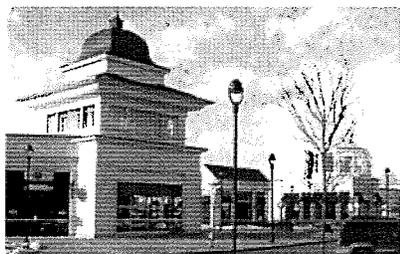
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## Purpose:

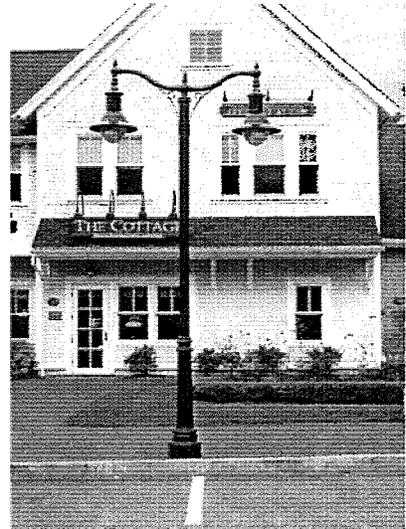
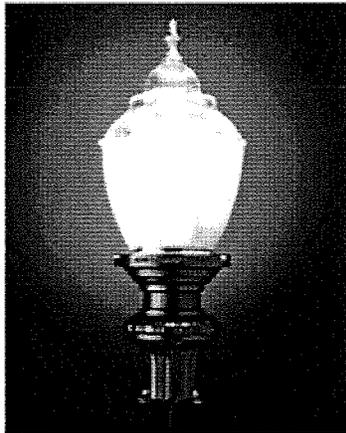
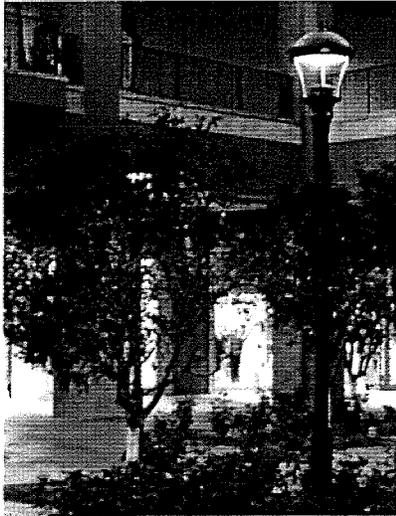
To provide standards for architecturally sensitive lighting fixtures which minimize light pollution, conserve energy, and maintain reasonable safety and security within the Gateway Commons Master Development Plan.

## Standards:

- 1) All outdoor lighting fixtures shall be appropriately located and/or shielded to avoid unnecessary illumination or glare onto abutting properties and into the night sky. A photometric analysis and plan shall be provided with the implementation of each phase of the MDP.
- 2) All building-mounted lighting fixtures shall be integrated and compatible with the architectural design of each building with the exception of lighting for loading areas and as otherwise required by other applicable regulation.
- 3) Exterior lighting fixtures shall be generally consistent throughout the development, compatible with surrounding buildings, and provide adequate safety lighting along pedestrian sidewalks and within parking areas. Architectural light fixtures are specifically encouraged along pedestrian sidewalks and public plazas.
- 4) Pole-mounted light fixtures shall not exceed 25 feet in height in parking areas and shall not exceed 20 feet in height elsewhere in the development. Pole heights shall be measured from average adjacent grade and shall include any base.
- 5) Examples. Representative examples of acceptable exterior lighting fixtures include the following:



*Nonresidential Lighting Fixtures*



*Residential Lighting Fixtures*

**Regulations Superseded:**

Section 11A.6.6 (Architectural Requirements – Lighting)  
Section 24.5.2(C) (Architectural Design\*)

\*(provisions for exterior lighting only)

# Signage

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## Purpose:

*To provide flexible and simplified signage requirements which acknowledge tenant branding requirements and preserve the visual appearance of development within the Gateway Commons Master Development Plan.*

## Standards:

- 1) **Design Guidelines.** All signage design within the development shall strive for simplicity, promoting clear, decipherable messages and should enhance the overall character of the development while conveying the branding and identity needs of each tenant. The detailing of signs including material, color, lettering, construction and illumination should serve to further the balance between the integration with building architecture and the preservation of brand identity. The location and scale of signs shall reflect thoughtful placement, respect for proportions, and appropriateness in the overall context of the development.
- 2) **Directional and Way-finding Sign Program.** A consistent and unified directional and way-finding sign program, representing a "family of signs", shall be provided within and throughout the development. The colors, style, material, lighting, size, branding, and location of these signs shall be compatible with the overall character and architectural styles of the development. A sign permit shall be obtained for the directional and way-finding sign program from the Zoning Officer pursuant to Section 18.1.13. The directional and way-finding sign program shall not be subject to a limit on sign area except that the following free-standing signs, advertising the variety of uses and tenants within the development and located at access points to the MDP area, shall be permitted with the following restrictions:
  - a) **Primary Free-standing Sign.** A single primary free-standing sign, no greater than 50 feet in height and including no more than 1200 square feet of total sign area, shall be permitted within the development adjacent to I-95.
  - b) **Secondary Free-standing Signs.** Additional secondary free-standing signs, no greater than 15 feet in height and including no more than 150 square feet of total sign area, shall be permitted within the development adjacent to each access to a state highway or ~~town~~ *state* road.

The height of these free-standing signs shall be measured from the average grade within 10 feet of their base to the highest point of the sign.

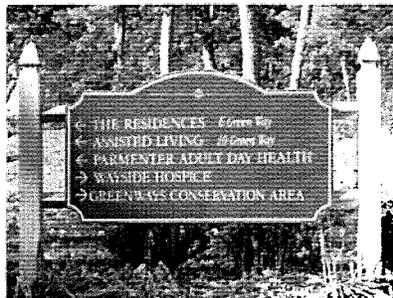
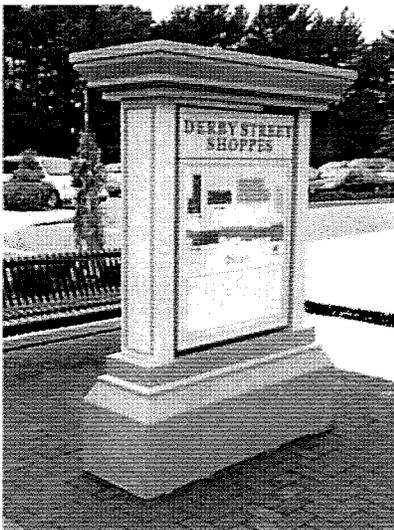
All signs part of the directional and way-finding sign program may be illuminated using external, backlit, or with the approval of the Commission, internal light fixtures. These signs may be comprised of multiple individual panels for various tenants and may have multiple colors and styles of lettering permitted.

- 3) **Nonresidential Signs.** Each nonresidential building frontage running parallel to an adjacent public street or private driveway (primary façade) shall be permitted no more than two (2) square feet of building mounted signage per linear foot along that length. Each nonresidential building frontage running parallel to an adjacent mew or parking area (secondary façade) shall be permitted no more than one (1) square foot of building mounted signage per linear foot along that length. Nonresidential building signs may be illuminated using external, backlit, or with the approval of the Commission, internal light fixtures. A sign permit shall be obtained for each nonresidential building's signage from the Zoning Officer pursuant to Section 18.1.13.

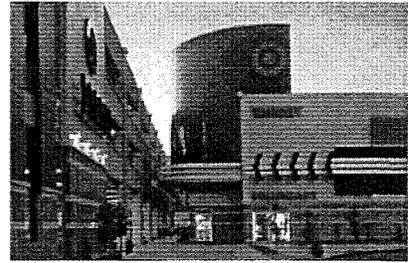
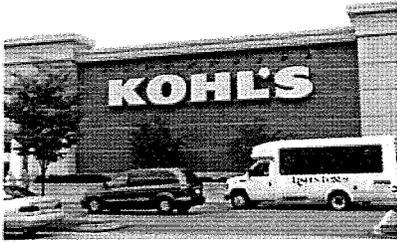
- 4) Residential Signs. Each residential building frontage running parallel to an adjacent public street or private driveway (primary façade) shall be permitted no more than one sign no more than six (6) square feet in size. Residential building signs may be illuminated using external or backlit light fixtures only. A sign permit shall be obtained for each residential building's signage from the Zoning Officer pursuant to Section 18.1.13.
- 5) Waivers. The Commission shall reserve the right to waive any sign regulation or prohibition included in Section 18 not otherwise superseded on a case by case basis if it is determined that such waiver is required to achieve and further the sign design guidelines for the development as described in Standard 1 above.
- 6) Examples. Representative examples of acceptable signage include the following:



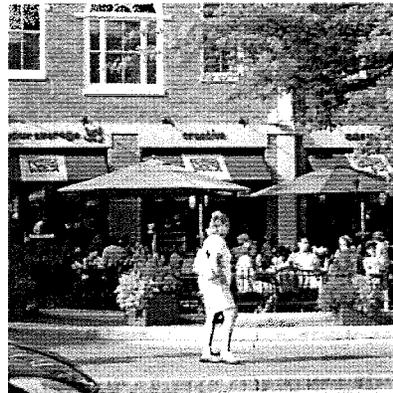
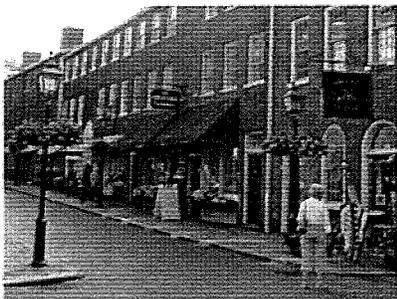
*Free-standing Signs*



*Other Directional and Way-finding Signs*



*Large-format Nonresidential Signs*



*Small-format Nonresidential Signs*

**Regulations Superseded:**

- Section 18.4.3 (Computation of Height)
- Section 18.1.4.4 (Computation of Maximum Total Permitted Sign Area for a Zone Lot)
- Section 18.1.5 (Signs Allowed on Private Property With and Without Permits)
- Section 18.1.6 (Permits Required)
- Section 18.1.7.1 (Design)
- Section 18.1.8 (Master or Common Signage Plan)
- Section 18.1.12 (Prohibited Signs\*)
- Tables 1.5A, 1.5B, 1.5C, 1.5D

\*(superseded as provided for by Commission waiver)

**GATEWAY COMMONS**  
East Lyme, CT

KGI Properties / SK Properties Development  
Arrowstreet Architects / BL Companies / TCORS

# Open Space & Conservation Areas

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**Purpose:**

*To provide requirements for the integration of open space, passive and active recreation areas, and preservation of natural features within the Gateway Commons Master Development Plan.*

**Standards:**

- 1) **Designated Open Space.** Designated open space within the MDP area shall consist of a variety of both publicly and privately accessible areas, designated for either active or passive recreational uses.
- 2) **Natural Features.** Natural features, including existing trees, vegetation, unique site features, and significant resources shall be maintained and protected where prudent and feasible within the development.
- 3) **Access.** Access to designated open space areas shall be provided by pedestrian trail systems or other means that limit unnecessary disturbance of natural areas.
- 4) **Maintenance.** Long-term maintenance for designated open space shall be provided by the property owner or, with the approval of the Commission, another designated party.

**Regulations Superseded:**

# Miscellaneous Provisions

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## Purpose

To address miscellaneous provisions of the East Lyme Zoning Regulations that would otherwise conflict with the Gateway Commons Master Development Plan.

## Standards

- 1) Utility Lines. All new electric, telephone, and cable television lines shall be placed underground. Existing electrical distribution lines may be relocated as necessary. Existing electrical distribution lines may be relocated underground where both feasible and prudent, subject to the approval of the line owner.
- 2) Aquifer Protection. All permitted uses within the MDP shall be permitted uses within any associated Aquifer Protection District. All development within the MDP shall be served by sanitary sewer without zoning restriction on sanitary waste water discharge.
- 3) Wetland and Watercourse Setback. No building or structure, except for necessary retaining walls, structural elements for crossings, and/or storm water structures, shall be erected or placed within 25 feet of a wetland, watercourse, or other body of water.

~~4) Sale of Alcoholic Beverages. The sale of alcoholic beverages for consumption on premises or off premises shall not be subject to any separation requirements.~~

4 5) Outdoor Dining. Outdoor dining shall be a permitted accessory use without restriction.

5 6) Drive-thru Facilities. Drive-thru facilities shall not be subject to separation requirements and may be permitted accessory uses to banks, pharmacies, and other compatible uses only with the approval of the Commission and subject to the design standards of Section 20.28(a)-(j).

## Regulations Superseded

Section 11A.4.6 (Transmission Lines)  
 Section 13.2 (Aquifer Protection District - Permitted Uses)  
 Section 13.5.1 (Sanitary Waste Water Discharge)  
 Section 20.15 (Setback from Wetland or Water Body)  
 Section 20.20 (Alcoholic Liquor Outlets)  
 Section 20.27 (Restaurant Outdoor Dining in CB Zones)  
 Section 20.26 (Drive-thru Separation)  
 Section 20.28 (Drive-thru Facilities\*)

\*(provisions for types of uses only)

# Architectural Styles

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## Purpose:

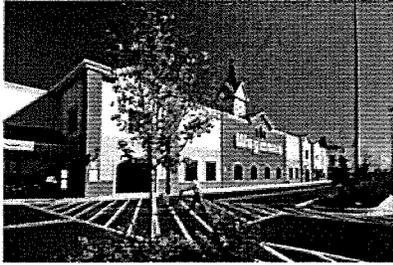
*To provide general standards for the architectural style of buildings within the Gateway Commons Master Development Plan to promote quality design and protect the architectural integrity of the surrounding community.*

## Standards:

- 1) **Styles.** The architectural vernacular used to articulate buildings in New England town centers typically represents a variety of styles, reflecting the evolution of a “place” over an extended period of time. As such, a variety of building scales, roof forms, materials and architectural details should be encouraged to accentuate the mix of uses desired, while reinforcing the key characteristics of architectural form and open space “place-making” that enhance an appropriately scaled, pedestrian-friendly environment.
- 2) **Compatibility.** Architectural styles may vary within the development to allow for buildings with distinctive character, but shall remain compatible with each other, helping to create a well-defined streetscape edge and a unified character to the development. The architecture should create a unique identity of place, while respecting the larger surrounding context.
- 3) **Articulation.** Excessive articulation and repetitive forms shall be discouraged in favor of simplicity of forms. Buildings should have a level of articulation appropriate to their scale and hierarchical placement in the development as well as their role in defining public open space.
- 4) **Architectural Detail.** A commitment to architectural details will help create visual interest appropriate for addressing adjacent streetscapes and public spaces. Architectural elements, such as windows, doors, storefronts, bays and decorative elements, such as cornices, brackets, trim, and railings should be judiciously utilized to articulate all building facades, with particular attention given to entries and primary facades along streets.
- 5) **Examples.** Representative examples of acceptable architectural styles include the following:



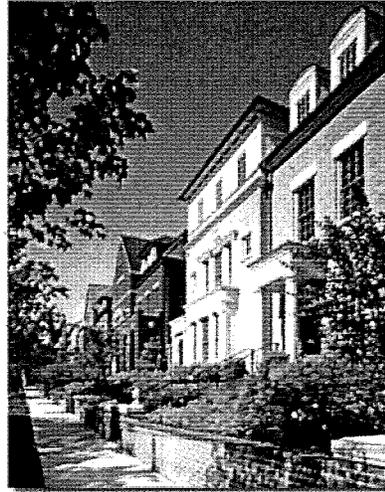
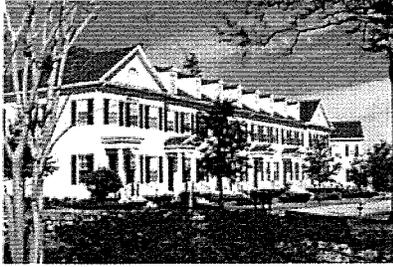
*Large-format Nonresidential Buildings*



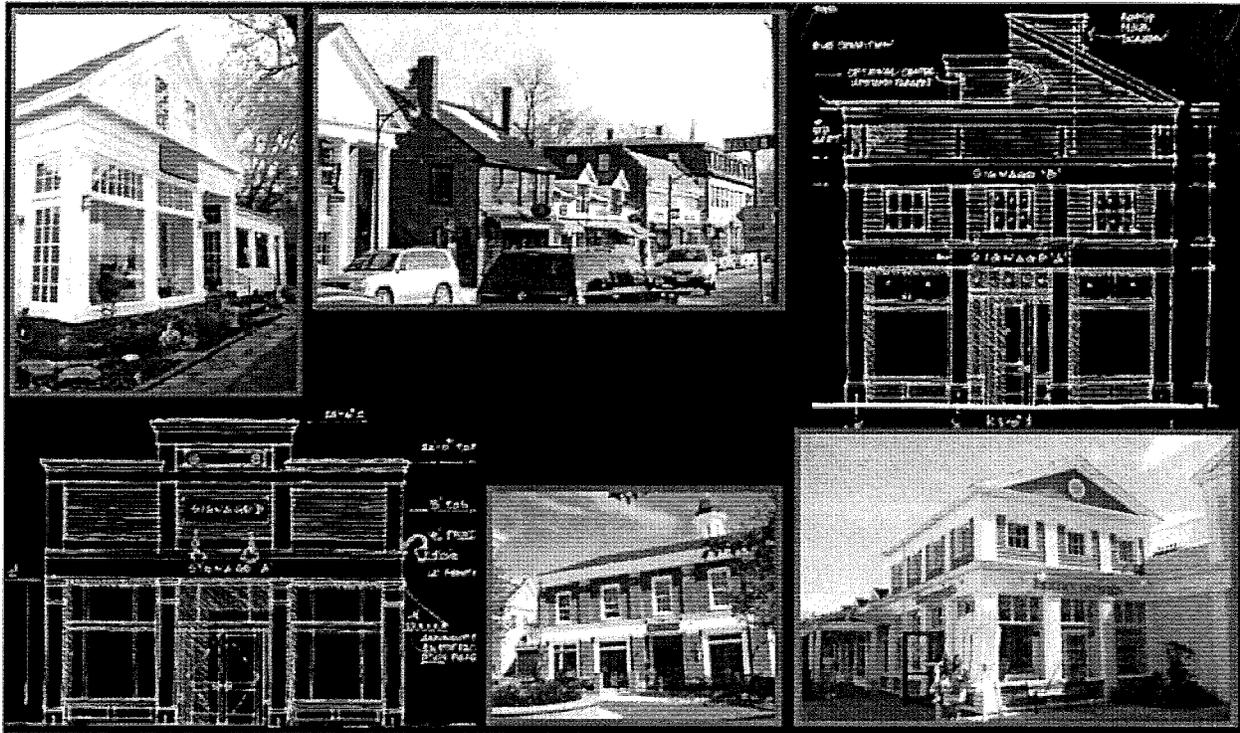
*Large-format Nonresidential Buildings*



*Small-format Nonresidential Buildings*



*Residential Buildings*



*Other Precedents*

**Regulations Superseded:**

- Section 11A.6 (Architectural Requirements)
- Section 24.5.2(C) (Architectural Design)

# Massing & Scale

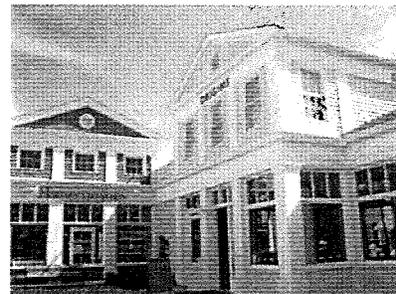
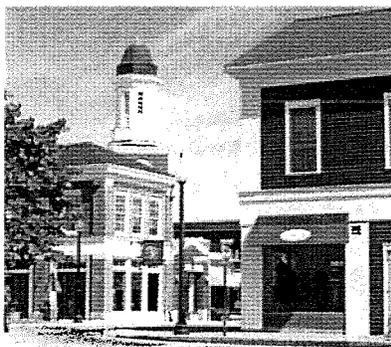
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## Purpose:

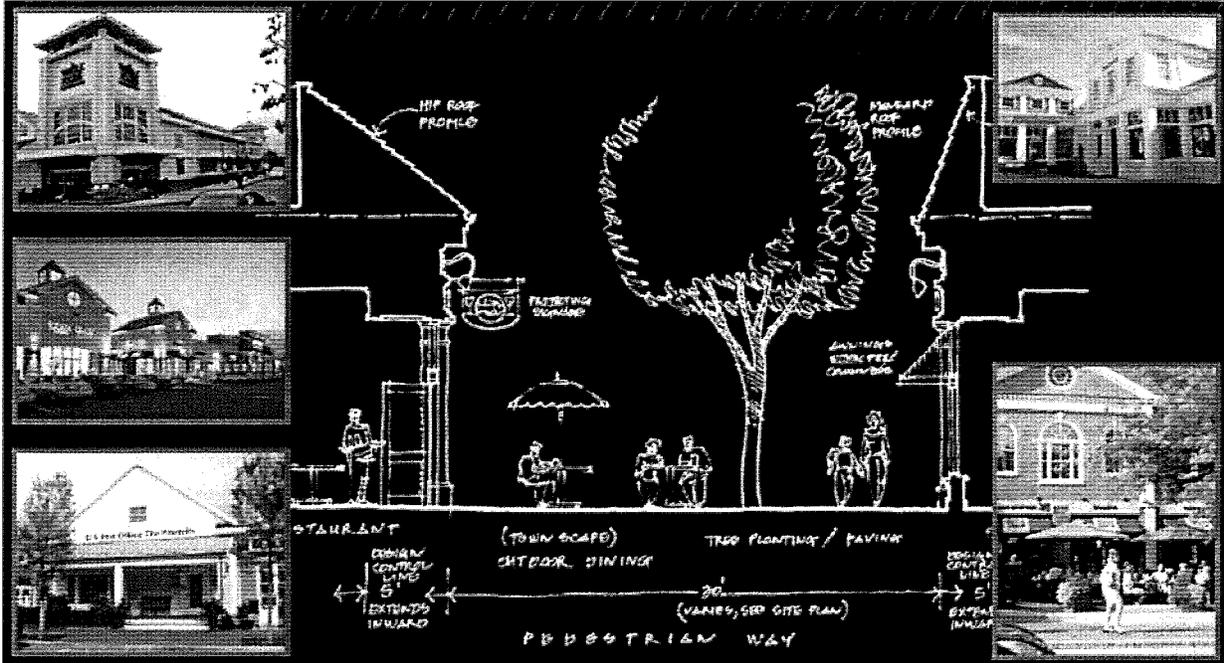
*To provide requirements for building massing and scale within the Gateway Commons Master Development Plan that balance visual relationships between buildings of varying sizes in order to promote a distinctive yet consistent character throughout the development.*

## Standards:

- 1) Proportion. Building massing and scale may vary within the development to reflect unique uses and the desired prominence of certain structures. Buildings of varying scales should strive to achieve a consistency of proportions characteristic of a pedestrian-scaled environment.
- 2) Massing. Buildings greater than 20,000 square feet in size shall provide façade and roof designs that break up the building into smaller and more visually segmented sections using a variety of architectural treatments and forms. Buildings less than 20,000 square feet in size shall utilize façade and roof designs that promote variety between the middle and ends of blocks, and provide visual focal points as appropriate.
- 3) Scale. Uninterrupted lengths and heights of facades shall be modulated through the use of architectural projections, setbacks, canopies, porches, trellises, variations in roof form, entryways, windows, and changes in materials. Wherever possible, building height shall be proportional to sidewalk width and overall public street or private driveway width on which it fronts.
- 4) Siting. Buildings shall contribute to creating street walls but may be setback from access ways to provide public space for dining or other public activities. Building locations that define public plazas, create view corridors, and enhance gateways to the development shall be encouraged. Buildings shall address primary facades to public streets and private driveways and secondary facades to mews and adjacent parking areas.
- 5) Examples. Representative examples of acceptable building massing and scale include the following:



*Massing and Scale*



Other Precedents

**Regulations Superseded:**

- Section 11A.6 (Architectural Requirements)
- Section 24.5.2(C) (Architectural Design)

# Materials & Colors

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## Purpose:

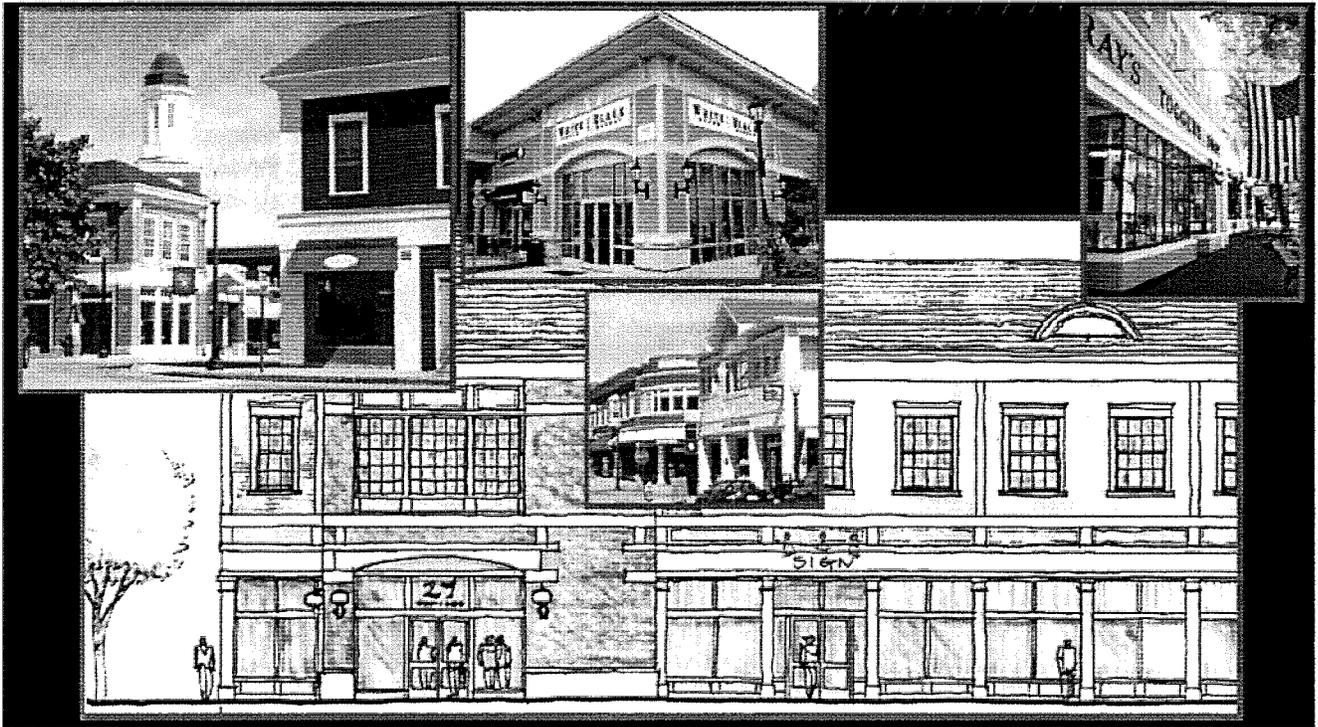
*To provide requirements for building materials and colors which insure the quality, the durability, and aesthetics of the development within the Gateway Commons Master Plan.*

## Standards:

- 1) Nonresidential Building Materials. For nonresidential buildings, exterior materials may consist of:
  - a) Cladding: Wood, fiber cement (siding or panels), brick, brick veneer, finished masonry, cast stone, vinyl siding
  - b) Base: Cast stone, finished masonry
  - c) Trim: Synthetic wood, GFR materials, wood
  - d) Roofing: Architectural asphalt shingles, metal, rubber (on flat surfaces not visible from the ground only)
- 2) Residential Building Materials. For residential buildings, exterior materials may consist of:
  - a) Cladding: Wood, fiber cement (siding or panels), composite clapboard, shiplap siding, vinyl siding
  - b) Base: Cultured stone, brick, wood, composite clapboard, shiplap siding
  - c) Trim: Synthetic wood, wood, extruded foam, cellular PVC
  - d) Roofing: Architectural asphalt shingles
- 3) Other Materials. Materials other than those listed in Standards 1 and 2 above may be utilized with the approval of the Commission if it is determined that such materials are consistent with the architectural standards of the development.
- 4) Building Colors. Exterior building shell and trim colors shall compliment the overall architectural character of the development and remain compatible with similar buildings in the community.

*\* All materials may be limited or adjusted by the Zoning Commission.*

5) Examples. Representative examples of acceptable materials and colors include the following:



*Precedents*

**Regulations Superseded:**

Section 11A.6 (Architectural Requirements)  
Section 24.5.2(C) (Architectural Design)

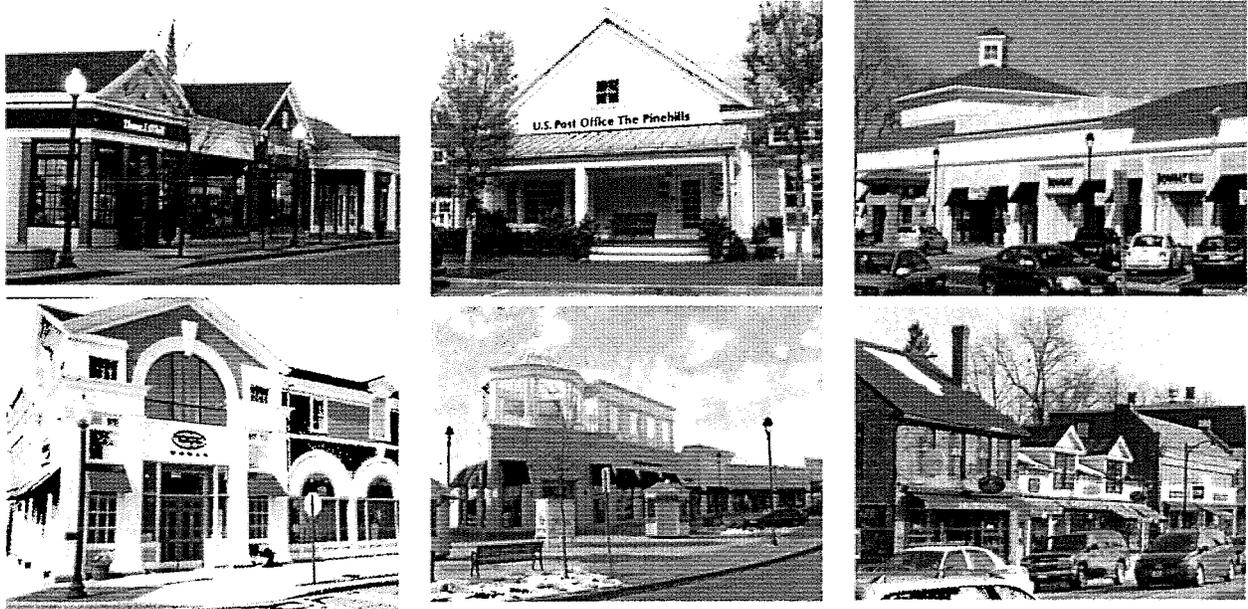
# Rooflines & Profiles

## Purpose:

*To provide standards for roof design and profile that preserve architectural integrity and visual aesthetics within the Gateway Commons Master Development Plan.*

## Standards:

- 1) Roof forms shall express the individual integrity of each building.
- 2) Roof profiles shall highlight variations between buildings by incorporating gable, hip, gambrel, shed or mansard designs. Flat roofs shall be screened from view from immediately adjacent public streets or plazas with parapets or other architectural features.
- 3) Roof mounted mechanical equipment such as heating and air conditioning units shall be adequately screened from view from public streets or plazas.
- 4) Examples. Representative examples of acceptable rooflines and profiles include the following:



*Rooflines & Profiles*



*Other Precedents*

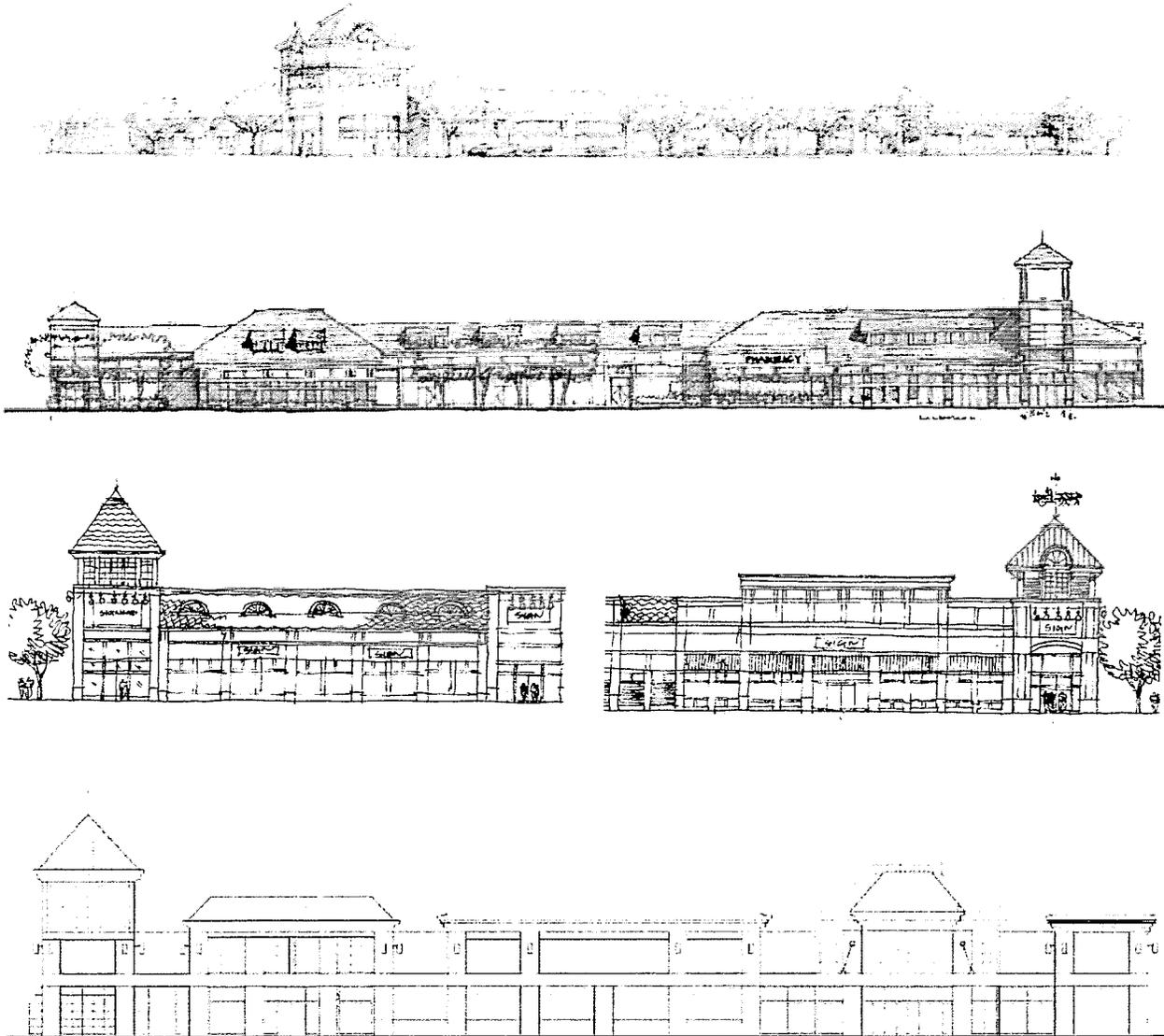
**Regulations Superseded:**

Section 11A.6 (Architectural Requirements)  
Section 24.5.2(C) (Architectural Design)

# Typical Building Facades & Elevations

Representative examples of Typical Building Facades & Elevations include the following:

- 1) Large-format nonresidential buildings.

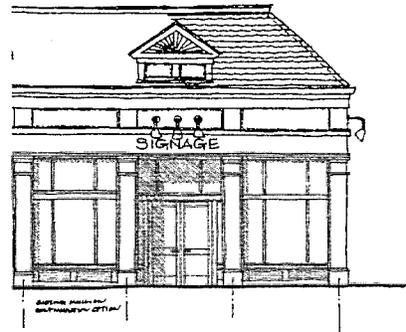
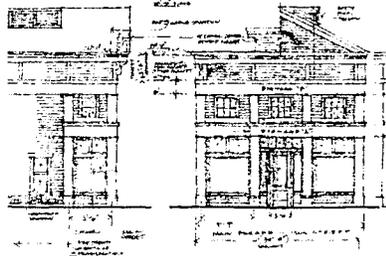
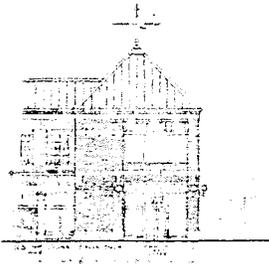
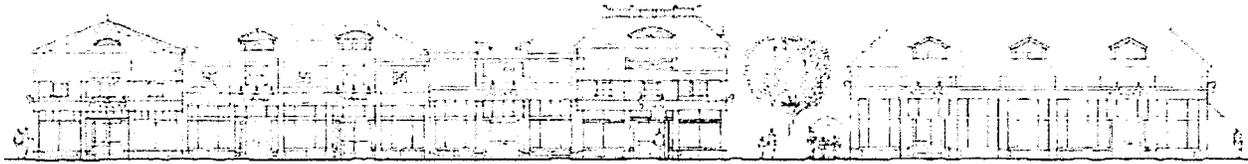


**GATEWAY COMMONS**  
East Lyme, CT

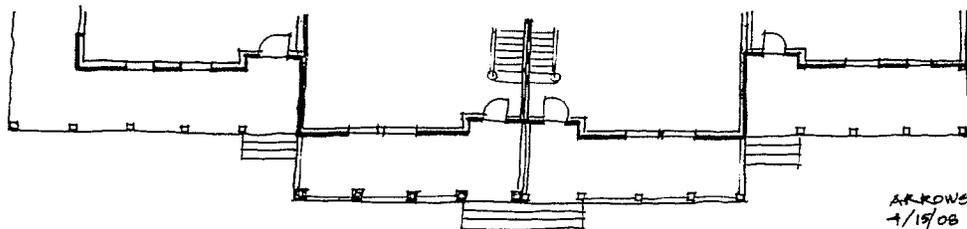
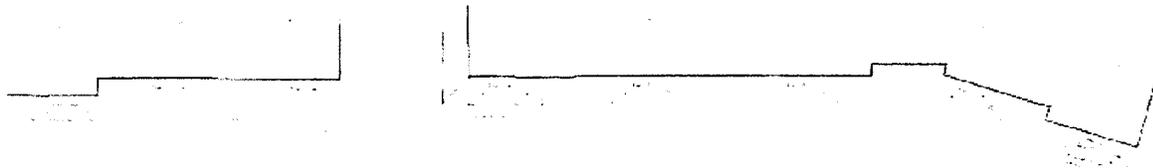
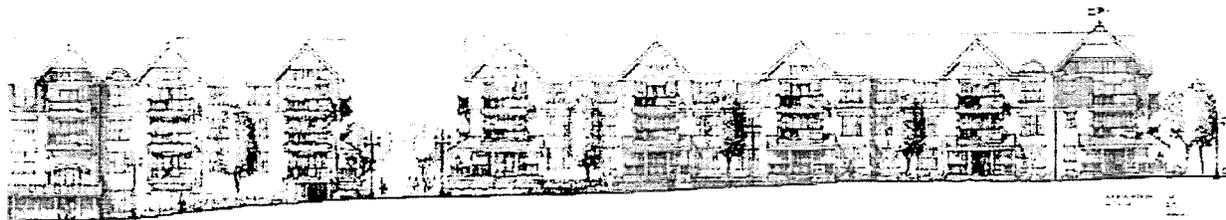
KGI Properties / SK Properties Development  
Arrowstreet Architects / BL Companies / TCORS

Revised 6/10/08

2) Small-format nonresidential buildings.



3) Residential buildings.



ARROWSTREET 06079  
 4/19/08  
 BL COMPANIES

PROPOSED TOWNHOUSE CLUSTER  
 GATEWAY COMMONS, EAST LYME, CONN

Aug 4 20 08 at 10 AM PM

EAST LYME ZONING COMMISSION  
SPECIAL MEETING  
Thursday, JULY 31st, 2008  
MOTIONS

Esther B. Wilshaw

EAST LYME TOWN CLERK

The East Lyme Zoning Commission held a Special Meeting on Thursday July 31, 2008 at the East Lyme Town Hall, 108 Pennsylvania Ave., Niantic, CT.

PRESENT: Mark Nickerson, Chairman, Rosanna Carabelas, Secretary, Norm Peck, Marc Salerno, Ed Gada, Steve Carpenteri

ALSO PRESENT: Attorney Theodore Harris, Representing the Applicant  
Jay Fisher, SK Properties  
Chris Knisley, KGI Properties  
John Mancini, BL Companies  
Bill Sweeney, TCORS  
Bob Bulmer, Alternate  
Gregory Massad, Alternate

ABSENT: William Dwyer, Alternate

Chairman Nickerson called this Special Meeting of the East Lyme Zoning Commission to order at 7:32 PM.

**Pledge of Allegiance**

The Pledge was observed.

**Public Delegations**

Mr. Nickerson called for any comments from the public regarding matters not on the agenda.

Mark Butterfield, 6 Upper Walnut Hill Road said that he wanted to speak regarding the Walnut Hill Country Club –

Attorney Theodore Harris objected and said that it is not appropriate to discuss a pending application that is to come before them.

Mr. Nickerson said to Mr. Butterfield that what Attorney Harris said was correct in that they cannot take public comment on pending applications.

**Special Meeting**

1. Application of Theodore A. Harris for Gateway Development/East Lyme LLC, for approval of a Master Development Plan in accordance with Section 11.A.9 of the East Lyme Zoning Regulations for property identified in the Application as: 284 Flanders Road, East Lyme Assessor's Map 31.3, Lot 1; Flanders Road, East Lyme Assessor's Map 31.0, Lot 1; 294-2 Flanders Road, East Lyme Assessor's Map 31.3, Lot 5; 282 Flanders Road, East Lyme Assessor's Map 31.3, Lot 2; 286 Flanders Road, East Lyme Assessor's Map 26.0, Lot 2; Ancient Highway, East Lyme Assessor's Map 25.0, Lot 35; Flanders Road, East Lyme Assessor's Map 31.1, Lot 9; Boston Post Road, East Lyme Assessor's Map 31.1, Lot 8.1; 4 Church Lane, East Lyme Assessor's Map 31.1, Lot 11; and 138 Boston Post Road, East Lyme Assessor's Map 31.1, Lot 7.

**\*\*MOTION (1)**

Mr. Salerno moved to APPROVE the Application of Theodore A. Harris for Gateway Development/East Lyme LLC, for a Master Development Plan in accordance with Section 11.A.9 of

the East Lyme Zoning Regulations for property identified in the Application as: 284 Flanders Road, East Lyme Assessor's Map 31.3, Lot 1; Flanders Road, East Lyme Assessor's Map 31.0, Lot 1; 294-2 Flanders Road, East Lyme Assessor's Map 31.3, Lot 5; 282 Flanders Road, East Lyme Assessor's Map 31.3, Lot 2; 286 Flanders Road, East Lyme Assessor's Map 26.0, Lot 2; Ancient Highway, East Lyme Assessor's Map 25.0, Lot 35; Flanders Road, East Lyme Assessor's Map 31.1, Lot 9; Boston Post Road, East Lyme Assessor's Map 31.1, Lot 8.1; 4 Church Lane, East Lyme Assessor's Map 31.1, Lot 11; and 138 Boston Post Road, East Lyme Assessor's Map 31.1, Lot 7; with the following modifications: Remove the word 'acceptable' where it appears and relates to 'representative samples' (pgs. 5, 6, 8, 11, 15, 19 & 23); Page 6, Item 2b change the buffer from 10' to 20' and add 'unless otherwise approved by the Zoning Commission'; Page 14 – Strike Item #4 and renumber accordingly; Page 10 on signage, Item 2b change the very last line at the end to read: 'state highway or state road'; Page 21 – Add a line that states: 'All materials may be limited or adjusted by the Zoning Commission' and regarding irrigation water – 'acceptable 'gray' water may be used'. Ms. Carabelas seconded the motion.  
Vote: 6 – 0 - 0. Motion passed.

It was noted that this would publish on 8/7/08 and become effective on 8/8/08.

2. Application of Francis and Robert Mattison for a Special Permit under Section 3.2.3 to operate a dog kennel at property identified in the Application as 98 Grassy Hill Road, East Lyme, CT.

**\*\*MOTION (2)**

Ms. Carabelas moved to DENY the Application of Francis and Robert Mattison for a Special Permit under Section 3.2.3 to operate a dog kennel at property identified in the Application as 98 Grassy Hill Road, East Lyme, CT.

Mr. Salerno seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

It was noted that this would publish on 8/7/08 and become effective on 8/8/08.

**Adjournment**

Mr. Nickerson called for a motion to adjourn.

**\*\*MOTION (3)**

Mr. Salerno moved to adjourn this Special Meeting of the East Lyme Zoning Commission at 9:35 PM.

Mr. Carpenteri seconded the motion.

VOTE: 6 – 0 - 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary

**11.A.9 Master Development Plan (MDP)**

As an alternative to the traditional parcel by parcel development of the GPDD Gateway Planned Development District under the preceding provisions, the Commission may, subject to a public hearing adopt a Master Development Plan (MDP) that modifies the zoning requirements of the District in accordance with the following standards.

**11.A.9.1 Purpose**

The purpose of the MDP process is to encourage the comprehensive planning and coordinated mixed-use development of multiple parcels within the District, promote creativity and superior design through flexible and context-sensitive development standards, support significant economic investment, reduce impacts associated with large-scale development, and provide protection to adjoining neighborhoods.

**11.A.9.2 Effect**

The adoption of an MDP shall modify the zoning requirements of the GPDD Gateway Planned Development District as specified by the MDP and except as provided in Section 11.A.9.2.1 and 11.A.9.2.2 shall allow for deviation from the typical requirements for use, bulk, and other development standards. Any provision of the East Lyme Zoning Regulations applicable to the property and not specifically superseded by adoption of the MDP shall continue in full force and effect.

**11.A.9.2.1 Retail Use**

To the extent that a MDP shall contain retail uses, such uses shall not exceed 425,000 square feet of net floor area in total, and shall be subject to the following bulk limitations: \*

- (A) Not less than twenty-five (25%) percent of all retail space in the MDP shall be contained in stores with less than 20,000 square feet of net floor area.
- (B) Not more than one (1) anchor store, containing no more than 140,000 square feet of net floor area, shall be allowed.
- (C) Not more than Five (5) junior anchor stores, typically ranging from 25,000 to 90,000 square feet shall be allowed, provided that no single store may exceed 90,000 square feet of net floor area, and not more than two (2) such stores may exceed 50,000 net floor area.

*50 TH  
225 multi  
ground  
public  
green*

**11.A.9.2.2 Residential Use**

To the extent that a MDP shall contain residential uses on the west side of the Pattagansett River, such uses shall be subject to the following:

- (1) No single family detached unit shall be permitted.
- (2) Such uses shall be designed and located to minimize the impact on surrounding areas by incorporating one or more of the following:
  - (a) Buffers to adjoining residential uses.
  - (b) Locating the lower density uses in areas near existing residential uses.
  - (c) Providing open space and/or recreational areas.
  - (d) Providing architectural and lighting controls.
- (3) The total number of units shall not exceed 275.

#### **11.A.9.3 Eligibility**

A MDP application must include at least 75% of the land within the GPDD Gateway Planned Development District. A MDP must provide for reasonable access and utility interconnections to any portion of the District not included within a proposed MDP. The uses and bulk contained in the MDP shall not be considered with respect to site plans for portions of the District outside the MDP.

#### **11.A.9.4 Submission Requirements**

An application for MDP adoption shall require public hearing and in lieu of a site plan as described in Section 24, shall include the following components:

- (a) Existing Conditions Survey prepared by a licensed surveyor showing:
  - (1) Existing topography with 5-foot contours showing the general gradient of the site, existing structures, existing roads and rights-of-way, easements, major topographic features, inland wetlands, watercourses and flood plains.
  - (2) Land uses, zoning and approximate location of buildings and driveways within 100 feet of the site.
  - (3) A-2 boundary survey.
  - (4) Location map.
- (b) Conceptualized Layout Plan prepared by a licensed engineer, architect and/or landscape architect showing:
  - (1) General location and nature of proposed land uses.
  - (2) Proposed public and private rights-of-way, parking areas, easements, and public and private open space areas.
  - (3) Proposed building footprints, floor areas, and building heights.
  - (4) Proposed location of landscaping, buffering, and screening.
  - (5) Utility and highway improvements.
  - (6) Construction phasing plan.
- (c) Development Standards for the proposed development shall be provided in a narrative form including, but not limited to:
  - (1) Permitted uses subject to Site Plan approval in accordance with Section 24.
  - (2) Bulk and dimensional requirements.

- (3) Parking and loading.
  - (4) Streets and sidewalks.
  - (5) Landscaping and screening.
  - (6) Lighting.
  - (7) Signage.
  - (8) Open space and conservation areas.
  - (9) Any other standards the Commission may reasonably require.
- (d) Architectural Standards for the proposed development provided in both narrative form and visual representations prepared by a licensed architect showing:
- (1) Architectural styles.
  - (2) Massing and scale.
  - (3) Materials and colors.
  - (4) Roof lines and profiles.
  - (5) Typical building facades and elevations.
  - (6) Provisions which require large format stores to contain features calculated to minimize the appearance of bulk.
- (e) Traffic Analysis prepared by a professional traffic engineer including:
- (1) A comprehensive traffic study detailing the impact of the proposed development.
  - (2) Improvement plan and the measures necessary to mitigate those impacts.

#### **11.A.9.5 Approval Criteria**

The adoption of a MDP shall require a public hearing with notice of the hearing made by publication. The Commission shall consider the following criteria in determining whether to adopt a proposed MDP:

- (1) Consistency with the Plan of Conservation and Development.
- (2) Consistency with the goal of the GPDD Gateway Planned Development District to broaden the Town's tax base while providing a coordinated development, in harmony with the underlying aquifer protection district, calculated to maximize the potential of the district.
- (3) Consistency with the purpose of the alternative MDP process.
- (4) Consistency with the orderly development of the istrict with provisions for necessary utility and traffic infrastructure and in harmony with the surrounding land uses.

The Commission shall reserve the right and discretion to deny the adoption of any MDP that, in the opinion of the Commission, fails to meet one or more of the above-mentioned criteria.

#### **11.A.9.6 Implementation**

The implementation of the MDP shall be subject to Site Plan approval by the Commission pursuant to Section 24 of these Regulations. The Site Plan submission shall also contain the information required pursuant to Sections 11.A.8.1-11.A.8.4 and shall comply with the standards outlined in Section 11A.5 (Environmental Requirements). All applications for Site Plan approval under an adopted MDP shall conform to the modified Development and Architectural Standards of the MDP and substantially conform to the size and location of buildings and uses as shown on the Conceptualized Layout Plan. All applications for Site Plan approval shall illustrate the adherence the adopted MDP through plans, renderings, architectural elevations, and other materials. Any Site Plan Application that substantially conforms to an adopted MDP shall be approved by the Commission.

#### **11.A.9.7 Phasing and Public Improvements**

Implementation of an adopted MDP may be phased on the condition that all public infrastructure associated with each phase of the MDP shall be constructed prior to the issuance of Certificates of Occupancy for such phase or shall be bonded to the satisfaction of the Commission.

# **Tab 2**

TOWN OF EAST LYME

ZONING COMMISSION

JUNE 20, 2013

REGULAR MEETING MINUTES

Members Present:

Marc Salerno, Chairman  
Matthew Walker  
Terence Donovan  
George McPherson  
Norm Peck  
Peter Lukas, Alternate (Sat for Regular Meeting)  
James Liska, Alternate (Sat for Item 2)  
William Dwyer, Alternate (Did not Sit)

FILED IN EAST LYME  
CONNECTICUT  
June 20, 2013 AT 8:30 AM PM  
Kathleen Ar  
EAST LYME TOWN CLERK

Members Absent:

Matthew Kane

Also Present:

Bill Mulholland, Zoning Officer  
Holly Cheeseman, Ex-Officio (Entered at 8:30 p.m.)

Mr. Lukas was seated as a Regular Member in Mr. Kane's absence.

1. APPLICATION OF THE COMMON LOON RESTAURANT, FOR A SPECIAL PERMIT FOR OUTDOOR DINING AT PROPERTY IDENTIFIED IN THE APPLICATION AS 135 BOSTON POST ROAD, EAST LYME, CONNECTICUT.

Mr. Salerno stated they are putting up a wrought iron fence, and will be under the existing canopy.

**Motion (1)** Mr. Donovan moved to approve the application of the Common Loon Restaurant, for a special permit for outdoor dining at property identified in the application as 135 Boston Post Road, East Lyme, Connecticut with the following conditions:

- a. Allow speakers and low level music, turned off at close of patio.
- b. Patio will close at 9:00 on weekdays, and 10:00 on weekends.

Seconded by Mr. McPherson.

Motion Passed 6-0.

This will be published next Thursday, June 27<sup>th</sup>, and will become effective on June 28<sup>th</sup>.

**\*\*Mr. Peck recused himself for Item 2, and Mr. Liska sat as a Regular Member for Item 2.**

**2. APPLICATION OF JUSTIN KROL, FOR A SPECIAL PERMIT TO OPERATE A FAST FOOD RESTAURANT AT PROPERTY IDENTIFIED IN THE APPLICATION AS 323 FLANDERS ROAD, EAST LYME, CONNECTICUT.**

Mr. Salerno stated they meet the parking requirements.

Mr. Liska wished them good luck.

**Motion (2)** Mr. McPherson moved to approve the application of Justin Krol, for a special permit to operate a fast food restaurant at property identified in the application as 325 Flanders Road, East Lyme, Connecticut.

Seconded by Mr. Liska.

Motion Passed 6-0.

This will be published next Thursday, June 27<sup>th</sup>, and will become effective on June 28<sup>th</sup>.

**\*\*Mr. Peck returned for the remainder of the Regular Meeting, and Mr. Liska stepped down.**

**3. EAST LYME ZONING COMMISSION PROPOSAL TO AMEND THE EAST LYME ZONING REGULATIONS BY DELETING SECTION 13 AQUIFER AND PRIMARY RECHARGE DISTRICT AND SECONDARY RECHARGE DISTRICT, AND SECTION 30, AQUIFER PROTECTION DISTRICTS FROM THE EAST LYME ZONING REGULATIONS, AND TO AMEND THE ZONING MAP BY REMOVING THE AQUIFER PROTECTION ZONES. JURISDICTION AND RESPONSIBILITY HAS BEEN TRANSFERRED TO THE TOWN'S AQUIFER PROTECTION AGENCY.**

Mr. McPherson stated they would need 2/3 majority to approve.

Mr. Donovan stated this will be shifting from being confusing. To adopt 1 map versus 2.

Mr. Peck stated we are not scientists, and we need to depend on the experts, and they said this is fine. If we can't enforce something we shouldn't have it in the regulations. If someone challenges something they could win.

Mr. Mulholland stated the jurisdiction and responsibility will be transferred to the town's Aquifer Protection Agency.

**Motion (3)** Mr. McPherson moved to approve the East Lyme Zoning Commission proposal to amend the East Lyme Zoning Regulations by deleting Section 13 Aquifer and Primary Recharge District and Secondary Recharge District, and Section 30, Aquifer Protection Districts from the East Lyme Zoning Regulations, and to amend the Zoning Map by removing the Aquifer Protection Zones.

Seconded by Mr. Donovan.

Motion passed 6-0.

This will be published next Thursday, June 27<sup>th</sup>, and will become effective on June 28<sup>th</sup>.

**4. REQUEST OF THEODORE A. HARRIS, ESQ., AGENT FOR GATEWAY COMMONS, FOR A SITE PLAN MODIFICATION FOR PROPERTY KNOWN AS GATEWAY DEVELOPMENT DISTRICT.**

Mr. Salerno stated the conceptual site plan was approved by the Zoning Commission; this is a modification of that.

Attorney Harris stated this is an application for site plan approval. This is the first phase of Gateway. According to the Master Development Plan on Gateway that was approved in July of 2008, they are applying for administrative site plan approval.

The site is in the vicinity of Exit 74 of I-95, and it bounded by East Society Road, Subdivisions, Route 1, and Flanders Road. The main challenge of the site is access. There is no access off of I-95. Offsite improvements to get access to the site would cost in the range of 12 to 15 million. They would not be able to sustain that. KGI and Konover Group have formed an alliance, each lending their expertise regarding the potential development of the site. The Master Development Plan is a conceptual site plan for the site. There are general locations, traffic flow, and list of design criteria for the site. It covers setbacks, heights, design criteria, siding, architectural controls. It is similar to a special permit without the final site plan. They had three public hearings before the Zoning Commission. It is a phased plan, and it will not happen overnight. During the public hearings there was spirited comment from the public. The Zoning Commission denied it after that. They then reached out to the neighborhood and had informal workshops with the Zoning Commission. They revised the structure, and returned with a new Master Development Plan. The Zoning Commission did approve the development of the site. Then step 2 was to approve the application of the Master Development Plan. That public hearing was quite different; there was only one person with public comment during that hearing in July of 2008. The Zoning Commission did approve the Master Development Plan on July 31, 2008. They had anticipated construction immediately, but they did not anticipate the financial crisis of 2008. They continued looking for users of the property. They are now confident that there is a demand for high end residential units, and they have designed for that phase. There is also renewed interest in the commercial end, and they have a letter of intent from a major commercial tenant. They are here to review the residential units. There are more wetlands on the site than anticipated. They want to avoid wetland impacts and that has dovetailed in with the type of building they are proposal, which are multi story buildings. They are able to manipulate around the wetlands. There are no direct impacts, just upland review areas. The Master Development Plan provides standards for parking which are different than the zoning regulations. The goal is to minimize impervious surfaces; there are no masses of black top. The master development plan is within the national standard and is based on the expertise of the Konover Group. There is also abundant room on the roadways for parking.

Mr. Walker read a letter from Mr. Mulholland.

Ray Gladwell of DL Companies of Hartford discussed the Site Plan. The site is right off of I-95, and is about 160 acres. The development would take up a portion of plus or minus 30 acres. The topography on the site is a challenge. The site can be served by public utilities. They will improve approximately 3800 feet of East Society Road all the way into the site. They will improve it to Town Road Standards. The road from East Society Road will continue through the site to Flanders Road as the project is developed. There will be 10 buildings with a total of 275 units, with 2 garages per building. There will

be 544 parking spaces. 42 of those will be with the clubhouse and the pool. There will 502 spots distributed among the site. They got to those numbers by published information as well as comparing this type of development in other communities. 1.79 spaces per unit are what that is based on. They came up with a number of 493, and increased it to 502. Each building will get two 8 car garages.

Mr. Gladwell presented the following exhibits:

Exhibit 1        Parking Memorandum  
Exhibit 2        Wetlands Permit

Mr. McPherson asked if everyone would get a garage.

Mr. Gladwell stated the rent is higher with a garage; there will be a mix of 2 bedroom and 1 bedroom apartments. There will be emergency access to the site from Flanders Road. Utilities will be outside of the I-95 off ramp area because of future projects by the State to improve the ramps.

Mr. Salerno stated he understood that the entire infrastructure was to be constructed.

Mr. Harris stated that was to be the infrastructure assigned with each phase. This phase involves improvement of East Society Road; the infrastructure is to be completed with the phases.

John Mancini of DL Companies stated they have already submitted an application to the State for an interface with Exit 73, they have discussed with the DOT and they are comfortable with the traffic going to East Society Road. They believe the infrastructure is to be completed per each phase.

Mr. Salerno stated they put that in to make sure the whole project was developed.

Mr. Harris stated the infrastructure is assigned with each phase. It is not for the whole development. Nobody will be able to put all of those costs up front.

Mr. Gladwell stated the closest point to a property line is about 40 feet from a corner of a parking lot.

Mr. Harris stated there is a buffer requirement, with an option to substitute decorative fencing. The area is undeveloped.

Mr. Mancini stated they were much closer to the buffer with their original proposal. They have pushed the development to the West in this proposal.

The landscape architect prepared a plan with approximately 325 trees of various varieties, 1200 shrubs. The nearest residential building will be 600 feet from the highway. The road will be a Town road, and will go all the way through when it is finished. There is presently a mature forest on the site, which is pretty dense.

Mr. Peck asked if they have designated open space.

Mr. Harris stated it is not formal open space, but because of the wetlands it is not developable.

Mr. Peck stated there is substantial buildable fronting on town roads and either side on the property could theoretically be sold off.

Mr. Harris stated single family is not allowed in this zone.

Mr. Salerno asked if they would be willing to designate open space.

Mr. Harris stated the RU-40.

Mr. Mulholland stated the RU-40 cannot be developed.

Mr. Mancini stated the only way to develop the RU-40 would be if a developer bought the house above the land and then developed.

Mr. Gladwell stated there would be a mix of street lights, and there would be 116 street lights on the site.

Mr. Salerno asked who owns the lighting.

Mr. Harris stated the Town would own the lighting.

Mr. Gladwell stated the lighting on the poles on the street would be 20 feet high, and the onsite lights would be 14 to 16 feet tall. Also the buildings would be illuminated. There will be zero foot candles to the adjacent property. They will not be LED, they will be night sky compliant and be 72 watts.

The utilities served will be water and sewer from Flanders, the gas service will be from Flanders, and communication will be from East Society.

Mr. Harris stated they will get water and sewer approval after, it is assessed for water and sewer so they don't anticipate any issues.

Mr. Gladwell stated there will be 3 detention ponds on the site, and 4 rain gardens which allow storm water to go back into the ground.

Mr. Harris stated they had significant discussion with the Inland Wetlands Agency to make sure they are not drying up the wetlands. The Inland Wetlands Agency hired their own expert to analyze the plan.

Mr. Gladwell stated the rooftop water goes into rain gardens, and if that overflows then it will go into the driveway then will be piped to the detention pond. They will use erosion controls and sediment traps, there will be sediment control measures for each building, silt fence will be installed, and it has been planned with the town engineering staff.

Mr. Salerno asked if there will be an association.

Mr. Harris stated they will be rented units.

Mr. Gladwell presented the following exhibits:

Exhibit 3	Overall Site Plan
Exhibit 4	Overall Landscape Plan
Exhibit 5	East Society Road and Utility Access Plan
Exhibit 6	Typical Building Planting Plan
Exhibit 7	Overall Lighting Plan
Exhibit 8	Overall Site Utility Plan
Exhibit 9	Initial Erosion Control Plan
Exhibit 10	Final Erosion Control Plan

Mr. McPherson asked if there will be access to Route 1.

Mr. Gladwell stated potentially in the future.

Architect, Tim Wentz of Bryn Mawr, Pennsylvania stated they will be 3 story buildings in front and 4 stories in back. Garden level units will only be half of the building. It is classified as 3 stories with a basement. They will use a variety of materials on the building, the base will be cultured stone. They have not decided if they will use hearty plank or vinyl. They will be varying heights of the materials, and will probably use different colors, all of the buildings will be different color schemes, but will be earth tones and will complement each other. All of the buildings will be the same, but some will have 5 less units.

Mr. Mulholland stated it will be worked out so there are no more than 275 units.

Mr. Wentz stated they will use very large windows, and each apartment will have its own balcony.

Mr. Donovan asked what the heat source will be.

Mr. Wentz stated it will be a gas fired split system. The units will be on the balcony. There will be studio apartments, 1 bedroom apartments and 2 bedroom apartments.

Mr. McPherson asked if they will be handicapped accessible.

Mr. Wentz stated every unit on the first floor will be.

Mr. Donovan asked if there is a fire protection system.

Mr. Wentz stated it will have fire sprinklers throughout.

Mr. Salerno asked the height of the buildings.

Mr. Harris stated they will be 45 feet.

Mr. Wentz stated the clubhouse will be 5700 square feet. The materials and the color palette will be very compatible with the project. There will be a leasing center, fitness center, media center, billiards area, central great room, serving kitchen, pool area, activity rooms, and locker rooms. The fitness center will be accessible when the clubhouse is closed.

Mr. Salerno asked if there would be a restaurant.

Mr. Wentz stated no there would be a serving kitchen with no stove, but it will have a sink, dishwasher, refrigerator, and microwave.

Mr. Salerno asked if they considered paved trails that connect the units.

Mr. Harris stated they can see if that works topographically.

Mr. Wentz stated the pool will be fenced with landscape around it. The garages will be for 8 cars, with gable ends, and will be compatible with the residential buildings. The back will be plain, but will be facing a steep slope. The bays are 11 feet wide.

**Mr. Wentz submitted the following exhibits:**

- Exhibit 11 Residential Building Floor Plan and Front Elevation**
- Exhibit 12 Residential Building Rear and Side Elevation**
- Exhibit 13 Residential Building Floor Plans**
- Exhibit 14 Residential Unit Plans**
- Exhibit 15 Residential Unit Plans**
- Exhibit 16 Clubhouse Front Elevation and Floor Plan**
- Exhibit 17 Side and Rear Elevation of Clubhouse**
- Exhibit 18 Garage**

Mr. McPherson suggested they re-think putting an elevator in the buildings.

Mr. Salerno asked if there was any open space designated for fields, or playgrounds.

Mr. Harris stated they have to make sure they can physically do it. He respectfully disagreed with the Chairman regarding the phasing of the infrastructure. It was originally intended to be phased in. This phase alone they will be putting 1 Million dollars into East Society Road.

Mr. Mulholland agreed with Mr. Harris, that each phase was to receive a CO as it was phased in.

Mr. Salerno stated he is concerned the residential will be built and the Commercial will not. They don't want just a portion of the project.

Mr. Harris stated the developer has purchased the lion share of the property. They do not intend to let it lay stagnant. They currently have a letter of intent for an anchor store. They firmly believe it will happen.

David Getman of KGI stated they have spent in excess of 5 million dollars to get to this point. As soon as possible they will be getting everything approved, they are trying to keep the project rolling.

Mr. Peck stated he likes the project, he would prefer the RU-40 zone be designated as permanent open space, and it will enhance the value of the project.

Mr. Getman stated they would be willing to look at that.

Mr. Peck stated it looks developable and that could be a condition of approval, the owner of which to be determined later.

Mr. Walker stated he is impressed with the design of the apartment, the landscaping, it will be a benefit to the town, and he hopes this sparks commercial development.

Mr. McPherson mentioned the lack of press coverage tonight.

Mr. Salerno stated he likes what he sees. The architecture is very nice. He would like to see something done with open space for recreation.

Mr. Harris stated they will work on that.

**Motion (4)** Mr. McPherson moved to approve the application of Theodore A. Harris, Esq., Agent for Gateway Development East Lyme, LLC for site plan approval to construct 275 residential dwelling units on property identified in the application as:

Ancient Highway	Map 25.0	Lot 35
286 Flanders Road	Map 26.0	Lot 2
284 Flanders Road	Map 31.3	Lot 1
282 Flanders Road	map 31.3	Lot 2
Flanders Road	Map 31.0	Lot 1

With the following conditions:

- a. The RU-40 Portion of the property be designated as open space with ownership to be determined.
- b. Provide a non-regulated area for recreation space.

Seconded by Mr. Walker.

**\*\*Mr. McPherson rescinded his Motion.**

**Motion (5)** Mr. McPherson moved to approve the application of Theodore A. Harris, Esq., Agent for Gateway Development East Lyme, LLC for site plan approval to construct 275 residential dwelling units on property identified in the application as:

Ancient Highway	Map 25.0	Lot 35
286 Flanders Road	Map 26.0	Lot 2
284 Flanders Road	Map 31.3	Lot 1
282 Flanders Road	map 31.3	Lot 2
Flanders Road	Map 31.0	Lot 1

With the following conditions:

- a. The RU-40 Portion of the property be designated as open space with ownership to be determined later, and to be left in its natural existing state, except for possible walking trails.
- b. Provide a non-regulated area for recreation space.

Seconded by Mr. Walker.

Motion Passed 5-0-1 (Mr. Donovan-Nay)

This will be published on June 27<sup>th</sup> and will be effective on June 28<sup>th</sup>.

#### 5. APPROVAL OF MINUTES OF JUNE 6, 2013

Motion (60 Mr. Walker moved to approve the Minutes of June 6, 2013.

Seconded by Mr. McPherson.

Motion passed 5-0-1 (Mr. Donovan – Nay)

#### OLD BUSINESS

##### 1. SIGN SUBCOMMITTEE

They did not meet.

##### 2. OUTDOOR DINING BARS SUBCOMMITTEE

They did not meet.

#### NEW BUSINESS

##### 1. ANY BUSINESS ON THE FLOOR, IF ANY BY THE MAJORITY VOTE OF THE COMMISSION

Mr. Peck stated there are 5 lots in the Rocky Neck Business Park available. This Commission could get an application for construction at any time. The architectural review was previously done by the Economic Development Commission. The architectural review is required by deed.

Mr. Mulholland asked if there was an expiration on that. He will look into that and report back to them at the next meeting.

##### 2. ZONING OFFICIAL

Mr. Mulholland stated he has been busy. The blue house across from Midway Mall has come down. There will be a 10000 square foot commercial building there. Henny Penny is going to try to stay in

business while the second store is being built. The architect of Gary Smith's building is finishing up plans. The Norton job is being shopped around.

Mr. Donovan asked about that sidewalk on Main Street.

Mr. Mulholland stated he has five years, but he will not have a CO until he does it.

He also anticipates Gateway back in the next few weeks.

### **3. COMMENTS FROM EX-OFFICIO**

Ms. Cheeseman had already left the meeting.

Mr. Salerno read her report, there was a Special Town Meeting and they appropriated money for the Board of Education, and for town vehicle lease and/or purchase, and for CNRE, Capital Improvement, Local Capital Improvement Plan, Town Aid Road Program, and the new playscape at Bride Brook, and they approved the new one year contract with the Fire Fighters union.

### **4. COMMENTS FROM ZONING BOARD LIAISON TO PLANNING COMMISSION**

Mr. Donovan stated they discussed Gateway. There was some housekeeping on the FEMA Flood Maps, and there was discussion of parking in front of businesses.

Mr. Mulholland stated the new flood maps are effective on August 5<sup>th</sup>.

### **5. COMMENTS FROM CHAIRMAN**

There were no comments.

### **6. ADJOURNMENT**

**Motion (7) Mr. Lukas moved to adjourn the meeting at 10:50 p.m.**

**Seconded by Mr. Donovan.**

**Motion Passed 6-0.**

**Respectfully Submitted,**

**Karen Miller Galbo  
Recording Secretary**

# Tab 3

TOWN OF EAST LYME

ZONING COMMISSION

MAY 7, 2015

REGULAR MEETING MINUTES

**Members Present:**

Matthew Walker, Chairman  
William Dwyer  
Terence Donovan  
George McPherson  
Norm Peck  
James Liska, Alternate (Sat for Regular Meeting)  
Shawn Singer, Alternate  
Peter Lukas, Alternate

FILED IN EAST LYME  
CONNECTICUT  
MAY 13 2015 AT 8:15 AM/PM  
*William Dwyer, Jr.*  
EAST LYME TOWN CLERK

**Members Absent:**

Matthew Kane

**Also Present:**

Bill Mulholland, Zoning Officer  
Holly Cheeseman, Ex-Officio  
Rita Franco-Palazzo, Planning Representative  
Attorney Mark Zamarka

**1. TOWN ATTORNEY REVIEW OF 8-30G AFFORDABLE HOUSING STATUTES**

Attorney Zamarka of Waller, Smith and Palmer stated Landmark Development LLC filed an affordable housing application for the Oswegatchie Hills related to one filed in 2005, which was denied. Landmark appealed that denial. In 2011 Judge Frazzini issued a memorandum of understanding that remanded the application back to this Commission. The current application was filed pursuant to that remand. There will be a public hearing on May 21st.

It is not proper to discuss the application or the Judge's decision now. He encouraged all members of this Commission to read that decision. With affordable housing applications the burden is on the Commission to substantiate their decision on appeal. He handed out Section 32 of the Zoning Regulations and urged all members to read and become familiar with that section. They can approve, approve with conditions, or deny. If it is denied or if there are conditions the Commission must state their reasons why. The decision should be supported by evidence in the record. The Commission can't rely on the court looking through the record; they must state the reasons for the decision on the record. This applied to Towns who have less than 10% of land devoted to affordable housing. East Lyme is not exempt as they only have approximately 6%.

Mr. Dwyer asked how water and sewer falls under this.

Attorney Zamarka stated that affordable housing statutes don't apply to water and sewer.

Mr. Donovan asked if they are going to be revamping 8-30g regarding the 10%.

Attorney Zamarka stated he has seen articles on that.

**2. CONTINUATION OF APPLICATION OF THE EAST LYME PARKS & RECREATION DEPARTMENT FOR PLACEMENT OF A 32'X32' GAZEBO AT BRIDE BROOK PARK, NIAN TIC**

Mr. Mulholland stated this was continued due to concerns about wind loads. That is the purview of the building official. He will review the design and anchoring.

Mr. Peck stated there was a feeling that public safety could be at risk.

Mr. Mulholland state those may be genuine concerns. The building official with review it and make sure it is built according to code or they won't get their Certificate of Occupancy. There is no standard in the Zoning Regulations for this.

Mr. Donovan stated the wind data is on the drawing.

Mr. Mulholland stated there are specific standards per the building code.

**Motion (1) Mr. McPherson moved to approve the application of the East Lyme Parks and Recreation Department for placement of a 32'x32' gazebo at Bride Brook Park, Niantic.**

**Seconded by Mr. Liska.**

**Motion Passed 6-0.**

**3. APPLICATION OF LEO ROCHE, FOR STRIVE LLC FOR A RENEWAL OF A SPECIAL PERMIT FOR OUTDOOR DINING AT PROPERTY IDENTIFIED IN THE APPLICATION AS 247-2 MAIN STREET, NIAN TIC**

**Motion (2) Mr. Donovan moved to approve the application of Leo Roche, for Strive LLC for a renewal of a special permit for outdoor dining at property identified in the application as 247-2 Main Street, Niantic with the previously approved conditions.**

**Seconded by Mr. McPherson.**

**Motion Passed 6-0.**

**4. APPLICATION OF RITA FOKAIDIS, FOR VILLAGE PIZZA, FOR A RENEWAL OF A SPECIAL PERMIT FOR OUTDOOR DINING AT PROPERTY IDENTIFIED IN THE APPLICATION AS 53 WEST MAIN STREET, NIAN TIC**

**Motion (3) Mr. McPherson moved to approve the application of Rita Fokaidis, for Village Pizza, for a renewal of a special permit for outdoor dining at property identified in the application as 53 West Main Street, Niantic with the previously approved conditions.**

Seconded by Mr. Donovan.

Motion Passed 6-0.

5. APPLICATION OF CRAIG TAFT, FOR CTRP ENTERPRISES, LLC (AKA BURKE'S TAVERN) FOR A RENEWAL OF A SPECIAL PERMIT FOR OUTDOOR DINING AT PROPERTY IDENTIFIED IN THE APPLICATION AS 267-283 MAIN STREET (AKA 13 HOPE STREET, NIANTIC)

Motion (4) Mr. McPherson moved to approve the application of Craig Taft, for CTRP Enterprises, LLC (aka Burke's Tavern) for a renewal of a special permit for outdoor dining at property identified in the application as 267-283 Main Street (aka 13 Hope Street, Niantic) with the previously approved conditions.

Seconded by Mr. Dwyer.

Motion Passed 6-0.

6. APPLICATION OF TIMOTHY O'REILLY, OWNER, EAST LYME CAFÉ, LLC DBA SMOKEY O'GRADY'S FOR A RENEWAL OF A SPECIAL PERMIT FOR OUTDOOR DINING AT PROPERTY IDENTIFIED IN THE APPLICATION AS 306 FLANDERS ROAD, NIANTIC

Motion (5) Mr. Donovan moved to approve the application of Timothy O'Reilly, owner, East Lyme Café, LLC DBA Smokey O'Grady's for a renewal of a special permit for outdoor dining at property identified in the application as 306 Flanders Road, Niantic with the previously approved conditions.

Seconded by Mr. Liska.

Motion Passed 6-0.

7. APPLICATION OF DAVID MCILHENNEY, FOR DAVID MCILHENNEY FITNESS STUDIO, FOR A SPECIAL PERMIT FOR OUTDOOR RECREATION AT PROPERTY IDENTIFIED IN THE APPLICATION AS 323 FLANDERS ROAD, EAST LYME

Mr. McPherson stated he feels there is adequate parking.

Motion (6) Mr. Liska moved to approve the application of David McIlhenney for David McIlhenney Fitness Studio for a Special Permit for Indoor Recreation at property identified in the application as 323 Flanders Road, East Lyme with the 25 parking spaces assigned.

Seconded by Mr. Donovan.

Motion Passed 6-0.

8. APPROVAL OF MINUTES OF APRIL 16, 2015

Mr. Donovan stated the second paragraph should state Mr. Donovan, and not Mr. Terrance.

**Motion (7) Mr. McPherson moved to approve the Public Hearing and Regular Meeting Minutes for April 16, 2015 as amended.**

**Seconded by Mr. Dwyer.**

**Motion Passed 5-0-1 (Mr. Liska abstained)**

**OLD BUSINESS**

**1. SUB-COMMITTEE MIXED USE IN CB ZONE**

There was nothing to report.

**NEW BUSINESS**

**1. APPLICATION OF TODD SAKOWSKI TO AMEND THE EAST LYME ZONING REGULATIONS SECTIONS 1.79, 9.2.10, 20.20.8 AND 25.5 TO PERMIT THE OPERATION OF A TAPROOM BREWERY**

Chairman Walker stated this is tentatively scheduled for a Public Hearing on June 4, 2015.

**2. REQUEST OF WAYNE & PATRICIA FRASER FOR A WAIVER OF SECTION 20.8 OF THE EAST LYME ZONING REGULATIONS FOR PROPERTY IDENTIFIED IN THE REQUEST AS 22 GURLEY ROAD.**

Mr. Mulholland stated this is routine, and they can take it off the floor if there is no objection.

**Motion (8) Mr. McPherson moved to take this item off the floor.**

**Seconded by Mr. Peck.**

**Motion Passed 6-0.**

Mr. McPherson read a letter from Mr. Fraser.

Mr. Mulholland stated this waiver can be granted with a 2/3 vote of the Commission.

Wayne Fraser of 22 Gurley Road, East Lyme thanked the members for taking this off the floor. They realize this Commission has a very heavy schedule in the future. He has owned this parcel for many years. He would like to sell a portion to his daughter. There are many ways to get into the property. They have already done the perc testing.

**Motion (8) Mr. McPherson moved to approve the waiver of Section 20.8 of the East Lyme Zoning Regulations for property identified in the request as 22 Gurley Road.**

**Seconded by Mr. Dwyer.**

**Motion Passed 6-0.**

Mr. Fraser thanked the members for the work they do, he knows it is a tough job.

**3. ANY BUSINESS ON THE FLOOR, IF ANY BY THE MAJORITY VOTE OF THE COMMISSION**

There was no business on the floor.

**4. ZONING OFFICIAL**

Mr. Mulholland thanked the members for their support. The Public Hearing on Landmark will be at Camp Niantic as they anticipate a large crowd. Gateway has occupied approximately 60 units and they are moving along.

Mr. Dwyer asked if the big box has withdrawn their application.

Mr. Mulholland stated there is no application to withdraw; he has discussed architectural design with them.

**5. COMMENTS FROM EX-OFFICIO**

Ms. Cheeseman stated the Board of Selectmen met in Executive Session regarding a personnel matter. They had a public hearing regarding the building ordinance. There was a large turnout due to the temporary cell tower on Ancient Highway. They authorized the First Selectmen to sign the JLUS agreement, they approved a historic preservation grant for the Town Clerk, they approved an appointment to the Smith Harris House Commission, there was discussion regarding the cell tower, and they authorized the First Selectmen to apply for intervener status. Crescent Beach wants to withdraw from the Golf Cart Regulation. They urged everyone to speak to their elected official regarding the Siting Council.

Mr. Mulholland stated the Zoning Commission has no jurisdiction regarding the cell tower.

Ms. Cheeseman stated Mr. Nickerson has presented 6 or 7 alternate sites for the cell tower.

**6. COMMENTS FROM ZONING BOARD LIAISON TO PLANNING COMMISSION**

Mr. Singer attended the meeting. They discussed Landmark, the brewery and re-subdivision of a lot on Walnut Hill Road.

**7. COMMENTS FROM CHAIRMAN**

Chairman Walker stated Mr. Mulholland and his wife are in their thoughts and we are all hopeful for a speedy recovery.

**Motion (9) Mr. McPherson moved to adjourn the meeting at 8:40 p.m.**

**Seconded by Mr. Peck.**

Motion Passed 6-0.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Karen Miller Galbo". The signature is written in a cursive, flowing style.

**Karen Miller Galbo**  
**Recording Secretary**

TOWN OF EAST LYME

ZONING COMMISSION

MAY 21, 2015

PUBLIC HEARING MINUTES

Members Present:

Matthew Walker, Chairman  
William Dwyer  
Terence Donovan  
Norm Peck  
George McPherson  
James Liska, Alternate (Sat for Public Hearing)  
Shawn Singer, Alternate (Did not Sit)

FILED IN EAST LYME  
CONNECTICUT  
MAY 21 2015 AT 8:25 AM/PM  
BRAD D. BEAN ATC  
EAST LYME TOWN CLERK

Members Absent:

Peter Lukas, Alternate  
Matthew Kane

Also Present:

Bill Mulholland, Zoning Official  
Holly Cheeseman, Ex-Officio  
Frank Balantic, Planning Representative  
Mark Nickerson, First Selectman  
Ed O'Connell, Town Attorney  
Mark Zamarka, Town Attorney  
Gary Goeschel, Town Planner

CALL TO ORDER

Chairman Walker welcomed the audience and called the Public Hearing to order at 7:35 p.m.

PLEDGE OF ALLEGIANCE

Chairman Walker led the assembly in the Pledge of Allegiance.

Chairman Walker stated there are 2 other days allotted for this Public Hearing and they have 35 days to make a decision.

INTRODUCTION OF LIEUTENANT COLONEL JOSEPH D. DANEAO, II, CONSTRUCTION & FACILITIES  
MANAGEMENT OFFICE OF THE CONNECTICUT ARMY NATIONAL GUARD

Chairman Walker thanked the National Guard for the use of Camp Niantic for the meeting tonight. It is important to get public input.

The Commission Members introduced themselves.

Chairman Walker introduced Lieutenant Colonel Joseph D. Daneao, II.

Lieutenant Colonel Daneao welcomed everyone to Camp Niantic. They have had a great relationship with East Lyme.

#### **PUBLIC DELEGATIONS**

There were no Public Delegations.

Mr. Liska was sat as a Regular Member for this meeting in Mr. Kane's absence.

- 1. PETITION OF TIMOTHY S. HOLLISTER FOR LANDMARK DEVELOPMENT GROUP, LLC AND JARVIS OF CHESHIRE, LLC UNDER CONNECTICUT GENERAL STATUTES SECTION 8-30G TO REZONE 123.02 ACRES FROM RU-120, ITS EXISTING ZONING DESIGNATION, TO AFFORDABLE HOUSING DISTRICT (SECTION 32 OF THE EAST LYME ZONING REGULATIONS) AND FOR APPROVAL OF A PRELIMINARY SITE PLAN (SECTION 32.9 OF THE EAST LYME ZONING REGULATIONS) WHICH PROPOSES OPEN SPACE OF 87 ACRES FOR PROPERTY IDENTIFIED IN THE APPLICATION AS CALKINS ROAD, EAST LYME, AND FURTHER IDENTIFIED IN SECTION 9 OF SAID PETITION AS BOSTON POST ROAD, (EAST LYME ASSESSOR'S MAP 31.0, LOT 4), 23 CALKINS ROAD, (EAST LYME ASSESSOR'S MAP 32.0, LOT 1) AND QUARRY DOCK ROAD (EAST LYME ASSESSOR'S MAP 27.0, LOT 14).**

Chairman Walker read the call of the meeting.

**Exhibit 1** was entered into the record: Spiral Bound; Application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC for rezoning of 123.02 acres to affordable housing district (AHD) and preliminary site plan approval, Calkins Road dated March 4, 2015 rcvd March 6, 2015 at 2:45 p.m.

**Exhibit 2** was entered into the record: Riverview Heights (A Residential Community) Calkins Road, East Lyme, Connecticut, Application for Approval of Rezoning and Preliminary Site Plan, February 4, 2015, rcvd 3/6/15

**Exhibit 3** was entered into the record: Traffic Impact Study Riverview Heights, East Lyme, Connecticut, Town of East Lyme Zoning Commission Site Plan Application State Traffic Commission Major Traffic Generator Certificate October 2005 by Ted DeSantos, PE, PTOE

**Exhibit 4** was entered into the record: East Lyme Zoning Regulations Adopted May 4, 1954 as amended through February 27, 2015

Mr. McPherson read **Exhibit 5** into the record: Notice of Intervenor from CT Fund for the Environment and Save the Sound.

Chairman Walker read **Exhibit 6** into the record: Notice of Intervenor from Friends of Oswegatchie Hills Inc. and Save the River/Save the Hills Inc. dated 5/19/15

Chairman Walker stated there have been Notices of Intervention received. He invited Attorney Zamarka to give a presentation on the intervener process. There has also been a question raised by the

intervenors regarding the Inland Wetlands issue. He will allow the intervenors to offer their view on the Inland Wetlands issue.

Attorney Mark Zamarka stated there have been two petitions to intervene filed. Both have been read in to the record. They can allow the intervenors but they have to have specific allegations regarding environmental issues, even if those allegations are never proven. If the intervenor status is granted that puts additional duties on the Zoning Commission. They would need to find that under the EPA Act the activity has an adverse effect on natural resources, and that prudent alternatives exist. He recommended that both petitions meet the requirements and should be approved. He presented a Resolution to the Commission (Exhibit 23).

Mr. McPherson read the following Resolution:

**RESOLUTION REGARDING INTERVENTION PETITIONS FILED BY CONNECTICUT FUND FOR THE ENVIRONMENT/SAVE THE SOUND AND FRIENDS OF OSWEGATCHIE HILLS NATURE PRESERVATION/SAVE THE RIVER SAVE THE HILLS**

**WHEREAS, Landmark Development Group, LLC and Jarvis of Cheshire, LLC have filed an application for rezoning of 123.03 acres to Affordable Housing District and for Preliminary Site Plan Approval (collectively the "Application") regarding property located in the Oswegatchie Hills; and**

**WHEREAS, Connecticut Fund for the Environment and Save the Sound, as well as Friends of Oswegatchie Hills Nature Preserve, Inc. and Save the River Save the Hills, have filed Verified Petitions for Intervention in proceedings regarding the above referenced Applications pursuant to General Statutes Section 22a-19; and**

**WHEREAS, General Statutes Section 22a-19 allows any person, partnership, corporation, association, organization or other legal entity to intervene in any administrative proceeding upon the filing of a verified pleading; and**

**WHEREAS, the verified pleading must assert that the proceeding involves conduct which has or which is reasonably likely to unreasonably pollute, impair or destroy the public trust in air, water, or other natural resources of the State; and must also contain specific factual allegations regarding (1) the nature of the alleged unreasonable pollution, impairment or destruction of the public trust in air, water or other natural resources and (2) whether the intervention implicates an issue within the Zoning Commission's jurisdiction; and**

**It is found that the verified petitions filed by Connecticut Fund for the Environment and Save the Sound and Friends of the Oswegatchie Hills Nature Preserve, Inc. and Save the River-Save the Hills meet the requirements of General Statutes Section 22a-19.**

**IT IS RESOLVED that Connecticut Fund for the Environment and Save the Sound and Friends of the Oswegatchie Hills Nature Preserve, Inc. and Save the River Save the Hills are hereby recognized as Intervenors in this matter pursuant to General Statutes Section 22a-19.**

Roger Reynolds, the legal director for the Connecticut Fund for the Environment and Save the Sound stated their mission is to protect the air, land, and water of Connecticut. They have intervened with a

petition that is a prime example of a threat to the environment. This application is premature and needs to go to Wetlands first.

Attorney Zamarka stated we will hear from the applicant and the intervenors just based on whether the intervention is proper.

Mr. Reynolds stated this application will threaten wetlands, it will threaten the water quality of the Niantic River, they will be blasting, State conservation is a priority. That is a coastal forest, and this is a remarkably destructive proposal.

Attorney Paul Geraghty representing Save the River Save the Hills stated he is not even sure they needed to intervene on this matter because it is on remand and they were a prior intervenor. It is a pristine area. He requested they grant the intervenor status as they did on the other application that Landmark filed.

Attorney Tim Hollister of Hartford representing the applicant stated he is disappointed in the way they started this hearing. There has been no application presented yet. If their application is granted it won't authorize them to turn one shovel. This is only to rezone the property and for a preliminary site plan. He objects to the intervention.

Mr. Reynolds stated if the conduct of this application is allowed it will impact the environment.

Mr. Geraghty stated it is important they have intervenor status at this time.

Chairman Walker asked Attorney Zamarka to review the criteria for intervenor status.

Mr. Zamarka stated a person or partnership may intervene as a party if they assume the conduct has or is reasonably likely to pollute the environment. The preliminary site plan is the first step toward final construction.

Mr. McPherson asked if all the groups were intervenor's during the prior application.

Mr. Zamarka stated the Friends of Oswegatchie Hills were, and Save the River Save the Hills were. The CT Fund for the environment was not.

Mr. McPherson asked why we have to revisit them as intervenors if they already were.

Attorney Zamarka stated he was not sure why.

**Motion (1) Mr. Liska moved to accept the Resolution as read into the record.**

**Seconded by Mr. Peck.**

**Motion Passed 6-0.**

Chairman Walker confirmed the legal advertisement was run on this item.

**Exhibit 7** was entered into the record: Legal Ad sent to New London Day on 5/8/15; Legal Notice Recorded with Town Clerk on 5/7/15

Gary Goeschel read **Exhibit 8** into the record: Planning Commission Letter (attached to this exhibit is the memo from Mr. Goeschel and a traffic report)

Gary Goeschel read **Exhibit 9** into the record: Planning Director Staff Review.

Mr. McPherson read **Exhibit 10** into the record: CT DEEP Referral Response.

Mr. McPherson read **Exhibit 11** into the record: Referral from Southeastern CT Council of Governments Regional Planning dated 5/7/15

Mr. McPherson read **Exhibit 12** into the record: Brad Kargl, Utilities Engineer Referral Response

Mr. McPherson and Mr. Donovan read **Exhibit 13** into the record: Town Engineer Response

There was no response from the Fire Marshal and from the Town of Waterford regarding this application; therefore **Exhibit 14 and Exhibit 15** were not entered.

Mr. Donovan, Mr. McPherson, and Chairman Walker read **Exhibit 16** into the record: Letter to Zoning Chairman Walker and Wetlands Chairman Lozanov from CT Fund for the Environment and Save the Sound dated 4/30/15.

Robert P. Jurason, Traffic Engineer read **Exhibit 17** into the record: Letter from Robert P. Jurason, PE, Traffic Engineer dated 5/11/15

**\*\*There was a 5 minute recess, the meeting resumed at 10:25 p.m.**

**Exhibit 18** was removed from the record.

**Exhibit 19** was entered into the record: Filing with Town Clerk of the Map of rezoning of 123+- acres to AH

**Exhibit 20** was entered into the record: Certificate of Mailing and Filing with Town Clerk

Mr. McPherson read **Exhibit 21** into the record: Letter from Niantic River Watershed Committee dated 5/7/15

Mr. Donovan read **Exhibit 22** into the record: East Lyme Harbor Management Referral Response.

Chairman Walker stated the intervening parties have asserted that this should have gone to the Inland Wetlands Agency prior to the Zoning Commission.

Mr. Reynolds stated this application is premature. They did not file with wetlands. This application shows a disregard for environmental law. Channels will flow into the wetlands and erode it. They have pictures of similar situations. They can provide expert testimony that this will have an adverse impact on the environment. This plan will require extra septic. Inland Wetlands has jurisdiction on this.

**Exhibit 24** was entered into the record: Letter from Steve Trinkaus

Attorney Hollister stated it is 11:05 p.m., earlier in the Public Hearing the Chairman had noted that we would be adjourning at 10:30. He is amazed, disappointed, and angered at how this has proceeded. We have received comments and they haven't heard what the application is. The applicant has the right to make his application without comments first. If they decide we should have gone to Wetlands first then fine, but right now they haven't heard or seen the application. He would like to present to a full audience, the 150 people who were here at 7:30. He would like to come back at the next meeting to present his application.

Chairman Walker stated there were a number of exhibits that had to be entered into the record, and that took a considerable length of time. His frustration is understandable.

**Motion (2)** Mr. McPherson moved to continue the Public Hearing to June 4<sup>th</sup> at the same location.

**Seconded by Mr. Peck.**

**Motion Passed 6-0.**

**Respectfully Submitted,**



**Karen Miller Galbo**  
**Recording Secretary**

**TOWN OF EAST LYME**  
**ZONING COMMISSION**  
**JUNE 4, 2015**  
**PUBLIC HEARING MINUTES**

**Members Present:**

**Matthew Walker, Chairman**  
**William Dwyer**  
**George McPherson**  
**Terence Donovan**  
**Norm Peck**  
**James Liska, Alternate (Sat for Public Hearing)**  
**Peter Lukas, Alternate**  
**Shawn Singer, Alternate**

FILED IN EAST LYME  
CONNECTICUT  
June 10 2015 AT 11:20 AM PM  
*Karen Salvo, AT*  
EAST LYME TOWN CLERK

**Members Absent:**

**Matthew Kane**

**Also Present:**

**Mark Nickerson, First Selectman**  
**Attorney Mark Zamarka**  
**Attorney Ed O'Connell**  
**Marc Salerno, Ex-Officio**  
**Gary Goeschel, Town Planner**  
**Rita Franco-Palazzo, Planning Representative**

**Also Absent:**

**Bill Mulholland, Zoning Officer**

**CALL TO ORDER**

Chairman Walker called the Public Hearing to order at 7:37 p.m.

**PLEDGE OF ALLEGIANCE**

Chairman Walker led the assembly in the Pledge of Allegiance.

Chairman Walker thanked everyone for coming. He thanked Lieutenant Colonel Joseph D. Daneao, II on behalf of the Town and the Zoning Commission. This is the second of likely three public hearings on the Landmark application. We are grateful for the use of the facilities at Camp Niantic. There will be a few exhibits tonight that will be need to be entered into the record, but they will be short. Then they will move onto the application. Once Attorney Hollister has completed his presentation we will move onto public comment, then we may take a break then the intereვენors will give their presentation, then the applicant will be given an opportunity for rebuttal.

Chairman Walker sat Mr. Liska in Mr. Kane's absence.

**PUBLIC DELEGATIONS**

There were no public delegations.

Item number 2 on the Agenda was moved up to Item 1.

1. **APPLICATION OF TODD SAKOWSKI TO AMEND THE EAST LYME ZONING REGULATIONS SECTION 1.79, 9.2.10, 20.20.8 AND 25.5 TO PERMIT THE OPERATION OF A TAPROOM BREWERY**

This item was continued to the June 18, 2015 meeting.

2. **CONTINUATION OF PETITION OF TIMOTHY S. HOLLISTER FOR LANDMARK DEVELOPMENT GROUP, LLC AND JARVIS OF CHESHIRE, LLC UNDER CONNECTICUT GENERAL STATUTES SECTION 8-30G TO REZONE 123.02 ACRES FROM RU-120, ITS EXISTING ZONING DESIGNATION, TO AFFORDABLE HOUSING DISTRICT (SECTION 32 OF THE EAST LYME ZONING REGULATIONS) AND FOR APPROVAL OF A PRELIMINARY SITE PLAN (SECTION 32.9 OF THE EAST LYME ZONING REGULATIONS) WHICH PROPOSES OPEN SPACE OF 87 ACRES FOR PROPERTY IDENTIFIED IN THE APPLICATION AS CALKINS ROAD, EAST LYME, AND FURTHER IDENTIFIED IN SECTION 9 OF SAID PETITION AS BOSTON POST ROAD, (EAST LYME ASSESSOR'S MAP 31.0, LOT 4), 23 CALKINS ROAD, (EAST LYME ASSESSOR'S MAP 32.0, LOT 1) AND QUARRY DOCK ROAD (EAST LYME ASSESSOR'S MAP 27.0, LOT 14).**

The following exhibits were entered:

**Exhibit 10 - This is an addendum to Exhibit 10, which was previously entered at the May 21, 2015 public hearing, and was inadvertently left out when first entered.**

**Exhibit 25 - Letter from Friends of Oswegatchie Hills Nature Preserve to Chairman Walker and Cheryl Lozanov, Chair of the Inland Wetlands Agency.**

**Exhibit 26 - Letter from Steven Trinkaus to the Friends of Oswegatchie Hills Nature Preserve and Save the River Save the Hills.**

**Exhibit 27 - Letter from Richard Morris**

Attorney Tim Hollister stated his client is not here. He believes the form of conduct at the May 21<sup>st</sup> public hearing was unfair. They took three and a half hours to read 26 exhibits. In thirty years he has never seen a public hearing taken up in that way. It was disrespectful to the public. The documents that were read were somewhat selective, he asked why they didn't read his cover letter and the Judge's decision. The procedure was confusing because the public may not understand the judge's orders. He could take the entire night tonight to give his presentation, but if he did that the public won't be able to speak. He will take about 20 minutes tonight, and he will summarize five items. Then he will let the public speak. His traffic and storm water experts will come to the next meeting for a single response.

**He presented the following exhibits:**

**Exhibit 28 - Applicant's supplemental materials.**

**Exhibit 29 - Memorandum**

He explained that Exhibit 28 is a compilation of information regarding affordable housing, which he has continually updated with data from 2014 and 2015. It explains the need for affordable housing in town. He stated of the 8400 housing units in town, there are only about 400 that are affordable housing. There is room for improvement. The applicant's property is 236 acres; he provided materials showing the owner can develop that land into single family units on 3 acre lots, which illustrates how it could be developed.

Attorney Hollister stated he took over this case about two and a half years ago. He was not involved in the Court case. 85% of this property is modest slope and has no wetlands. The idea that this is swamp or undevelopable is not true. The State had the opportunity to acquire this land as open space; the State had no interest because it was surrounded by residential developments. The sewer shed is at the top of the hill on the property, so it could be connected to the sewer system. The Landmark property being connected to sewers would give the town the opportunity to eliminate septic in the Golden Spur neighborhood. In the 1990's there was a dispute with the Sewer Commission as to whether the land was in the sewer district. The DEP said that part of it was in it. In 2005 the applicant applied for an amendment to the affordable housing regulations to rezone the entire 236 acres to an affordable housing district. There were extensive hearings in 2005. The Zoning Commission denied the application but approved multi-family residential development within the sewer district. Landmark appealed and in 2011 Judge Frazzini issued a ruling. His decision resolved many issues, and framed what they are doing tonight. Landmark has to get the traffic plan approved by the DOT. The Zoning Commission's decision can be conditional on the approval of the Water and Sewer Commission, or by the DEEP. This is on remand from the Superior Court; this is not a new application. No one has the right to reopen issues that have already been decided. The Planning Commission's referral was about 8 years late. Landmark applied to the Water & Sewer Commission in 2012 for up to 118,000 gallons per day. The purpose of that was to secure the capacity to know what Landmark can work with. The Water & Sewer Commission denied that application and said zero capacity. Landmark appealed that and in 2014 the denial was overturned. The Water & Sewer Commission then granted them 14,000 gallons. The Water & Sewer Commission is doing the Zoning Commission's job. Landmark owns property in the sewer district; the town can grant the application and still have capacity for others.

The Affordable Housing District Regulations were revised in 2013, now is the appropriate time to proceed to the next phase. 87 acres of the applicants will not be developed. The development area is entirely outside the coastal zone. They have produced a preliminary plan to show they can establish boundaries, to show the roads, and to show there is no health and safety impact on the Town of East Lyme.

They are proposing a phased plan; they don't know the sewer capacity so they don't know the density. The Zoning Commission and the Town won't be prejudiced by approving this application. If there is any engineering aspect not presented here there won't be a claim later that they waived their opportunity. Approval of this application is not permission to construct anything. This application does not require Inland Wetlands Agency approval; this doesn't give them permission to build anything.

**Matt Lebeau of Attorney General Blumenthal's office read a letter from Attorney General Blumenthal into the record – Exhibit 30.**

Chairman Walker asked about a CAM review.

Attorney Hollister stated that is not prepared because it is outside of the coastal area.

**PUBLIC COMMENT**

Richard Jalbert – 23 River Road, East Lyme stated he is the owner of Cozy Nest Cottages, his property is between River Road and Caulkins Road. He rents cottages. This development would destroy his business and destroy the neighborhood. We don't need a traffic engineer to know that if there was an emergency there the residents would be trapped. This makes terrible sense for evacuation, it will be a traffic nightmare. He stated the existing roads may not have a right of way that is 50 feet wide.

**Robert Garofalo – 15 Ledge Road, Niantic read a letter into the record to Chairman Walker, and Chairwoman Lozanov – Exhibit 31.**

**Susan Kraynak – 1 River Road, East Lyme read a letter into the record to Mr. Mulholland and Chairman Walker – Exhibit 32.**

**Susan Lambert – 10 Oak Hill Road, Niantic read a letter into the record from Attorney Paul Geraghty on behalf of Richard Ford of 26 Hill Road, East Lyme – Exhibit 33 (with attachments, traffic report and I-95 Corridor Study)**

Attorney Paul Geraghty stated he represents Richard Ford. In 2005 he was never given notice, regardless of what Judge Frazzini said, his client wasn't notified.

**Cordett Grimsey – 35 Oswegatchie Road, Waterford read a letter into the record to Chairman Walker – Exhibit 34**

David Karg – 20 Hill Road, East Lyme stated he is against this approval. It will totally ruin Golden Spur. He has lived there 33 years. In 1982 two bridges washed out. The Golden Spur area was isolated. With one way in and one way out it would be very dangerous to funnel that many cars. The members of this Commission should do a site walk. He went to the Planning Commission meeting. They discussed a 2005 traffic study. Do they think that basing this application on a 10 year old traffic study is relevant? There are 8 to 10 deliveries a day into the neighborhood, the traffic is not just cars, but delivery trucks also.

Richard Gallagher – 16 Brainerd Road, Niantic stated he is opposed to this. Attorney Hollister referred to this application as lines on paper. There are 1767 parking spaces, and 840 units. If it is approved 700 of those units won't have a place to flush their sewage. It is very clearly 840 units.

Carol Kruse – 51 Quarry Dock Road, Niantic stated this application is not in the best interest of the East Lyme community. We are responsible as citizens to do no harm or put the environment at risk.

Fred Grimsey – 35 Oswegatchie Road, Waterford asked that materials he submitted be entered as exhibits.

**The following exhibits were entered:**

**Exhibit 35 - Letter to Zoning Commission from Waterford East Lyme Shellfish Commission**

**Exhibit 36 – Letter to Fred Grimsey from Robert Haskins**

**Exhibit 37 – Letter from Robert DeSanto to Chairman Walker.**

Marvin Schutt – 39 N. Edgewood Road, Niantic stated he has learned a lot. The purpose of affordable housing is to make sure people who can't get housing can. The purpose wasn't to destruct god's creations.

\*\*There was a recess, the Public Hearing resumed at 9:30 p.m.

Roger Reynolds representing the CT Fund for the Environment stated they have over 5000 members. He wanted to address and object to Attorney Hollister's actions at the last public hearing. As he introduced an expert Mr. Hollister jumped up and objected. He objected that they read the exhibits into the record, he did not cite any law in that objection. In fact that was a perfectly reasonable choice and it was highly unjustified for Attorney Hollister to interrupt. They are correct to raise the environmental issues, they have cited law that the Inland Wetlands Agency should see this first. The Zoning Commission should reject this as premature. He asked Attorney Hollister to stop bullying, stop jumping up, and to respect the Zoning Commission. The Zoning Commission has the right to dismiss this or stay until the Inland Wetlands Agency sees this application.

Steve Trinkaus, 114 Hunters Ridge Road, Southbury stated he is certified in erosion and sedimentation controls. He reviewed the application and submitted a letter. He looked at the potential actions. The discharge points are just outside the 100 foot upland area. The discharge will erode a channel into the wetlands, and wind up as sediment in the wetlands. There is no water quality treatment, there are pollutants in the runoff. The problems will be very large, will bury plants and will affect species within them. The storm water management system won't work and they will have to use land that they have stated they intend for open space.

Roger Reynolds stated this will have an adverse impact on the wetlands. It should be referred to the Inland Wetlands Agency. 100 or so units have been approved for sewage. The site plan doesn't show septic. He asked this Commission to refer this to Inland Wetlands and stay or dismiss these proceedings.

Attorney Hollister stated this is a two part application. The first part is to rezone. The Preliminary Site Plan Regulations doesn't say that they need approval from the Inland Wetlands Agency. If they are not asking for permission to build they don't need a wetlands permit. If this application gets approved then they can say they have to get wetlands approval first.

Chairman Walker asked Attorney Zamarka if it is the Zoning Commission's purview to refer this to Inland Wetlands Agency for a report without the applicant applying to Inland Wetlands.

Attorney Zamarka stated the application is for a Preliminary Site and a zone change. Judge Frazzini told the Zoning Commission to determine the environmental issues within the zone change. The Zoning

Commission is not responsible for making an environmental finding without hearing from the Inland Wetlands Agency. They can refer this to the Inland Wetlands Agency for a report and hold this open until the June 18<sup>th</sup> meeting.

**Motion (1) Mr. Donovan moved to refer this to the Inland Wetlands Agency for a report to the Zoning Commission at the Public Hearing on June 18<sup>th</sup>.**

**Seconded by Mr. Liska.**

**Motion Passed 6-0.**

Roger Reynolds stated he hasn't seen an application with this level of disregard for the law and the environment. This originally started out as a golf course, then the affordable housing applications began. The rules don't seem to apply. The Inland Wetlands Agency, the CAM Act, and the Zoning Regulations say what is required. They were granted 14,000 gallons of sewer, they don't believe they need to comply. Sewage treatment is not included in this application. It is necessary to protect the environment and that outweighs the need for affordable housing. 8-30g doesn't apply to the Water and Sewer Commission. This will have a devastating impact on the wetlands.

**Exhibit 28 was entered into the record by Attorney Paul Geraghty - What's Legally Required**

Attorney Geraghty stated the document that Attorney Hollister submitted tonight shows a proposed 60 lot subdivision, even though that is not something that is automatically granted. The court found this property environmentally significant. The record supports this Commission's findings that the public interest in open space outweighs the public interest in affordable housing. It is a unique environmental site, there is evidence of the environmental harm if this is approved. The applicant always seems to do less than required of him, and the applicant continues to fail to follow the rules that Judge Frazzini set up. The applicant has the burden of submitting evidence. Landmark has refused to provide proper evidence.

Attorney Hollister stated he prefers to respond on June 18<sup>th</sup>.

Attorney Zamarka stated if the Inland Wetland report is pending, the Zoning Commission decision will be due 35 days after the report is issued.

Mr. McPherson asked Attorney Zamarka to look into the ownership of the roads.

Attorney Zamarka stated he will do that and report back to them.

Chairman Walker asked if they have 35 days to make a decision from when Inland Wetlands submits their report.

Attorney Zamarka stated that yes.

Attorney Hollister stated they have 65 days after the Public Hearing to make a decision, he hopes they aren't adding another 35 days onto that. The Inland Wetlands Agenda for Monday the 8<sup>th</sup> has already been filed. He has nothing to present to the Inland Wetlands Agency.

**Motion (2) Mr. McPherson moved to continue the Public Hearing to June 18, 2015.**

**Seconded by Mr. Donovan.**

**Motion Passed 6-0.**

**Respectfully Submitted,**

A handwritten signature in cursive script, reading "Karen Miller Galbo".

**Karen Miller Galbo  
Recording Secretary**

TOWN OF EAST LYME

ZONING COMMISSION

JUNE 18, 2015

PUBLIC HEARING MINUTES

**MEMBERS PRESENT:**

MATTHEW WALKER, CHAIRMAN  
WILLIAM DWYER  
TERENCE DONOVAN  
NORM PECK  
GEORGE MCPHERSON  
JAMES LISKA, ALTERNATE (SAT FOR PUBLIC HEARING)  
SHAWN SINGER, ALTERNATE

**MEMBERS ABSENT:**

MATTHEW KANE  
PETER LUKAS, ALTERNATE

**ALSO PRESENT:**

BILL MULHOLLAND, ZONING OFFICER  
MARK NICKERSON, FIRST SELECTMAN  
HOLLY CHEESEMAN, EX-OFFICIO  
ED O'CONNELL, TOWN ATTORNEY  
MARK ZAMARKA, TOWN ATTORNEY  
GARY GOESCHEL, TOWN PLANNER  
RITA FRANCO-PALAZZO, PLANNING REPRESENTATIVE  
FRANK BALANTIC, PLANNING REPRESENTATIVE

**CALL TO ORDER**

Chairman Walker called the Public Hearing to order at 7:35 p.m.

**PLEDGE OF ALLEGIANCE**

Chairman Walker led the assembly in the Pledge of Allegiance.

Chairman Walker welcomed everyone in the audience and thanked the National Guard for the use of their building, this is the third public hearing on Item number 1, and the National Guard has been very gracious in allowing the use of this building.

Mr. Liska sat as a Regular Member for the Public Hearing.

FILED IN EAST LYME  
CONNECTICUT  
June 24, 2015 AT 8:50 AM PM  
*Valen Walker*  
EAST LYME TOWN CLERK

## **PUBLIC DELEGATIONS**

There were no public delegations.

## **PUBLIC HEARING:**

- 1. CONTINUATION OF PETITION OF TIMOTHY S. HOLLISTER FOR LANDMARK DEVELOPMENT GROUP, LLC AND JARVIS OF CHESHIRE, LLC UNDER CONNECTICUT GENERAL STATUTES SECTION 8-30G TO REZONE 123.02 ACRES FROM RU-120, ITS EXISTING ZONING DESIGNATION, TO AFFORDABLE HOUSING DISTRICT (SECTION 32 OF THE EAST LYME ZONING REGULATIONS) AND FOR APPROVAL OF A PRELIMINARY SITE PLAN (SECTION 32.9 OF THE EAST LYME ZONING REGULATIONS) WHICH PROPOSES OPEN SPACE OF 87 ACRES FOR PROPERTY IDENTIFIED IN THE APPLICATION AS CALKINS ROAD, EAST LYME, AND FURTHER IDENTIFIED IN SECTION 9 OF SAID PETITION AS BOSTON POST ROAD, (EAST LYME ASSESSOR'S MAP 31.0, LOT 4), 23 CALKINS ROAD, (EAST LYME ASSESSOR'S MAP 32.0, LOT 1) AND QUARRY DOCK ROAD (EAST LYME ASSESSOR'S MAP 27.0, LOT 14).**

**Attorney Hollister submitted the following exhibits:**

**Exhibit 39 – Applicant's Supplemental Materials dated June 18, 2015;**

**Exhibit 40 – Presentation Slides**

**Exhibit 41 – Email exchange between Attorney Hollister, town staff, and Attorney Zamarka**

**Exhibit 42 – June 11, 2015 letter from Gary Goeschel to Mr. Russo**

**Exhibit 43 – Darrow Pond Pollution Prevention Plan**

Attorney Hollister stated Section 32 of the Zoning Regulations was drafted two years ago. This complies with the remand direction from Judge Frazzini. Section 32.9.1 provides for the Preliminary Site Plan, it gives the applicant permission to layout the big picture and defer engineering and impact assessments until the final site plan. This is a proposed preliminary layout; they are proposing to rezone 123 acres to an Affordable Housing District. Within that, there would be 87 acres with no residential structures. Some of those 87 acres may be needed for septic; otherwise it will be open space. The driveway will be boulevard style. He provided them a checklist of 32.9.1 showing that he complied with their Regulation. CT Fund for the Environment is not understanding what they are applying for. Everyone is pining for open space and here it is being offered. They will be developing outside the wetlands. It is a relatively flat area and is adjacent to Deerfield Village. Conditional approval of this is acceptable. They can approve the Preliminary Site Plan conditioned on Water and Sewer; they are not prejudicing themselves if they issue this conditionally. The Judge decided it can be approved conditionally on traffic, water and sewer. If there has not been a substantial change in traffic since 2005 there is no basis to reopen that. Landmark does have a portion of this property in the sewer district. They have been approved for approximately 14,000 gallons of capacity. They have asked the Court why they are not entitled to more. The only thing in the coastal zone is the driveway. The Fire Marshal presented two exhibits. If fire trucks can't get in they can use Deerfield as a second access point. There was a statement that River Road floods. If that is true why does the Town let people live there?

Scott Hesketh of F.A. Hesketh & Associates, East Granby, Connecticut stated he is a traffic consultant. He read a letter dated June 18, 2015 to Mr. Russo. He stated the traffic volumes have not changed significantly since 2005. He also stated there have been no recently approved projects in the vicinity of

the site. They will install a new traffic signal. They will also widen the road to allow a two lane approach.

Guy Hesketh of F.A. Hesketh & Associates stated he is a professional engineer. This is not their final design, this is their preliminary design. There will be 840 units with an access drive, clubhouse, and pool area. All proposed development is outside of the coastal area. The building site is as far from the river as possible. The building area has no wetlands. There will be a little over 87 acres of open space. He discussed some housekeeping measures, pet waste stations, water basins, sand removal, pesticides, snow removal, groundwater recharge, storm water management.

Attorney Hollister stated Attorney Geraghty made the statement that Landmark is not playing by the rules. We are challenging Zoning on this, we are challenging the Water & Sewer Commission ruling, we are also challenging the discrepancy in how this application is being treated by the Zoning Commission. There is a Special Meeting next week of the Inland Wetlands Agency next week on this, and they will attend. If the Zoning Commission denies this because they did not apply to Inland Wetlands on this they will argue in court that the Zoning Commission waived their right of review. They are asking that they conditionally approve this. Final engineering will be deferred to the Final Site Plan stage. He is disappointed how the first public hearing unfolded. The developed area is limited to 36 acres, it is outside the coastal zone, there will be a minimum of 87 acres as open space at no cost to the town.

Mr. Mulholland asked if there is evidence to support the emergency access from Deerfield.

Attorney Hollister stated there is no marked access and there is no easement, but the fire trucks can go wherever they want. If they need to get to a fire and access on River Road is blocked then fire trucks can go where they want.

Mr. McPherson asked what the land is like between Landmark land and Deerfield.

Attorney Hollister stated it is a slight incline, there is a lawn area and then woods, if it is developed then the woods would then be lawn.

Chairman Walker stated at the June 4<sup>th</sup> public hearing you stated the buildings would be about 1500 feet from the river, but from the maps it looks to be about 800 feet.

Mr. Russo stated the coastal line is about 1000 feet from the River and the buildings are above that.

Mr. Peck asked if it is a right of way for egress to Deerfield for residents.

Attorney Hollister stated there is no proposed vehicular access.

Mr. Peck stated at the last meeting there were questions raised regarding ownership of the road on River Road.

Mr. Mulholland asked if there was an easement for water and sewer through Deerfield.

Attorney Hollister stated they have water and sewer at Deerfield but there is no formal easement to allow an extension to the Landmark property.

Mr. McPherson asked why the traffic counts were done in February.

Scott Hesketh stated the counts were done by the DOT. Fuss & O'Neill did some in August in 2005 and 2007.

Mr. McPherson asked if winter storms affect traffic counts.

Mr. Hesketh stated he doesn't know if there were storms during the counts.

Mr. McPherson asked who can determine who owns the roads.

Attorney Zamarka stated that is not the Zoning Commission's jurisdiction to determine title to private lands.

Chairman Walker clarified that would not be a reason to not approve.

\*\*There was a recess. The Public hearing resumed at 9:00 p.m.

Attorney Roger Reynolds introduced Steven Trinkaus of Southington, Connecticut. Mr. Trinkaus stated he reviewed the preliminary storm water management plan. There are many assumptions made, but no evidence to support those assumptions. Runoff is being directed to the systems, rainfall that falls on the roofs is not clean, runoff is not clean, there will be 36 acres of impervious cover, they have to keep it clear of ice. That will pass through the treatment systems and into the river.

**Mr. Trinkaus presented the following exhibits:**

- Exhibit 44 - 1 page letter from Mr. Trinkaus**
- Exhibit 45 - 2 page letter from Mr. Trinkaus**

**Mr. Reynolds presented the following exhibits:**

- Exhibit 46 - Environmental Review Team Report**
- Exhibit 47 - Letter from Mary Dunne, State Historic Preservation Office**

Mr. Reynolds stated Attorney Hollister did not address if his site plan application needs to go to Inland Wetlands. He skipped key provisions of the Regulations. Open space is indicated, but it may be taken up by septic. Judge Frazzini stated a CAM report has to be provided. The Judge stated they should consider this information during the preliminary site plan.

Attorney Geraghty stated Attorney Hollister has indicated there will be no activity in the wetlands so they have not gone to Inland Wetlands. The driveway is two lanes, each is 18 feet wide, that is anything but a driveway. A CAM review is absolutely required. The septic capacity that was approved will only serve approximately 10% of the units. The map shows open space, but it would more correctly be undeveloped land. Mr. Hesketh stated there are no new development approvals in the area, but he has overlooked Gateway. The DOT reviewed the highway ramps in the area, all of them received E or F grades, and a long range study predicts they are only getting worse.

Mike Dunn of The Friends of Oswegatchie Hills, 9 King Arthur Drive, Niantic stated the letter from Mr. Trinkaus talked about the level of environmental impact. The community septic in the area has not yet been designed. Landmark failed to properly identify the location of the wetlands on this preliminary plan. The Friends routinely survey the property within the preserve. There are wetlands in the upland review area.

John Hianey (sp?) a Professional Soil Scientist of Coventry Connecticut stated he was hired by the Friends to do wetlands mapping, he reviewed survey maps, and did a vernal pool study. The vernal pools are extensive. There are significantly unmapped wetland resources, specifically in the area of building 5.

**Mr. Dunn presented the following exhibits:**

- Exhibit 48** - **Packet from Friends with letters, photos, and survey maps**
- Exhibit 49** - **Resume of John Hianey**

Attorney Hollister asked if Mr. Hianey went on the Landmark property.

Mr. Hianey stated he tried not to, he would never intentionally trespass, as a surveyor he does have the right to walk property lines to determine wetland boundaries.

Mr. Dunn stated the Landmark plans don't show the wetlands. He obtained permission from Deerfield and walked the common boundary line. Building 5 is approximately 25 feet from the property line. Wetlands don't end when the standing water ends. Why was this not identified?

Jason Westcott of 1 Post Hill Place, New London stated he has been involved with the Water and Sewer case from the beginning.

**Mr. Westcott presented the following exhibit:**

- Exhibit 50** - **Letter from Attorney Westcott**

Mr. Westcott stated most of that document that he submitted has quotes from Judge Frazzini, the drawings today using the boundary are not accurate, there are three different lines. There are expectations that this will include common septic. It is disturbing that this applicant presented plans with an incorrect sewer line. The Judge's decision was very long, but he did recognize the value of the Hills to the town and the area.

Mr. Liska asked if the buildings are moved to the East to avoid wetlands what percentage would be in the sewer service district.

Mr. Westcott stated it would depend how far they are moved. There is no case law in which they can condition a decision on a Court overturning another Commission's decision.

Two East Lyme Middle School students, Sarah Fulcher and Ellie Stetson gave a brief presentation. They stated you cannot replace nature; it would be a shame to not see it there. The parking lot will be seven times as big as Stop and Shop's parking lot.

Fred Grimsey of 35 Oswegatchie Road, Waterford stated there is a pump out program on the River, and they are committed to the health of the river. There is a water quality monitoring program. After rainfalls there is runoff to the river.

**Mr. Grimsey presented the following exhibit:**

**Exhibit 51 - Photo of water runoff**

Susan Kraynak of 1 River Road, East Lyme stated she raised the issue of access at the last meeting. She is disappointed tonight that nobody seems to know who owns the roads. It appears that it belongs to the property owners in the Golden Spur neighborhood. Without proper ownership the roads can't be widened. There was an incident yesterday and traffic was backed up. She rebuts any traffic study that says the traffic has not increased.

David Karg of 20 Hill Road, East Lyme stated he spoke against this application on June 4<sup>th</sup>. This is the wrong use for this property. In the spring of 1982 this area got 16 inches of rain in 3 days. Their small neighborhood was isolated; there is only a single way in and a single way out. This is ill advised.

Attorney Hollister asked why he lives there if it is so unsafe.

Mr. Karg stated it is unsafe for that many cars.

**David Karg presented the following exhibit:**

**Exhibit 52 - The New London Day articles regarding the flooding.**

Bob Linden of 82 Quarry Dock Road, Niantic asked Mr. Hesketh if he has determined how much ledge is there as opposed to topsoil.

Vincent Jalbert asked if the members of this Commission have walked the neighborhood.

Chairman Walker stated they have discussed walking it in the immediate future.

Mr. McPherson asked Mr. Mulholland if they can take the Inland Wetlands Agency report after the close of the Public Hearing.

Attorney Zamarka stated they can receive the report after the close of the Public Hearing. Their decision is dependent on when the Inland Wetlands report is received. They have 35 days from when they receive that report to make a decision.

Mr. Peck asked if they have information on the ledge and the depth of the topsoil.

Attorney Hollister stated there is deep hole testing in the record.

**Motion (1) Mr. McPherson moved to close the Public Hearing.**

**Seconded by Mr. Dwyer.**

Motion Passed 6-0.

2. APPLICATION OF TODD SAKOWSKI, TO AMEND THE EAST LYME ZONING REGULATIONS SECTION 1.79, 9.2.10, 20.20.8 AND 25.5 TO PERMIT THE OPERATION OF A TAPROOM BREWERY

This Item has been continued to the June 24<sup>th</sup> meeting.

3. APPLICATION OF JULIE SMART, FOR SMARTY'S, FOR A SPECIAL PERMIT FOR OUTDOOR DINING AT PROPERTY IDENTIFIED IN THE APPLICATION AS 215 MAIN STREET, NIAN TIC

This item has been continued to the June 24<sup>th</sup> meeting.

4. APPLICATION OF DAVID J. HAYLON, JR, FOR HAYLON'S DELI, FOR A SPECIAL PERMIT FOR FAST FOOD RESTAURANT AT PROPERTY IDENTIFIED IN THE APPLICATION AS 157 W MAIN STREET, NIAN TIC

This item has been continued to the June 24<sup>th</sup> meeting.

5. APPLICATION OF PATRICK & LORI MASSEY, FOR A SPECIAL PERMIT FOR FAST FOOD RESTAURANT AT PROPERTY IDENTIFIED IN THE APPLICATION AS 44 BLACK POINT ROAD, NIAN TIC

This item has been continued to the June 24<sup>th</sup> meeting.

Respectfully Submitted,



Karen Miller Galbo  
Recording Secretary

**TOWN OF EAST LYME**

**ZONING COMMISSION**

**JULY 23, 2015**

**SPECIAL MEETING MINUTES**

**Members Present:**

Matthew Walker, Chairman  
William Dwyer  
Norm Peck  
Terence Donovan  
George McPherson

**Members Absent:**

Matthew Kane  
James Liska, Alternate  
Shawn Singer, Alternate  
Peter Lukas, Alternate

**Also Present:**

Bill Mulholland, Zoning Officer  
Holly Cheeseman, Ex-Officio  
Mark Zamarka, Town Attorney

**CALL TO ORDER**

Mr. Walker called the meeting to order at 6:05 p.m.

**PLEDGE OF ALLEGIANCE**

Mr. Walker led the assembly in the Pledge of Allegiance.

**PUBLIC DELEGATIONS**

There were no public delegations.

**1. PETITION OF TIMOTHY S. HOLLISTER FOR LANDMARK DEVELOPMENT GROUP, LLC AND JARVIS OF CHESHIRE, LLC UNDER CONNECTICUT GENERAL STATUTES SECTION 8-30G TO REZONE 123.02 ACRES FROM RU-120, ITS EXISTING ZONING DESIGNATION, TO AFFORDABLE HOUSING DISTRICT (SECTION 32 OF THE EAST LYME ZONING REGULATIONS) AND FOR APPROVAL OF A PRELIMINARY SITE PLAN (SECTION 32.9 OF THE EAST LYME ZONING REGULATIONS) WHICH PROPOSES OPEN SPACE OF 87 ACRES FOR PROPERTY IDENTIFIED IN THE APPLICATION AS CALKINS ROAD, EAST LYME, AND FURTHER IDENTIFIED IN SECTION 9 OF SAID PETITION AS BOSTON POST ROAD, (EAST LYME ASSESSOR'S MAP 31.0, LOT 4), 23 CALKINS ROAD, (EAST LYME ASSESSOR'S MAP 32.0, LOT 1) AND QUARRY DOCK ROAD (EAST LYME ASSESSOR'S MAP 27.0, LOT 14).**

Attorney Zamarka handed out a memo regarding this Item (Attached).

Attorney Zamarka discussed the application and then he reviewed the memo that he provided to members. He stated there is a lot of information in the memo and it was to help guide them through the decision making process. He recommended everyone read the memo. Any questions they have they can discuss at the next meeting. He suggested they make their decision by August 20th. As a way to help, if he is directed by the Zoning Commission, he will draw up resolutions with three different options. It is the Zoning Commission's obligations to make the findings, but the resolutions can serve as a framework. He suggested they review the memo and the exhibits and they can start their discussion next week. There is a big record; the entire record is available electronically. The Inland Wetlands Agency report is anticipated to be received by next week.

**Motion (1) Mr. McPherson moved to adjourn at 6:45 p.m.**

**Seconded by Mr. Donovan.**

**Motion Passed 5-0.**

**Respectfully Submitted,**



**Karen Miller Galbo  
Recording Secretary**

FROM: WALLER, SMITH & PALMER, P.C.  
TO: EAST LYME ZONING COMMISSION  
RE: LANDMARK AFFORDABLE HOUSING APPLICATION

The Zoning Commission ("Commission") has closed the public hearing and will soon receive the Inland Wetlands Agency's ("IWA") referral report. The next step is for the Commission to render its decision on Landmark's Application for approval of a Preliminary Site Plan and Zone Change ("PSP" or "Application"). This decision must be based on a thorough review and evaluation of the Application and all evidence in the record. The purpose of this memorandum is to provide guidance to the Commission regarding the decision-making process.

### **OVERVIEW OF THE COMMISSION DECISION MAKING PROCESS**

The processing of affordable housing applications follows the same procedural statutory provisions as zone changes, site plans and subdivisions as conventional applications. The Commission can either **approve, approve with conditions, or deny** the Application.

If the Application is **approved**, it is **filed in the same manner as any other** zoning application, together with the declaration of deed restrictions which must be part of any affordable housing application.

If the Application is **denied or approved with conditions**, the applicant, i.e. Landmark, has a choice – (1) it can file an affordable housing appeal to the Superior Court, or (2) it can resubmit to the Commission an amended or modified application responding to some or all of the conditions or restrictions stated by the Commission

An appeal or resubmission must be filed within fifteen days after publication of the Commission's decision.

### **JUDGE FRAZZINI'S RULINGS**

This Application is filed pursuant to the remand order contained in Judge Frazzini's October 31, 2011 Memorandum of Decision ("Decision"). The Commission should focus on the **Zone Change** and **Site Plan** portions of the Decision, as Judge Frazzini's rulings regarding the text amendments to the §32 of the East Lyme Zoning Regulations have already been implemented.

**Regarding the proposed ZONE CHANGE, the Court found that:**

1. There was **insufficient evidence to support the denial of a zone change for the entire property based on lack of public sewers**. There was also insufficient evidence to use the lack of sewers as a basis for rejecting Landmark's suggestion that only the site plan area be rezoned.

2. There was **sufficient evidence to support the denial of the zone change for the entire Landmark property based on open space and environmental and coastal concerns.** However, the public interest in protecting the environment and coastal areas **can be protected by remanding the zone change issue** to the commission. The court set out a **3 step process:**
  - a. First, the court **instructed the commission to amend the regulations** "as specified above," presumably referring to the environmental information discussed in the Amendments section above. **THIS HAS ALREADY BEEN DONE AS REFLECTED IN AMENDED §32.**
  - b. Second, following adoption of those amendments, **Landmark is to submit a preliminary or final site plan that provides the information necessary to assess "those" (environmental and coastal) matters. THIS IS THE STAGE WE ARE AT NOW.**
  - c. The commission then determines whether the public interest can be protected by expanding the zone change from the portion within the sewer district (i.e. what was already approved) or to the entire site plan area.
3. The decision to grant a limited zone change to the area within the sewer district, without simultaneously approving a conceptual site plan for the rezoned area, was not a reasonable modification to the application. That order was remanded to rescind the rezoning unless the commission subsequently approves a site plan submitted by Landmark. **Landmark has filed a new zone change application as part of its application.**

**Regarding the proposed SITE PLAN, the Court found that:**

1. The requirement in the current regulations for public sewers in Affordable Housing districts is not supported by sufficient evidence and is not necessary to protect a substantial public interest.
2. There was **insufficient evidence to support the lack of public sewers as a basis for denying** the conceptual site plan.
3. There was **insufficient evidence to support the decision to deny the conceptual site plan because it was not accompanied by a special permit** and "information required thereunder" by the zoning regulations.
4. There was **sufficient evidence to support the denial** of the conceptual site plan **because Landmark had not yet shown that adequate potable water was available.** However, the public interest in adequate waste

disposal and potable **water could have been protected by a conditional approval**. The conditional approval should have required that Landmark show, in a preliminary or final site plan under the amended regulations, that public water and sewers can be provided to all or part of the development, or to the extent that relevant state agencies have approved community septic or water for the portions of the development not served by public water or sewer. **AMENDED §32 NOW REQUIRES THIS AS PART OF A FINAL SITE PLAN APPLICATION.**

5. There was **insufficient evidence to deny the conceptual site plan based on open space considerations**. The proposal shows more than 200 acres as either designated or potential open space, which is more than the amount designated by the most recent town plan.
6. There was **insufficient evidence to deny the site plan based on traffic issues**. The commission could have **approved conditioned on Landmark obtaining DOT approval of its traffic expert's recommendations and then implementing the improvements at Landmark cost**.
7. There was **insufficient evidence to deny the site plan based on harm to coastal resources** caused by the road and traffic thereon. This issue **can be revisited when Landmark provides the information required by the DEP and for a preliminary site plan**.
8. There was **sufficient evidence to deny a preliminary site plan based on the proposed draft regulations**, because as drafted they would have allowed approval of an application before a developer would have provided sufficient information to allow the commission to assess potential environmental harm. However, the public interest could have been protected by a reasonable change to the application – treating and approving it as a conceptual site plan, and **requiring Landmark to submit “information pertinent to environmental or coastal harm” in subsequent applications** for preliminary or final site plan under the amended regulations.
9. The application for preliminary site plan is remanded. The Commission is instructed to approve a conceptual site plan conditioned on Landmark subsequently demonstrating, in its preliminary or final site plan application under the amended regulations, that (a) public water and sewers can be provided to the entire development, (b) the relevant state agencies have approved community water and septic, or that a combination of public and onsite water and waste disposal can serve the entire development, and (c) that the state DOT approve the improvements recommended by Landmarks traffic engineers and that Landmark bear the full cost of those

improvements. **WE ARE NOW AT THIS STAGE AS LANDMARK HAS FILED A PSP.**

### **ISSUES THE COMMISSION MUST CONSIDER**

**Need for Affordable Housing.** In rendering its decision, the Commission must make a finding regarding the need for affordable housing in East Lyme.

**Environmental and Coastal Issues.** As noted previously, the interventions by CFE and the Friends require the Commission to make appropriate findings under the Connecticut Environmental Protection Act ("CEPA"). Judge Frazzini's decision also keeps open the issue of environmental impacts related to the Application, and further held that the Commission can revisit coastal resources issue based on the proposed road which goes through the Coastal Area Management Zone.

### **ISSUES THE COMMISSION MAY PROPERLY CONSIDER**

**Traffic.** The Decision notes that the Commission could have approved the application conditioned on Landmark obtaining Department of Transportation approval of the recommendations of its traffic expert, and then implementing those improvements at Landmark's cost. However, as part of its Application, Landmark included an updated traffic report which makes specific findings regarding whether information from Landmark's original traffic report, which was done in 2005 and is now 10 years old, are still valid, and whether or not the original report conforms to current engineering standards. While the Commission is still bound by the findings of the Decision regarding traffic, it may properly analyze the updated information.

**Compliance with ELZR 32.9.1.** Does the Application comply with, and include all information required for a PSP, as set forth in §32.9.1 of the Regulations?

**Other issues related to public health and safety.**

### **IF THE PSP APPLICATION IS APPROVED**

As noted previously, if the Commission approves the PSP Application as is, without imposing conditions, it is **filed in the same manner as any other** zoning application, together with the declaration of deed restrictions which must be part of any affordable housing application.

### **IF THE PSP APPLICATION IS APPROVED WITH CONDITIONS OR DENIED**

If the Commission approves with conditions, or denies the PSP Application, its decision is subject to analysis under C.G.S. §8-30g(g) if Landmark appeals to the superior court. The §8-30g(g) analysis applies to a zoning authority's **decisions, not only denials; a**

conditioned approval can still be appealed and that decision is subject to same analysis as if the application was denied.

When an agency (1) approves an application with conditions, or (2) denies an application, "it **must state its reasons on the record and that statement must take the form of a formal, official, collective statement of reasons for its actions.**" The reasons must be cited by the zoning agency at the time it takes its formal vote on the application. The formal decision should take the form of a detailed resolution. Unlike standard zoning appeals, the court does not search the record for reasons which might be culled later from the administrative record.

The Commission must make findings regarding the need for affordable housing in town and balance that need against identified interest in public health and/or safety. The Commission cannot deny an affordable housing application unless there is **some quantifiable probability of harm from the defect or problem with the application, and not only the mere possibility of harm** to the public interest, and reasonable changes cannot be made in the application to address the problem.

#### **FINDINGS THE COMMISSION MUST MAKE**

**The following analysis to all reasons listed by the Commission in support of its decision.** The Commission should refer to evidence in the record that it relied upon in support of each finding or reason.

1. **Under the Affordable Housing Statute §8-30g(g):** For each and every stated reason in support of a decision to approve with conditions or deny, that reason

Must be supported by **sufficient evidence** in the record

Must be **related to a substantial public interest** in health, safety (Commission must also specifically what public interest is being protected)

The **need to protect that public interest must clearly outweigh the need for affordable housing** (Commission must make a finding re the town's need for AH)

Must be shown that **reasonable changes to the application cannot protect the substantial public interest**

2. **Under The Connecticut Environmental Protection Act (CEPA):** The intervention of Connecticut Fund for the Environment and The Friends of Oswegatchie Hills requires the Commission to make additional findings under CEPA:

- a. Whether **activity resulting from approval of application is reasonably likely to unreasonably adversely affect** public trust in land, air water or other natural resource, and if so
- b. Whether **feasible and prudent alternatives** exist.

As applied here, the findings under CEPA can be stated as follows:

1. Would approving the PSP or zone change result in activity that is reasonably likely to unreasonably adversely affect the public trust in land, water, air, or other natural resources?
2. If so, do feasible and prudent alternatives exist?

The Connecticut Supreme Court held that in an affordable housing application, a zoning agency **has the burden of proof** on proposing and determining **if there are feasible and prudent alternatives**, and the statute does not shift that burden to the applicant; **this is equivalent to having the agency make all reasonable changes to an application before it can deny it based on environmental factors.** Quarry Knoll II Corp. v. Planning and Zoning Commission of Town of Greenwich, 256 Conn. 674, 732, 735–737, 780 A.2d 1, 38, 39–40 (2001).

### **CONDITIONAL APPROVALS**

In its presentations, Landmark stated that the Commission must conditionally approve its Application. To that end Landmark included in its final submission excerpts from two Connecticut cases – CMB Capital Appreciation, LLC v. North Haven PZC and Kaufman v. Danbury Zoning Commission – in support of this proposition.

Both cases deal with conditional approvals in the context of affordable housing. Based on the specific facts and records on those cases, the Courts ordered that the developer's site plan (CMB) and zone change (Kaufman) be conditionally approved. Both cases also recognized the importance of conditional approvals in affordable housing cases. However, neither decision absolutely requires conditional approvals in all cases. The Kaufman court held that "[F]or the commission to demonstrate that its denial of the plaintiff's affordable housing application had been necessary to protect substantial public interests ... the commission was required to show that on the basis of the evidence in the record, it reasonably could have concluded that it could not grant the zone change and protect the public interest."

Put another way, if the Commission finds, based on the evidence in the record, that the public interests in public health, safety, the environment, etc. **can** be adequately protected by imposing reasonable conditions, then it must approve the PSP and/or zone change subject to those conditions. However, if the Commission finds that it **cannot** grant the PSP or zone change and simultaneously protect the public interests, the Application must be denied.

## CONCLUSION

The Commission has three options regarding Landmark's Application for PSP and zone change: it can (1) approve, (2) approve with conditions or (3) deny. If the Application is approved, it is processed and filed the same as any other approved land use application.

If the Commission chooses to approve with conditions or deny, the Commission is required to make detailed findings on the record in support of its decision. The Commission's decisions should take the form of a **detailed resolution that fully sets forth the reasons for its decision and makes reference to evidence in the record that it believes supports those reasons.** .

The Commission cannot deny the Application unless there is **some quantifiable probability of harm to the public interest from the defect or problem with the Application, and not simply the mere possibility of harm** to the public interest, and that reasonable changes cannot be made in the application to address the problem. However, if reasonable changes or conditions can adequately protect the public interest, it is required to approve the Application subject to those conditions.

TOWN OF EAST LYME

ZONING COMMISSION

JULY 30, 2015

SPECIAL MEETING MINUTES

Members Present:

Matthew Walker, Chairman  
William Dwyer  
Terence Donovan  
Norm Peck  
George McPherson (Entered at 6:10 p.m.)  
James Liska, Alternate (Sat for Special Meeting)

FILED IN EAST LYME  
CONNECTICUT  
AUG 3 2015 AT 8:40 AM PM  
EAST LYME TOWN CLERK

Members Absent:

Matthew Kane  
Peter Lukas, Alternate  
Shawn Singer, Alternate

Also Present:

Mark Nickerson, First Selectman  
Rita Franco-Palazzo, Planning Representative (left at 7:15 p.m.)  
Attorney Mark Zamarka

CALL TO ORDER

Chairman Walker called the Special Meeting to order at 6:05 p.m.

PLEDGE OF ALLEGIANCE

Chairman Walker led the assembly in the Pledge of Allegiance.

Mr. Liska sat in Mr. Kane's absence.

PUBLIC DELEGATIONS

There were no public delegations.

1. PETITION OF TIMOTHY S. HOLLISTER FOR LANDMARK DEVELOPMENT GROUP, LLC AND JARVIS OF CHESHIRE, LLC UNDER CONNECTICUT GENERAL STATUTES SECTION 8-30G TO REZONE 123.02 ACRES FROM RU-120, ITS EXISTING ZONING DESIGNATION, TO AFFORDABLE HOUSING DISTRICT (SECTION 32 OF THE EAST LYME ZONING REGULATIONS) AND FOR APPROVAL OF A PRELIMINARY SITE PLAN (SECTION 32.9 OF THE EAST LYME ZONING REGULATIONS) WHICH PROPOSES OPEN SPACE OF 87 ACRES FOR PROPERTY IDENTIFIED IN THE APPLICATION AS CALKINS ROAD, EAST LYME, AND FURTHER IDENTIFIED IN SECTION 9 OF SAID PETITION AS BOSTON POST ROAD, (EAST LYME ASSESSOR'S MAP 31.0, LOT 4), 23 CALKINS ROAD, (EAST

**LYME ASSESSOR'S MAP 32.0, LOT 1) AND QUARRY DOCK ROAD (EAST LYME ASSESSOR'S MAP 27.0, LOT 14).**

Chairman Walker stated this meeting will be a discussion as we move toward a decision. We recognize the need for affordable housing in East Lyme. Tonight we will focus on the proposed zone change and the Preliminary Site Plan. We will put our specific findings on the record. If we make a decision to approve with conditions or to deny, our reasons must be supported by sufficient evidence in the record, must be related to a substantial public interest in health and safety, the need to protect that public interest must clearly outweigh the need for affordable housing, and it must be shown that reasonable changes to the application cannot protect the substantial public interest. Under the Connecticut Environmental Protection Act (CEPA) we must determine whether the activity resulting from approval of this application is reasonably likely to unreasonably adversely affect the public trust in land, air, water of other natural resources and if feasible or prudent alternatives exist. We have a daunting task in front of us. We can approve, approve with conditions, or deny. Either of these should have very specific reasons.

There was discussion on where to start, and it was decided to discuss the application in its entirety.

Mr. Donovan stated the Inland Wetlands Agency said an application to them was needed.

**Chairman Walker entered a letter from Cheryl Lozanov, Chair of the Inland Wetlands Agency as Exhibit 1.**

Mr. Donovan stated in order for the Inland Wetlands Agency to properly evaluate our request they need an application submitted. Therefore, they need that in order to proceed. There are quite a bit of Wetlands on the property.

Chairman Walker stated there are significant environmental concerns for those wetlands. The Inland Wetlands Agency came to the conclusion a permit was necessary.

Mr. Donovan stated they need a wetlands permit. We also didn't hear a septic proposal, the Inland Wetlands Agency has a say in that.

Mr. McPherson stated they are banking on getting the gallons through the lawsuit.

Mr. McPherson asked Attorney Zamarka what constitutes a complete Preliminary Site Plan.

Attorney Zamarka stated Section 32.9.1 of the Zoning Regulations spells out what they need.

Mr. McPherson stated we got Mr. Goeschel's letter saying there are questions as to the accuracy of the location of the wetlands on the site.

Attorney Zamarka stated that was the Inland Wetlands Agency letter we received.

Chairman Walker stated our first concern is the Inland Wetlands Agency report and that they require an application. There are no septic proposals in the existing Preliminary Site Plan.

Mr. Liska stated one person showed photos that clearly showed wetlands where a building would be. The letter from the Inland Wetlands Agency calls into play the wetlands boundaries.

Chairman Walker stated there is one building within the wetlands based on everything in the record.

Chairman Walker stated we should cite what exhibit that information is in.

Mr. Donovan stated there is a concern about water runoff into the river and the wetlands.

Mr. Liska stated wetlands and septic have to come into play as a safety concern.

Mr. Donovan stated in Exhibit 26 Mr. Trinkaus stated the storm water plan will not work as presented.

Chairman Walker stated there was no water runoff proposal that was adequate for mitigating runoff.

Mr. McPherson stated the Preliminary Site Plan showed the extent of the watershed and someone mentioned that was inaccurate. What is the truth or not?

Mr. Donovan stated the Trinkaus report mentioned the pollutants during and after rain, fertilizer, oil drips, and salt in the winter.

Chairman Walker stated we were tasked with reviewing the environmental consequences by Judge Frazzini.

Mr. Dwyer led a review of the entire Section 32.9.1 as to the requirements within a Preliminary Site Plan. The Commission agreed there were problems with Section C, Section D, Section F, Section G, Section H, Section I, Section J, Section L, Section N and Section O.

Mr. Liska mentioned the fire concerns.

Mr. Donovan stated there is one access in there. Attorney Hollister said they can enter from Deerfield. The Fire Marshal said there was one access way, it is also in the area of 100 year storm. If something happened there would be no access.

Mr. Peck stated he cannot think of another development with 840 units and one way in. There are a lot of things that could happen. This is human life, the environment is important, but human life is crucial.

Mr. Liska asked about the possibility of a second access point.

Chairman Walker stated it is no secret that there are issues going in and out.

Mr. Liska stated Route 1 is backed up on a good day if that is the only way out.

Mr. Donovan stated even when they applied for the 60 lot subdivision they had two ways in.

Mr. Dwyer stated he doesn't think Caulkins Road can handle that much traffic.

Mr. Peck stated we have been through this before and every time there is more evidence against the development of this land. The Trinkaus Report, The Friends letter Exhibit 25, The Trinkaus Report Exhibit 26 with the resume. They all detail what is likely going to happen, there is a lot of evidence in opposition of such a massive development.

Chairman Walker stated there are a lot of concerns.

Mr. Liska stated he is concerned about the building on the wetlands and the wetlands being so close to the septic.

Chairman Walker stated it was stated on record by Mr. Trinkaus that once the sediment from the runoff goes to the wetlands there is irreparable damage.

Mr. McPherson stated this is an incomplete Preliminary Site Plan.

Mr. Dwyer stated those are swamps, not just wetlands.

Mr. Peck stated the photos were not a certified report, but it did draw questions to the applicant's presentation.

Mr. Liska stated there was a photo with a ribbon and then the map marked where the ribbon was.

Mr. Peck stated the surveyor could not walk on the applicants property so he couldn't do soil testing.

Mr. Peck asked if the survey shows the delineation of the wetlands.

Mr. Donovan stated the wetlands were viewed from the Friend's land and the Woodridge boundary. He did not go on the applicant's property. There are 11 photos along the Woodbridge/Landmark boundary by John Ianni. The map shows where the photos were taken from. Building 5 is in the middle of it.

Mr. Peck asked if that is cause to deny.

Chairman Walker stated there is a lack of fully engineered plans.

Mr. Peck stated we could put on a condition of moving that building.

Mr. McPherson stated the wetlands should have been on the Preliminary Site Plan.

Mr. Liska stated there are two wetlands reports, one that says the building is fine and one that says the building is going to be in wetlands.

Mr. Peck stated according to our Zoning Regulations they are supposed to have the location of the wetlands on the Preliminary Site Plan.

Attorney Zamarka stated if there is conflicting evidence then it is the Zoning Commission's discretion to decide, but there has to be evidence supporting that in the record.

Mr. Liska stated if these buildings are going to be built and have septic, and they are in the wetlands and there is a chance the septic will be in the wetlands and the runoff won't drain adequately. What is the motivation to approve this zone change?

Mr. Donovan stated they are counting on sewers.

Mr. Liska stated even with sewers they can't build in the wetlands.

Chairman Walker stated Judge Frazzini's decision stated it was the applicant's burden to provide information that the Preliminary Site Plan would have minimal effect on the wetlands.

Mr. Peck stated we may not even have enough information to even put a condition on the wetlands. The applicant's wetlands map has been proven wrong. Now we are thinking where are the wetlands? How can we tell them to move a building as a condition if we don't know where the wetlands are?

Mr. Donovan stated they were granted 14,434 gallons of sewer, and they need 118,000.

Mr. Donovan stated the traffic study was conducted in February and one was done in August. He would like to see one done at the height of traffic.

Chairman Walker stated that could be a condition.

Mr. Liska stated traffic is a two part concern. It is less of a concern on a normal day, but on an abnormal day or during an emergency could people get out if everyone needed to leave at once.

Mr. Dwyer stated the map stopped at the property line and didn't show the tiny roads.

Mr. Liska stated the bridge that flooded was not on their property.

Mr. Donovan stated the report on June 18<sup>th</sup> stated traffic hasn't changed significantly since 2005.

Chairman Walker stated he thinks they need a new study done 10 years later.

Attorney Zamarka stated traffic could be conditioned on DOT approval. Attorney Geraghty did contend that Mr. Ford did not receive notice.

Chairman Walker stated traffic should be looked at as a condition for DOT's approval.

Mr. Liska stated he thinks we could add in a storm.

Mr. Donovan stated we are not against affordable housing.

Chairman Walker stated we have to be very detailed and specific. He has been writing down everyone's concerns and issues, but they need to be linked to where they originated.

Mr. Peck stated he screened all of the documents and how he came up with his concerns. The DEEP May 26<sup>th</sup> letter regarding coastal impact Exhibit 10. The Trinkaus June 16<sup>th</sup> letter, the Niantic River Watershed letter dated May 7<sup>th</sup> Exhibit 21, Exhibit 25 Friends letter dated May 11<sup>th</sup>, Exhibit 26 Trinkaus

letter dated May 2<sup>nd</sup>, and the May 21<sup>st</sup> Trinkaus letter. There is a tremendous amount of information in those documents.

Chairman Walker stated the applicant scaled back from the previous application. There are significant changes from the previous ones. They are 1500 feet from the River, it is a phased planning of development, and they have argued the Preliminary Site Plan for Darrow Pond was a similar application. Most of the public comment was traffic and environmental impact. We have a lot of work to do. There have been various issues raised.

Mr. Dwyer stated if they have to use wells what is the amount of water they can supply.

Attorney Zamarka stated how and what percentage of water and sewer is part of the Final Site Plan and not the Preliminary Site Plan.

Chairman Walker stated Water and Sewer did approve a tie in from Route 1. That is out of our purview and shouldn't factor into our decision making process.

Attorney Zamarka stated at this stage that is not proper.

Mr. Peck asked if they can put a condition on that there be no engineered septic.

Attorney Zamarka stated one thing that can be done to help is to draft resolutions and set the framework for the approval, approval with conditions, or denial.

Chairman Walker stated that is a wise course of action.

Chairman Walker stated we have a good starting point for next week. We have to be concrete in our language and findings. He will discuss the time of next week's meeting with Mr. Mulholland.

**Motion (1) Mr. Donovan moved to adjourn the meeting at 7:30 p.m.**

**Seconded by Mr. McPherson.**

**Motion Passed 6-0.**

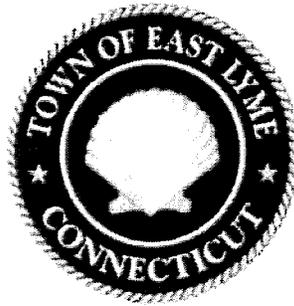
**Respectfully Submitted,**



**Karen Miller Galbo  
Recording Secretary**

# Town of

P.O. Drawer 519  
Inland Wetlands Agency



# East Lyme

108 Pennsylvania Ave  
Niantic, Connecticut 06357  
Phone: (860) 691-4114  
Fax: (860) 860-691-0351

July 27, 2015

Mathew Walker, Chairman  
East Lyme Zoning Commission  
P.O. Box 519  
108 Pennsylvania Avenue  
Niantic, CT 06357

**RE: Zoning Referral - Petition of Timothy S. Hollister for Landmark Development Group, LLC and Jarvis of Cheshire, LLC; under Connecticut General Statutes §8-30g to rezone 123.02 acres from RU-120, its existing zoning designation, to Affordable Housing District (Section 32 of the East Lyme Zoning Regulations) and for approval of a Preliminary Site Plan (section 32.9 of the East Lyme Zoning Regulations) which proposes open space of 87 acres for property identified in the application as Calkins Road, East Lyme, and further identified in Section 9 of said Petition as Boston Post Road, (East Lyme Assessor's Map 31.0, Lot 4), 23 Calkins Road, (East Lyme Assessor's Map 32.0, Lot 1), and Quarry Dock Road, (East Lyme Assessor's Map 27.0, Lot 14).**

Chairman Walker,

Based on the filings of the Intervenors', the Friends of the Oswegatchie Hill Nature Preserve/Save the River Save the Hills and the Connecticut Fund for the Environment/ Save the Sound, there is sufficient evidence within the record for the Inland Wetlands Agency to determine that the proposed Preliminary Site Plan (PSP) involves regulated activities that require a permit from the Inland Wetlands Agency.

More specifically, a report from Steve Trinkaus, PE, CPESC, CPSWQ to Ms. Kristen Lambert and Mr. Fred Grimsey dated May 2, 2015 (Trinkaus report), an inland wetlands delineation performed by John Ianni of Highland Soils, Inc., the plan entitled "Perimeter Survey prepared for Friends of Oswegatchie Hills, on Property of the Town of East Lyme, East Lyme, Connecticut, Assessors Map Id: 26.0/4, Scale 1"=100', dated June 2, 2015 revised to June 15, 2015" prepared by John Paul Mereen, L.S. of Gerwick-Mereen, LLC, and the plan entitled Compilation Plan prepared for Friends of Oswegatchie Hills, on Property of the Town of East Lyme, and Landmark Development Group, LLC, Showing Existing Wetlands and Approximate Locations of Proposed Buildings, East Lyme, Connecticut, Scale 1"=100', dated June 2, 2015 revised to June 15, 2015" prepared by John Paul Mereen, L.S. of Gerwick-Mereen, LLC, identifies the approximate location of proposed building #4 and the installation of roof drain drywells within 100-feet of an inland wetland (WF#140). As such, the construction of both the building and the installation of roof drain drywells within 100-feet of inland wetlands are regulated activities. Mr. Ianni's delineation is cause to question the accuracy of the PSP and the wetlands delineation provided by the applicant and whether the applicant has shown all the wetlands on site.

In addition, based on the above report from Steve Trinkaus, PE, CPESC, CPSWQ the PSP also involves activities that are likely to adversely impact or affect on-site wetlands or watercourses such as the substantial pollutant loads generated by approximately 36-acres of impervious surface during every rainfall which, according to the PSP will be collected in four water quality basins; whose outlet pipes discharge on moderate to steep slopes which are not directed to a stabilized location thus, concentrating flow and resulting in erosion that will be conveyed and discharged into down gradient wetlands. According to the Trinkaus report there is no assessment that the four water quality basins will adequately reduce pollutant loads for total suspended sediments, total phosphorus, total nitrogen, petroleum hydrocarbons, and metals. Further, the Trinkaus report indicates that the storm water report submitted states that the proposed water quality basins are located in "moderate to moderately rapid permeable soils with a deep groundwater table that will drain any surface water in the basin to below the bottom of the basin between storm events." However, if the soils types in the area of the proposed development are Charlton and Hollis as identified by Mr. Trinkaus based on the Natural Resource Conservation Service (NRCS) web soil survey and that bedrock will likely be encountered well before design depths are achieved and therefore infiltration of storm water will not occur, thus resulting in increased runoff volumes directed toward the down gradient wetland areas, then the discharge of this storm water would be considered a regulated activity.

The Trinkaus report also identifies the sources of pollutants the proposed development will generate that will exacerbate the adverse impacts to wetlands and watercourses. The pollutants are:

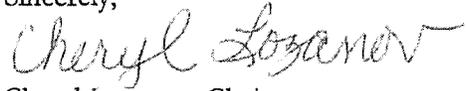
- sand and salt used in winter maintenance operations on driveways, sidewalks and parking areas,
- nutrients from fertilizers used on grass and landscaped areas,
- metals from vehicle brake pads, hydrocarbons from inadvertent gasoline spills and vehicular oil drips on impervious surfaces, and;
- atmospheric deposition on impervious surfaces.

The Trinkaus report indicates that atmospheric deposition is a significant contributor to non-point source pollution citing research from North Carolina State University that indicated 91% of nitrate loads and 38% of total nitrogen load found in runoff was the result of atmospheric deposition directly on impervious surfaces. The Trinkaus report further cites research from Charlotte, North Carolina that found between 10-13% of phosphorous and total suspended solids along with 30-50% of copper and lead and 70-90% of nitrogen in runoff was also the result of atmospheric deposition. As such, if bedrock is encountered before design depths are achieved for each of the water quality basins and the infiltration of storm water does not occur then the proposed development may have adverse impacts to on site inland wetlands and watercourses.

Further, the PSP, the Intervenor's filings, and the Zoning Commission public hearing minutes and exhibits do not provide sufficient information regarding the affect these pollutant loads would have on any of the on-site inland wetlands. Additionally, the PSP, the Intervenor's filings, and the Zoning Commission public hearing minutes and exhibits do not provide sufficient information regarding the affect of the identified on-site regulated activities would have on the on-site inland wetlands. As such, in order to evaluate the environmental impact, the short and long term impacts, irreversible or irretrievable impacts of the regulated activities and the impacts on wetlands or watercourses outside the area of the regulated activity as well as evaluate whether any feasible and prudent alternatives exist, additional information is necessary.

Therefore to properly evaluate the above, the Inland Wetlands Agency would need an application for an inland wetlands permit to be submitted with all the applicable information as required by Section 7 of the East Lyme Inland Wetlands and Watercourses Regulations to conduct regulated activities.

Sincerely,



Cheryl Lozanov, Chairwoman  
Inland Wetlands Agency

cc: William Mulholland, Zoning Official  
Ed O'Connell, Esq.  
Mark Zamarka, Esq.  
Timothy Hollister, Esq.  
Roger Reynolds, Esq.  
Jason Westcott, Esq.  
Paul Geraghty, Esq.

**TOWN OF EAST LYME**

**ZONING COMMISSION**

**AUGUST 6, 2015**

**SPECIAL MEETING MINUTES**

**MEMBERS PRESENT:**

**MATTHEW WALKER, CHAIRMAN**

**TERENCE DONOVAN**

**WILLIAM DWYER**

**NORM PECK**

**JAMES LISKA, ALTERNATE (SAT FOR SPECIAL MEETING)**

**GEORGE MCPHERSON (ARRIVED AT 7:20 P.M., DID NOT SIT)**

**PETER LUKAS, ALTERNATE (ARRIVED AT 7:30 P.M., DID NOT SIT)**

**ALSO PRESENT:**

**ATTORNEY MARK ZAMARKA**

**HOLLY CHEESEMAN, EX-OFFICIO**

**BILL MULHOLLAND, ZONING OFFICER**

**RITA FRANCO-PALAZZO, PLANNING REPRESENTATIVE**

**MEMBERS ABSENT:**

**MATTHEW KANE**

**SHAWN SINGER, ALTERNATE**

**CALL TO ORDER**

Chairman Walker called the Special Meeting to order at 6:17 p.m.

**PLEDGE OF ALLEGIANCE**

Chairman Walker led the assembly in the Pledge of Allegiance.

Mr. Liska sat as a regular member in Mr. Kane's absence.

**PUBLIC DELEGATIONS**

Steven Massad of 7 Whiting Farms Lane stated he is trying to get help from the Building Department, he bought a unit at Whiting Farms and the Town doesn't seem to want to get anything done. The roads are crumbling, there are no street lights. He stated that his comments are supported by 90% of his neighbors. The driveways flood, and in the winter it is all ice. It is an over 55 development.

Mr. Mulholland stated he talked to the developer about two weeks ago. The project is not done, it is a private project. He is trying to be helpful by meeting with Mr. Rodgers, but he cannot order him to do things. He will talk to him again. He did discuss the street lights with him, but he didn't like the lights he wanted to put up. He will help where he can, but it is a private project. He did get him to put a stop sign

FILED IN EAST LYME  
CONNECTICUT  
Aug 10 2015 AT 10:35 AM PM  
William Walker, Jr.  
EAST LYME TOWN CLERK

up. He also asked him to cut the brush at the beginning of the road. He concurs with him that he can be more diligent. He invited Mr. Massad to come see him on Monday. He also will try to set up a meeting with both parties. He understands it's not fun living in a construction project, but sooner or later he has to do this. He can't force him to pave it.

Chairman Walker stated it sounds like it is a private project and is out of Mr. Mulholland's purview. The pictures presented by Mr. Massad are very telling. Sub-par is an understatement. He encouraged Mr. Massad to work with Mr. Mulholland in a joint effort to coax the developer to follow through soon on these issues.

Mr. Mulholland stated he has told him he won't get final CO's until everything is done, but it may be a while.

Joe Arcarese of 5 Whiting Farms Lane stated he understands, but they don't want the town to forget about them. The water fills up and goes into his garage, the roads are in disrepair. The Town should be looking out for them.

Mr. Mulholland stated he is there about once a week. He encouraged them to come see him and he will try to arrange a joint meeting. There may be some elevation issues.

- 1. PETITION OF TIMOTHY S. HOLLISTER FOR LANDMARK DEVELOPMENT GROUP, LLC AND JARVIS OF CHESHIRE, LLC UNDER CONNECTICUT GENERAL STATUTES SECTION 8-30G TO REZONE 123.02 ACRES FROM RU-120, ITS EXISTING ZONING DESIGNATION, TO AFFORDABLE HOUSING DISTRICT (SECTION 32 OF THE EAST LYME ZONING REGULATIONS) AND FOR APPROVAL OF A PRELIMINARY SITE PLAN (SECTION 32.9 OF THE EAST LYME ZONING REGULATIONS) WHICH PROPOSES OPEN SPACE OF 87 ACRES FOR PROPERTY IDENTIFIED IN THE APPLICATION AS CALKINS ROAD, EAST LYME, AND FURTHER IDENTIFIED IN SECTION 9 OF SAID PETITION AS BOSTON POST ROAD, (EAST LYME ASSESSOR'S MAP 31.0, LOT 4), 23 CALKINS ROAD, (EAST LYME ASSESSOR'S MAP 32.0, LOT 1) AND QUARRY DOCK ROAD (EAST LYME ASSESSOR'S MAP 27.0, LOT 14).**

Chairman Walker stated these are continued deliberations on this item. He wants to make clear that this Commission recognizes the need for affordable housing in East Lyme. They are committed to working toward that end. They are also keenly aware of the uniqueness of this property. There has been much discussion. The public record is extensive. They are continuing to work toward the process of specific findings. The goal is to form a detailed resolution. There are three possible outcomes, approval, approval with conditions, and denial. Straight approval does not seem to be something that is likely because of the concerns and issues. They cannot deny it unless there is quantifiable probably of harm to the public interest, not just the possibility of harm. He feels they have more questions than answers. There seems to be a lot of missing information. He has the sense of wanting to demand more information, but that won't happen. Attorney Zamarka has prepared draft resolutions.

Attorney Zamarka stated their decision is due by August 20<sup>th</sup>. There is the possibility that time could be extended because of the Inland Wetlands Report, however there is not a lot of case law on that subject, and the applicant hasn't consented to an extension so he strongly suggests they make their decision by August 20<sup>th</sup>. He drafted a resolution based on last week's discussion. There is a lot going on in this application. It is a large record. In the interest of clarity he drafted a resolution for conditional approval,

and he attempted to incorporate the concerns of the Commission from last week. This is just a preliminary draft and is not intended to be anything more than a framework for discussion.

Chairman Walker asked Attorney Zamarka if it is his legal point of view that they should reach a resolution by the 20<sup>th</sup> unless the applicants consent to an extension.

Attorney Zamarka stated they should not hang their hats on an extension. The applicant has the option of granting an extension but it has not been done at this point. The draft has proposed conditions, the Zoning Commission felt some requirements of the Preliminary Site Plan were not met, roadway access, wetlands; all of these conditions were based on the Commission's concerns. He suggested they review the record and decide if this is how they want to move forward.

Mr. Peck stated last time we struggled with the wetlands issue. There is good documentation that a building will be placed on the wetlands, but we really have no idea where the wetlands are. The wetlands mapping the applicant presented seemed off. Could it be denied because there is not enough information for a condition to be put on?

Attorney Zamarka stated that is what the interveners would like.

Mr. Peck stated we don't have the knowledge to prepare a condition to move the buildings.

Attorney Zamarka stated he raises a salient point because the conditions have to be supported by the record.

Mr. Dwyer asked if it is proper to quote environmental experts.

Chairman Walker stated yes, in the report of Mr. Trinkaus (Exhibit 26) dated May 2<sup>nd</sup> there are a number of concerns cited regarding pollutant loads, discharge to wetlands, no water quality treatment proposed, discharge into the river, the 36 impervious acres, the ridgeline will be flattened, and erosion concerns. On the second to last page there are soil concerns. The water won't infiltrate into the bed rock. He refuted much of the assertions made by the applicant. Nitrogen in the runoff and that effect on the river. That is already a concern in the river. They are also trying to build up the eel grass in the river.

Mr. Donovan stated the DEEP Letter (Exhibit 10) mentions the potential sediment and erosion along the river. All of these exhibits basically have the same findings.

Mr. Donovan stated there are items missing such as a coastal site plan.

Chairman Walker stated there is no evidence to show there will be minimal impact on the environment and coastal resources.

Mr. Donovan stated the Niantic River Watershed Letter (Exhibit 21) stated there will be a greater number of pollutants. The river is already impaired. The water runoff will be significantly more and pollution will probably most definitely happen.

Chairman Walker stated Trinkaus discussed the impervious area and its source of pollutants from sand and salt in the winter, he also said the calcium chloride they intend to use is not better, nutrients from fertilizer, metal from brake pads and oil drips.

Mr. Donovan stated in the Niantic River Watershed letter they mention the pollutants in the water related to the impervious surfaces in the watershed. Pollutants can affect water, water life, and human water related activities.

Chairman Walker asked if there is any balance in the conversation that suggests we can mitigate these problems.

Mr. Liska said Exhibit 16 stated there will be irreversible impact to the wetlands, Exhibit 21 mentioned the nitrogen, and Exhibit 49 all conclude the same things.

Attorney Zamarka stated he does believe there was a storm water management plan in the initial application, and that was updated on June 18<sup>th</sup>.

Chairman Walker stated Trinkaus cites that in his report.

Mr. Donovan stated the June 18<sup>th</sup> letter page 1 addresses that.

Mr. Liska stated we have two reports, one says it's acceptable, and one says it's not.

Mr. Donovan stated Trinkaus addresses the catch basins in his report.

Mr. Dwyer stated he rebukes what they presented for solutions for storm water.

Chairman Walker stated a number of people spoke regarding concerns collectively wanting to protect the public interest in that land. Environmental concerns were a common thread. There were a multitude of people in opposition.

Mr. Peck stated the three letters from Trinkaus dated May 2<sup>nd</sup>, May 21<sup>st</sup>, and June 16<sup>th</sup> were all more and more strong in words. Exhibit 2 stresses the engineered septic hazard. Everyone is saying the same thing.

Mr. Liska asked if they can do a condition that if they don't get the 118k gallons then they don't get approval. The experts don't believe sewage would be adequately drained.

Chairman Walker stated these are all significant concerns. Judge Frazzini was clear that environmental concerns were remanded to us. There are quite a bit of concerns regarding the environment.

Mr. Dwyer stated for all of our concerns we should list the expert, and not just our opinion.

Mr. Donovan stated there is nothing saying who is going to take care of sediment and debris.

Chairman Walker stated there is a lot of missing information we would love to have in front of us.

Attorney Zamarka stated water and sewer is to be provided at the Final Site Plan phase. The Commission needs to decide whether these interests adequately can be protected by reasonable changes. There is a public interest in protecting the inland wetlands and watercourses.

Mr. Dwyer stated the environmental experts are against this. They were all negative about the plan, but none came up with a solution. The solution is up to us.

Attorney Zamarka stated he is correct. It is up to this Commission to come up with the solutions. They may say buildings should be moved, they may say they need inland wetlands approval first.

Mr. Dwyer asked if we have the expertise to move the building.

Attorney Zamarka stated they have to base their conditions on what is in the record or decide there are fatal flaws and deny the application, or they could condition it to ask for additional information.

Mr. Dwyer stated it seems like a catch 22.

Chairman Walker stated we have more work to do. We have some additional information to look at. We are getting closer.

**Motion (1) Mr. Donovan moved to adjourn the Special Meeting at 7:15 p.m.**

**Seconded by Mr. Dwyer.**

**Motion Passed 5-0.**

**Respectfully Submitted,**



**Karen Miller Galbo  
Recording Secretary**

TOWN OF EAST LYME  
ZONING COMMISSION

FILED IN EAST LYME  
CONNECTICUT  
August 17, 2015 AT 12:00 AM/PM  
Deslynn Blais  
EAST LYME TOWN CLERK

AUGUST 13, 2015

SPECIAL MEETING MINUTES

**MEMBERS PRESENT:**

MATTHEW WALKER, CHAIRMAN  
TERENCE DONOVAN  
WILLIAM DWYER  
GEORGE MCPHERSON  
NORM PECK

**MEMBERS ABSENT:**

MATTHEW KANE  
SHAWN SINGER, ALTERNATE  
JAMES LISKA, ALTERNATE  
PETER LUKAS, ALTERNATE

**ALSO PRESENT:**

ED O'CONNELL, TOWN ATTORNEY

**ALSO ABSENT:**

BILL MULHOLLAND, ZONING OFFICIAL

**CALL TO ORDER**

Chairman Walker called the Special Meeting to order at 6:37 p.m.

**PLEDGE OF ALLEGIANCE**

Chairman Walker led the assembly in the Pledge of Allegiance.

1. **PETITION OF TIMOTHY S. HOLLISTER FOR LANDMARK DEVELOPMENT GROUP, LLC AND JARVIS OF CHESHIRE, LLC UNDER CONNECTICUT GENERAL STATUTES SECTION 8-30G TO REZONE 123.02 ACRES FROM RU-120, ITS EXISTING ZONING DESIGNATION, TO AFFORDABLE HOUSING DISTRICT (SECTION 32 OF THE EAST LYME ZONING REGULATIONS) AND FOR APPROVAL OF A PRELIMINARY SITE PLAN (SECTION 32.9 OF THE EAST LYME ZONING REGULATIONS) WHICH PROPOSES OPEN SPACE OF 87 ACRES FOR PROPERTY IDENTIFIED IN THE APPLICATION AS CALKINS ROAD, EAST LYME, AND FURTHER IDENTIFIED IN SECTION 9 OF SAID PETITION AS BOSTON POST ROAD, (EAST LYME ASSESSOR'S MAP 31.0, LOT 4), 23 CALKINS ROAD, (EAST LYME ASSESSOR'S MAP 32.0, LOT 1) AND QUARRY DOCK ROAD (EAST LYME ASSESSOR'S MAP 27.0, LOT 14).**

Chairman Walker stated this Special Meeting is regarding the decision on the Landmark application. The application was submitted pursuant to Judge Frazzini's memorandum of decision, and was remanded

back to the Zoning Commission. The application is for rezoning of 123 acres and approval of the Preliminary Site Plan for 840 units, 30% of which is proposed to be affordable housing. The Inland Wetlands Agency report was issued on July 27<sup>th</sup> and they found sufficient evidence in the record that the application involved regulated activities that required a wetlands permit. They recommended that this Commission require the applicant to apply to the Inland Wetlands Agency. There were numerous hours of testimony, and approximately 60 exhibits. Throughout this process it has become apparent that this Commission is leaning a certain direction. There are a multitude of concerns. It appears they will either approve with conditions or modifications, or they will deny this application. He does not anticipate a decision tonight, but does anticipate one next Thursday.

Mr. McPherson stated they were approved for the zone change in their last application.

Mr. Peck stated within the sewer district.

Mr. Dwyer stated he would go along with that again, within the area of the sewer district.

Chairman Walker stated there is not sufficient evidence to do otherwise. He also stated the coastal impact concerns we have relative to the Preliminary Site Plan are because of the roads leading in. There is no question this property has been subject to the extensive efforts of many people. We need to focus on what we can sink our teeth into.

Mr. Donovan state we saw evidence that there are wetlands in the area of the buildings.

Chairman Walker stated some of the buildings are allegedly on wetlands.

Mr. Donovan asked if that affects the zone change.

Chairman Walker stated there are conditions that could be put in that the applicant shall include more accurate depictions of the wetlands and relocation of the buildings. We would like experts to provide solutions.

Mr. Dwyer stated building 4 and 5.

Mr. McPherson stated it could be more buildings, we don't know because the wetlands aren't delineated.

Mr. Donovan stated they were delineated, but there was evidence that showed more.

Attorney O'Connell stated the applicant will be more detailed with the Final Site Plan. The Regulations require that. The exact nature of the basins are appropriate for the Final Site Plan. They will have to provide that because of how the Regulations are set up.

Mr. McPherson asked about staff input on that.

Chairman Walker stated the applicant doesn't need details on sewer or traffic for the Preliminary Site Plan.

Attorney O'Connell stated that would be submitted with the Final Site Plan.

Mr. Donovan stated the point of access/egress is a public safety issue. Mr. Donovan stated most of his concerns are in the draft submitted by Attorney Zamarka. If they go to Inland Wetlands would they then have to do a new Preliminary Site Plan application?

Attorney O'Connell stated not if it is approved with conditions.

Chairman Walker stated we want the applicant to apply to the Inland Wetlands Agency, accurately depict the wetlands on the proposed development; the applicant needs to submit an application for a CAM review, and plans for roadway access.

Mr. Donovan asked if we can ask for a different traffic study.

Attorney O'Connell stated no.

Chairman Walker stated we could put a condition on that they have to demonstrate a second point of exit.

Mr. Dwyer stated the applicant claims the boulevard gives them a second exit.

Mr. Donovan asked what would happen if it is blocked at the end.

Mr. Dwyer agreed with Mr. Donovan.

Chairman Walker stated that is out of our purview.

Attorney O'Connell agreed with Mr. Walker, that will be addressed with the Final Site Plan.

Chairman Walker stated the Fire Marshal will have input on that.

Mr. Donovan asked if we can ask them to come up with another means of egress.

Attorney O'Connell stated they will determine at the Final Site Plan stage whether the proposal complies with traffic regarding emergency access/egress.

Chairman Walker asked about environmental concerns.

Mr. Dwyer stated the Trinkaus report details those concerns.

Attorney O'Connell stated the Trinkaus report summarized concerns. If they all agree he can put those in the final draft.

Mr. Dwyer stated the Highland Soil report also.

Chairman Walker stated regarding storm water the Trinkaus and Highland Soil report are central to our concerns.

Mr. Donovan stated the studies are on record. He asked if the applicant has access to those.

Attorney O'Connell stated he heard what you heard at the Public Hearing.

Mr. Peck suggested all units be served by sewer, all storm water runoff plans be presented at the Final Site Plan and should demonstrate handling of the runoff while taking care of 100 year storm. He also suggested we would like to have Mr. Trinkaus review their storm water runoff system.

Attorney O'Connell stated the Town has an engineering staff.

Mr. Peck stated Trinkaus has done a lot of work already. He suggested all units be served by sewer, storm water runoff plan, a guarantee of the maintenance of the system with a perpetual bond, Inland Wetlands approval, a certified wetlands map, and the building moved per the certified wetlands map.

Mr. McPherson suggested moving or removal of the building.

Attorney O'Connell stated he doesn't think they can require only sewer.

Mr. Peck stated Mr. Trinkaus stated non-public sewers were dangerous.

Attorney O'Connell stated he will look into that.

Mr. Peck stated Mr. Trinkaus knows more about the Judge on that subject.

Attorney O'Connell stated he will look at the Regulations. If they don't require guarantees or perpetual bonds on other approvals he doesn't think they would want to single out this applicant. He will look into that.

Chairman Walker asked about the 100 year storm.

Attorney O'Connell asked if that is required of every other applicant.

Mr. Peck stated this is a highly sensitive location and every other location is different.

Attorney O'Connell stated he will look into that.

Chairman Walker asked about having Trinkaus review the applicants design, or the Town looking into it, or a third party looking into it.

Attorney O'Connell stated a satisfactory review by a licensed engineer firm or the Town Engineering Department. They should be careful on that.

Mr. McPherson stated there were concerns about the cuts and fills on site.

Attorney O'Connell stated that will be addressed in the Final Site Plan with the modes and methods of construction.

Mr. Dwyer stated the road goes through an environmental area.

Attorney O'Connell stated if they direct him to the Trinkaus report he will fill in those conditions on the final draft.

Chairman Walker stated the concerns of Trinkaus, the concerns articulated by the public. He thinks it would be wise to suggest that Attorney O'Connell work on a more final resolution with additional concerns from the Trinkaus report and the Highland Soils report. If they are leaning toward approval with conditions the conditions should be pretty stringent. The applicant will have to do due diligence to move to the next phase regarding egress, sewer, water, and the Inland Wetlands permit.

**Motion (1) Mr. Donovan moved to adjourn at 7:30 p.m.**

**Seconded by Mr. McPherson.**

**Motion Passed 5-0.**

**Respectfully Submitted,**

**Karen Miller Galbo  
Recording Secretary**

# **Tab 4**

**LANDMARK INVESTMENT GROUP, LLC  
AFFORDABLE HOUSING APPLICATION**

**August 20, 2015**

**CONDITIONAL APPROVAL OF ZONE CHANGE AND APPROVAL WITH  
MODIFICATIONS OF PRELIMINARY SITE PLAN APPLICATION**

**RECITALS**

1. On March 4, 2015, Landmark Investment Group, LLC, and Jarvis of Cheshire, LLC ("Applicant") filed an "Application for Rezoning of 123.02 Acres to Affordable Housing District (AHD) and Preliminary Site Plan Approval" ("Application") with the East Lyme Zoning Commission ("Commission") consisting of a set of plans for 840 total units for sale or rent of which 30% would be affordable housing units on approximately 36 acres, an affordability plan pursuant to Section 32 of the East Lyme Zoning Regulations ("Regulations") and a proposed zone change for approximately 123.03 acres and;
2. The Application is submitted pursuant to Superior Court Judge Stephen Frazzini's Memorandum of Decision and Remand Order dated October 31, 2011 ("Decision") in the matter of *Landmark, LLC v. East Lyme Zoning Commission*, HHB CV 06-4016813S, Superior Court of Connecticut, Judicial District of New Britain; and
3. The Applicant has requested (1) the rezoning of 123.03 acres of the property of Jarvis of Cheshire LLC and Landmark Development Group LLC ("Property"), from its existing designation to an Affordable Housing District, in accordance with Section 32 of the Regulations and (2) approval of a Preliminary Site Plan for the construction of 840 housing units, 30% of which would be affordable housing units, in accordance with Section 32 of the Regulations; and
4. The Commission, having determined that the application includes a request for a change in zone, has made the requisite referrals to the Planning Commission pursuant to General Statutes § 8-3a and the Southeastern Connecticut Council of Governments pursuant to General Statutes §8-3b; and
5. The Commission has determined that the application proposes activity within the coastal boundary as defined in General Statutes §22a-94 and the Town's Plan of Development the Commission has referred the application to the Department of Energy and Environmental Protection (DEEP) pursuant to general Statutes §22a-104(e), and the Office of Long Island Sound Programs (OLISP); and
6. Pursuant to General Statutes §22a-19, the Friends of Oswegatchie Hills Nature Preserve, Inc. and Save the River, Save the Hills, Inc. and the Connecticut Fund for the Environment and Save the Sound ("Intervenors") have intervened in this Application upon the belief that the application involves conduct that is reasonably likely to have the

effect of unreasonably polluting, impairing or destroying the public trust in the air, water and other natural resources of the State of Connecticut; and

7. The Commission also received referral reports from the Niantic River Watershed Committee, the East Lyme Harbor Management Commission and the East Lyme Director of Public Safety; and

8. The Commission is required to make appropriate findings under the Affordable Housing Statute C.G.S. §8-30g as well as the Connecticut Environmental Protection Act ("CEPA") §22a-16 et. seq.; and

9. In light of the Intervenor's allegations regarding potential damage to inland wetlands and watercourses resulting from the Application, the Commission referred the Application to the East Lyme Inland Wetlands Agency ("IWA") for a report. The IWA report, dated July 27, 2015, found there was sufficient evidence in the record to determine that the Application involved regulated activities that require an IWA permit. The report further recommended that the Applicant be required to apply for an IWA permit; and

10. The Commission held three (3) public hearings on the application during which it listened to numerous hours of testimony. Approximately sixty (60) exhibits were submitted by the Applicant and various agencies and individuals for consideration during the hearing process. In addition the Return of Record in the matter of *Landmark, LLC v. East Lyme Zoning Commission*, HHB CV 06-4016813S ("2005 Application") was also incorporated as an exhibit and is part of the record in this Application. In making its decision, the Commission is considering and taking into account the testimony and exhibits submitted at the hearings on the Application as well as all relevant exhibits from the record of the 2005 Application.

11. For the purposes of this affordable housing application, the Commission will address this motion in two separate parts:

- I. The request for a zone change;
- II. The request for approval of a "Preliminary Site Plan";

#### **I. THE PROPOSED ZONE CHANGE TO THE APPLICANT'S PROPERTY**

WHEREAS, the Commission finds and recognizes that there is a need for affordable housing in the Town of East Lyme, and that less than 10% of available housing stock meets the statutory definition of affordable housing; and

WHEREAS, the Applicant is applying for a zone change for 123.02 acres of its property that is the subject of this Application. The development plan submitted proposes 840 residential units to be located on 36 acres of the 123.02 acres that are the subject of the

zone change, and that the remaining 87.02 acres would be dedicated as open space; and

WHEREAS, in its decision regarding the Applicant's 2005 Application the Commission granted a partial change of zone for that portion of the Applicant's Property that was located within the East Lyme Sewer Service District ("SSD"); and

WHEREAS, in his Decision regarding the 2005 Application, Judge Frazzini found that there was insufficient evidence to support the denial of a zone change for the entire property based on lack of public sewers for an affordable housing district with the proposed or potential density as here. He also found that there was also insufficient evidence to use the lack of sewers as a basis for rejecting Landmark's suggestion that only the site plan area be rezoned; and

WHEREAS, Judge Frazzini also found that there was sufficient evidence in the record to support the Commission's decision in the 2005 Application to deny a zone change for the Applicant's entire 236 acre property based on concerns regarding environmental and coastal damage, and rescinded the Commission's granting of a partial zone change for that portion of the Property located within the SSD unless the Commission later approved a preliminary or final site plan that provided the information necessary for the Commission to assess environmental and coastal impacts; and

WHEREAS, Judge Frazzini also found that approximately 60% of the area to be developed was located outside the East Lyme SSD; and

WHEREAS, the Applicant has requested from the East Lyme Water and Sewer Commission sewer treatment capacity for the proposed development in the amount of 118,000 gallons per day ('gpd"), that the Water and Sewer Commission has allocated 14,434 gpd, approximately 10% of the amount requested by the Applicant, that the Applicant has appealed this allocation to the Superior Court, and that the appeal is still pending; and

WHEREAS the Commission has determined there is sufficient evidence in the record that if the Applicant does not receive the entire 118,000 gpd sewer allocation, the Applicant will require on site community septic which may be located in the area designated for open space, an area which is largely composed of inland wetlands and upland review area; and

WHEREAS, the Applicant has not applied for coastal site plan review and has not provided the information necessary for the Commission to assess environmental damage to the area, coastal resources, and the interests protected by the coastal management act and conservation zone statute; and

WHEREAS, the Commission has determined that there is sufficient evidence in the record that the property has been the subject of extensive efforts by and on behalf of

the Town, the Intervenors, members of the public, conservation groups and others to preserve the land for its unique environmental qualities, and that such qualities are widely known and are documented sufficiently in the record, and that the proposed zone change would be antithetical to that purpose; and

WHEREAS, the Commission has determined there is sufficient evidence in the record that large portions of the land within the proposed zone change are within the Coastal Boundary as described in General Statutes §22a-94. The Commission has determined there is sufficient evidence in the record that the proposed zone change is incompatible with the purposes of General Statutes §22a-105, et seq., the Coastal Management Act, in that a zone change would allow for activity that would have an adverse impact on coastal resources and water quality, and is inconsistent with the Town's Plan of Conservation and Development, the Municipal Coastal Program and the Harbor Management Plan. Pursuant to General Statutes §22a-106, the Commission finds that the site is characterized by shallow depth-to-bedrock and steep slopes which would necessitate significant alterations of the site to provide for road access, community septic, or water and sewer service, and the proposed structures' and

WHEREAS the Commission has determined that there is a significant public interest in the preservation and protection of the Coastal Boundary area, that this significant public interest outweighs the need for affordable housing, and that this significant public interest can be adequately protected by reasonable changes and conditions to the Application; and

WHEREAS, the Commission has determined there is sufficient evidence in the record that the proposed zone change would result in regulated activities as described in the East Lyme Inland Wetlands and Watercourses Regulations, and that such activities are likely to impact or affect inland wetlands and/or watercourses. There is sufficient evidence in the record that at least part of the proposed development may be located in wetlands or the upland review area. The Commission finds that there is a substantial public interest in protecting the Town's inland wetlands and watercourses, and that this substantial public interest outweighs the need for affordable housing. The Commission also finds that there is not sufficient evidence in the record for the Commission to properly evaluate the impacts of the regulated activities. The Commission further finds that the substantial public interest in preserving and protecting the Town's inland wetlands and watercourses can be adequately protected by reasonable changes and conditions to the Application; and

WHEREAS, pursuant to General Statutes §22a-19 the Commission finds that there is sufficient evidence in the record that the proposed zone change would result in activity that is reasonably likely to unreasonably adversely affect the public trust in land, air, water or other natural resources, and that feasible and prudent alternatives exist.

**BE IT THEREFORE RESOLVED**, the Commission hereby APPROVES the application of Landmark Investment Group, LLC to re-zone the Applicant's property to an Affordable Housing District, subject to the following CONDITIONS:

1. The change of zone shall apply only to that portion of the Applicant's Property that is located within the East Lyme Sewer Service District as determined by the Water and Sewer Commission on January 28, 2003, as shown on a map entitled "Sewer Service District Boundary Comparison East Lyme Connecticut", dated August 31, 2005 by Fuss & O'Neill, Inc. Consulting Engineers (Exhibit 17 submitted at 2005 public hearing, incorporated herein by referenced).
2. The Applicant shall, prior to (or contemporaneous with) applying for Final Site Plan approval pursuant to §32.9.2 of the Regulations, apply for and receive an Inland Wetlands Permit from the East Lyme Inland Wetlands Agency. Said application and approval shall accurately depict the location of all wetlands in relation to the proposed development and shall also depict the location of any septic fields or system;
3. The Applicant shall, prior to (or contemporaneous with) applying for Final Site Plan approval pursuant to §32.9.2 of the Regulations, also submit an application for coastal site plan review pursuant to General Statutes §22a-105(b)
4. The Applicant shall, at the time it applies for Final Site Plan approval pursuant to §32.9.2 of the Regulations, provide the Commission with the information necessary for the Commission to assess the environmental and coastal impacts of the proposed change of zone, including but not limited to:
  - A. A stormwater management plan which shall, at a minimum, address and resolve the following aspects:
    1. The Applicant shall conduct test borings in the area of each detention basin to determine the presence of bedrock and whether it would be encountered before design depths are achieved for each of the water quality basins as it may impact the infiltration of storm water thus, adversely impacting on site inland wetlands and watercourses.
    2. Substantial pollutant loads generated by approximately 36-acres of impervious surface during every rainfall which, according to the PSP will be collected in four water quality basins; whose outlet pipes discharge on moderate to steep slopes which are not directed to a stabilized location thus, concentrating flow and resulting in erosion that will be conveyed and discharged into down gradient wetlands. The Applicant should submit an assessment that the four water quality basins will adequately reduce pollutant loads for total suspended sediments, total phosphorus, total nitrogen, petroleum hydrocarbons, and metals, and will not result in concentrated runoffs and discharges of eroded materials into down gradient wetlands.

3. Sources of pollutants the proposed development will generate that will exacerbate the adverse impacts to wetlands and watercourses. The pollutants are:
  - i. Sand and salt used in winter maintenance operations on driveways, sidewalks and parking areas,
  - ii. Nutrients from fertilizers used on grass and landscaped areas,
  - iii. Metals from vehicle brake pads, hydrocarbons from inadvertent gasoline spills and vehicular oil drips on impervious surfaces, and
  - iv. Atmospheric deposition on impervious surfaces.

The Applicant shall address and resolve the effect that the foregoing pollutants and loads would have on any of the on-site inland wetlands.

- B. The Applicant shall address and resolve the following concerns regarding drainage discharges along the proposed access driveway:
  - i. The three discharges from the access driveway will convey runoff from the proposed impervious area discharge directly onto upland soils and not into an existing stabilized location.
  - ii. The discharge of flow onto this slope for a length in excess of 300 feet will cause a channel to be eroded in the upland area as the natural slope does not currently experience concentrated runoff. The concentrated flow being discharged here will result in eroded sediments then being conveyed and potentially discharged into the Niantic River as no wetland areas are located down gradient of this point. A small riprap pad or plunge pool will only initially slow the velocity of the discharge and the continuous discharge or runoff will concentrate and cause the erosion.
  - iii. There is no water quality treatment proposed for these three discharge points, so pollutants found in the on-point source will be discharged directly into the Niantic River.

## **II. THE REQUEST FOR APPROVAL OF A PRELIMINARY SITE PLAN**

WHEREAS, the Commission finds and recognizes that there is a need for affordable housing in the Town of East Lyme, and that less than 10% of available housing stock meets the statutory definition of affordable housing; and

WHEREAS, the Applicant is applying for approval of a Preliminary Site Plan pursuant to §32.9.1 of the Regulations; and

WHEREAS, in his Decision regarding the Applicant's 2005 submission, Judge Frazzini found the following regarding the Site Plan:

1. There was insufficient evidence to support the lack of public sewers as a basis for denying the conceptual site plan.
2. There was sufficient evidence to support the denial of the conceptual site plan because Landmark had not yet shown that adequate potable water was available. However, the public interest in adequate waste disposal and potable water could have been protected by a conditional approval. The conditional approval should have required that Landmark show, in a preliminary or final site plan under the amended regulations, that public water and sewers can be provided to all or part of the development, or to the extent that relevant state agencies have approved community septic or water for the portions of the development not served by public water or sewer.
3. There was insufficient evidence to deny the site plan based on traffic issues. The Commission could have approved conditioned on Landmark obtaining Department of Transportation approval of its traffic expert's recommendations and then implementing the improvements at Landmark cost.
4. There was insufficient evidence to deny the site plan based on harm to coastal resources caused by the road and traffic thereon. This issue can be revisited when Landmark provides the information required by the DEP and for a preliminary site plan.
5. There was sufficient evidence to deny a preliminary site plan based on the proposed draft regulations, because as drafted they would have allowed approval of an application before a developer would have provided sufficient information to allow the commission to assess potential environmental harm. However, the public interest in protecting against potential harm to the environment could have been protected by a reasonable change to the application – treating and approving it as a conceptual site plan, and requiring Landmark to submit “information pertinent to environmental or coastal harm” in subsequent applications for preliminary or final site plan under the amended regulations.
6. The Commission is instructed to approve a conceptual site plan conditioned on Landmark subsequently demonstrating, in its preliminary or final site plan application under the amended regulations, that
  - (a) public water and sewers can be provided to the entire development,
  - (b) the relevant state agencies have approved community water and septic, or that a combination of public and onsite water and waste disposal can serve the entire development, and

- (c) that the state DOT approve the improvements recommended by Landmarks traffic engineers and that Landmark bear the full cost of those improvements.

WHEREAS, the Commission finds that the Application does not comply with Section 32 for one or more of the following reasons:

1. The Application does not accurately depict the location of wetlands and watercourses as required by §32.9.1.c of the Regulations;
2. The Application does not contain information regarding the location, ownership, operation and maintenance of sewage disposal and water supply, as required by § 32.9.1.f of the Regulations;
3. The Application does not supply a sufficient preliminary stormwater management plan as required by § 32.9.1.g of the Regulations;
4. The Application does not contain coastal zone resources information as required by § 32.9.1.h of the Regulations;
5. The Application does not contain information describing any impact on public health and safety, as required by § 32.9.1.o of the Regulations.

WHEREAS, the traffic report cited in the Decision was prepared in 2005. The instant PSP Application contains a report which purports to verify and update information contained in the 2005 traffic report; and

WHEREAS, the Commission finds there is sufficient evidence in the record that the proposed access road to the development provides for one incoming lane and one outgoing lane with a boulevard style divider in the middle, and that the access road runs through the Coastal Management Zone. The Commission further finds that there is a substantial public interest in the protection of the Coastal Management Zone, that this substantial public interest outweighs the need for affordable housing, and that this public interest can be adequately protected by reasonable changes and conditions to the Application; and

WHEREAS, the Applicant has not provided the information necessary for the Commission to assess the environmental and coastal impacts of the PSP; and

WHEREAS, the Commission has determined that there is sufficient evidence in the record that, pursuant to General Statutes 22a-19, the proposed development is reasonably likely to have the effect of unreasonably polluting, impairing and destroying the surrounding natural resources, and that feasible and prudent alternatives exist.; and

WHEREAS, the Commission has determined there is sufficient evidence in the record that the access roadway to the proposed development, known as Calkins Road, must have an unobstructed vertical clearance of not less than thirteen feet, six inches, pursuant to the National Fire Prevention Association and the Connecticut State Fire Prevention Code ("CSFPC") §18.2.3.4.1.1 and must have an unobstructed width of not less than twenty feet pursuant to CSFPC §18.2.3.4.1.2; and

WHEREAS, the Commission has determined there is sufficient evidence in the record that PSP does not provide for a second point of exit that meets CSFPC §18.2.3.3 Multiple Access Roads, that the single access road (Calkins Road) provided for in the Application is located on Route One and could be impaired by vehicle congestion, climactic conditions or other factors that could limit access, that the Applicant acknowledged that it did not have a second access road into the development; and

WHEREAS, the Commission has determined there is a substantial public safety interest in providing and maintaining emergency access to the proposed development and in complying with the Connecticut State Fire Prevention Code, that this public interest outweighs the need for affordable housing, and that this public interest can be adequately protected by reasonable changes to the Application; and

WHEREAS, the Commission has determined there is sufficient evidence in the record that a substantial portion of the buildings in the proposed development is or may be located in an inland wetland or watercourse area, that there is a substantial interest in protecting the Town's inland wetlands and watercourses, and this public interest outweighs the need for affordable housing, and that the public interest can be adequately protected by reasonable changes; and

**BE IT THEREFORE RESOLVED**, the Commission hereby APPROVES the application of Landmark Investment Group, LLC for a Preliminary Site Plan, subject to the following MODIFICATIONS:

1. The Applicant shall, prior to (or contemporaneous with) applying for Final Site Plan approval pursuant to §32.9.2 of the Regulations, apply for and receive an Inland Wetlands Permit from the East Lyme Inland Wetlands Agency. Said application and approval shall accurately depict the location of all wetlands in relation to the proposed development;
2. The Applicant shall, prior to (or contemporaneous with) applying for Final Site Plan approval pursuant to §32.9.2 of the Regulations, also submit an application for coastal site plan review pursuant to General Statutes §22a-105(b)
3. The Applicant shall, prior to (or contemporaneous with) applying for Final Site Plan approval pursuant to §32.9.2 of the Regulations, demonstrate that public water and sewers can be provided to all of the development, or to the extent that relevant state agencies have approved community septic or water for the portions of the development not served by public water or sewer, that a

combination of public water and sewer and onsite water and waste disposal can serve the entire development. The Applicant shall also describe the location, ownership, operation and maintenance of said systems.

4. The Applicant shall, at the time it files for Final Site Plan approval pursuant to §32.9.2 of the Regulations, demonstrate that the access roadway to the proposed development, known as Calkins Road, shall have an unobstructed vertical clearance of not less than thirteen feet, six inches, pursuant to the National Fire Prevention Association and the Connecticut State Fire Prevention Code ("CSFPC") §18.2.3.4.1.1 and shall have an unobstructed width of not less than twenty feet pursuant to CSFPC §18.2.3.4.1.2
5. The Applicant shall, at the time it files for Final Site Plan approval pursuant to §32.9.2 of the Regulations demonstrate that the proposed development has a second point of exit that meets CSFPC §18.2.3.3 Multiple Access Roads,
6. The Applicant shall, at the time it applies for Final Site Plan approval pursuant to §32.9.2 of the Regulations, provide the Commission with the information necessary for the Commission to assess the environmental and coastal impacts of the proposed change of zone, including but not limited to:
  - A. A stormwater management plan which shall, at a minimum, address and resolve the following aspects:
    1. The Applicant shall conduct test borings in the area of each detention basin to determine the presence of bedrock and whether it would be encountered before design depths are achieved for each of the water quality basins as it may impact the infiltration of storm water thus, adversely impacting on site inland wetlands and watercourses.
    2. Substantial pollutant loads generated by approximately 36-acres of impervious surface during every rainfall which, according to the PSP will be collected in four water quality basins; whose outlet pipes discharge on moderate to steep slopes which are not directed to a stabilized location thus, concentrating flow and resulting in erosion that will be conveyed and discharged into down gradient wetlands. The Applicant should submit an assessment that the four water quality basins will adequately reduce pollutant loads for total suspended sediments, total phosphorus, total nitrogen, petroleum hydrocarbons, and metals, and will not result in concentrated runoffs and discharges of eroded materials into down gradient wetlands.
    3. Sources of pollutants the proposed development will generate that will exacerbate the adverse impacts to wetlands and watercourses. The pollutants are:
      - i. Sand and salt used in winter maintenance operations on driveways, sidewalks and parking areas,
      - ii. Nutrients from fertilizers used on grass and landscaped areas,

- iii. Metals from vehicle brake pads, hydrocarbons from inadvertent gasoline spills and vehicular oil drips on impervious surfaces, and
- iv. Atmospheric deposition on impervious surfaces.

The Applicant shall address and resolve the effect that the foregoing pollutants and loads would have on any of the on-site inland wetlands.

- B. The Applicant shall address and resolve the following concerns regarding drainage discharges along the proposed access driveway:
- i. The three discharges from the access driveway will convey runoff from the proposed impervious area discharge directly onto upland soils and not into an existing stabilized location.
  - ii. The discharge of flow onto this slope for a length in excess of 300 will cause a channel to be eroded in the upland area as the natural slope does not currently experience concentrated runoff. The concentrated flow being discharges here will result in eroded sediments then being conveyed and potentially discharged into the Niantic River as no wetland areas are located down gradient of this point. A small riprap pad or plunge pool will only initially slow the velocity of the discharge and the continuous discharge or runoff will concentrate and cause the erosion.
  - iii. There is no water quality treatment proposed for these three discharge points, so pollutants found in the on-point source will be discharged directly into the Niantic River.

7. The Applicant shall, at the time it applies for Final Site Plan approval pursuant to §32.9.2 of the Regulations, submit not only the information required for a Final Site Plan, but shall also submit the following:

Documents, reports or such other evidence which will be of use to the Commission in determining the exact location, extent and nature of "Inland Wetlands Area #5", more particularly described in a report from Highland Soils, LLC dated April 24, 2014 and depicted on maps and in photographs attached to a letter to the Commission from Friends of Oswegatchie Hill Nature Preserve dated June 1, 2015 (Exhibit 48 submitted at June 18, 2015 public hearing).

# **Tab 5**

NO. HHD-CV-15-6064232-S

SUPERIOR COURT

LANDMARK DEVELOPMENT  
GROUP, LLC and JARVIS OF  
CHESHIRE LLC

JUDICIAL DISTRICT  
OF HARTFORD  
LAND USE DOCKET

V.

EAST LYME ZONING COMMISSION

MAY 24, 2019

**DEFENDANT EAST LYME ZONING COMMISSION'S BRIEF ON APPEAL**

**I. OVERVIEW**

This appeal concerns the zoning of land in the Oswegatchie Hills area of East Lyme. The land in question, approximately 236 acres, is a steep, rocky, largely undeveloped expanse bordered by the Niantic River to the east, I-95, Latimers Brook and residences on Calkins and River Roads to the north, residences and large undeveloped tracts to the west and Smith Cove, residences and other undeveloped portions of Oswegatchie Hills to the south. With vistas of the Niantic River and Long Island Sound, this rugged, hilly wilderness is one of the last undeveloped areas in East Lyme, and, indeed, on the Connecticut shoreline.

The plaintiff (Landmark Development, LLC and Jarvis of Cheshire, LLC, collectively "Landmark" or the "plaintiff") has sought to develop the area for years,

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continually escalating its plans to build multi-family housing units at the top of a high, steep hill composed mostly of ledge. Over time the proposed development has mushroomed from a few hundred units to the current application which seeks to put almost a thousand housing units on a small area near the top of the property. The current application also overreaches regarding the proposed zone change, seeking to re-zone 123 acres to Affordable Housing District (AHD), even though only one-fourth (approximately 36 acres) will ever be developed.

The East Lyme Zoning Commission (Commission)<sup>1</sup> denied two of the plaintiff's prior applications. The plaintiff appealed both denials to the Superior Court, and both times the denials were upheld. Landmark Development Group, LLC v. East Lyme Zoning Comm., 2004 WL 2166353 (Conn. Super. Ct. Sept. 7, 2004, Quinn, J.) ("Landmark I") and Landmark Development Group, LLC v. East Lyme Zoning Comm., 45 Conn. L. Rptr. 63, 2008 WL 544646 (Conn. Super. Ct. Feb. 2, 2008, Prescott, J.) ("Landmark II").

The current appeal arises from the plaintiff's 2005 application to the Commission, which continued to greatly increase the proposed development. Now the plaintiff seeks to build 840 housing units on a 36 acre portion wedged near the top of the hill. (ROR 2)

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<sup>1</sup>The Commission is the agency designated by the town to receive, process and decide upon applications for zoning changes and petitions for amendments to zoning regulations. East Lyme has a separate Planning Commission.

Currently municipal water and sewer service is not available to the development area. A sewer extension along the Boston Post Road, on which the plaintiff has frontage, has been approved by the East Lyme Water and Sewer Commission ("WSC") but has never been built and the WSC has no plans to build one in the near future. The Commission approved in part and denied in part the 2005 application, which the plaintiff again appealed to the Superior Court. In 2011 the Court (Frazzini, J.) issued a 104 page memorandum of decision which affirmed in part and denied in part the appeal, and remanded the case to the Commission with specific instructions regarding how to proceed. Landmark Development Group, LLC v. East Lyme Zoning Commission, Judicial District of New Britain, docket no. HHB-CV-06-4016813-S (Oct. 31, 2011, Frazzini, J.). Thereafter the Commission adopted a revised affordable housing regulation (Sec. 32.9) in accord with Judge Frazzini's decision, based primarily on Landmark's proposed regulation.

In 2015 the plaintiff filed the application (which is a continuation of the 2005 application) that is the subject of this appeal. However, the application does not comply with East Lyme's amended affordable housing regulation or General Statutes §8-30. For the reasons set forth herein, the Court should uphold the Commission's decision to approve the application in part and deny it in part.

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## II. HISTORY OF THE PROCEEDINGS

### A. "LANDMARK I"

In December 2001, the plaintiffs applied for a text amendment to §32 of the East Lyme Zoning Regulations (Regulations) and for a zone change for the above described property. On June 26, 2002, following two public hearings, the East Lyme Zoning Commission ("Commission) denied the application. Rather than appeal this first denial, the plaintiffs submitted a modified proposal less than one month later. The modification did not address the fundamental problems raised by the initial application. Thus, the Commission denied the modified proposal as well and the plaintiffs launched their first appeal ("Landmark I").

The Superior Court (Quinn, J.) upheld the Commission's denial and dismissed the plaintiffs' appeal. In her decision, Judge Quinn held that the Commission sustained its burden on all five stated reasons for its denial. Landmark I at \*21. Judge Quinn focused on two of the Commission's reasons – preservation of the Oswegatchie Hills area as open space and the lack of water and sewer service to the area – while noting that the record contained substantial evidence to support all five reasons for the denial.

Judge Quinn recognized years of local efforts to preserve the area as open space, in addition to the fact that the proposed construction of hundreds of condominium units

was inconsistent with: 1) the Coastal Management Act; 2) the Municipal Coastal Program; 3) the Harbor Management Plan, and 4) the plans of conservation of development of both the Town of East Lyme and the Southeast Connecticut Council of Governments. Id. at 16. The Court concluded that the record contained substantial evidence that the Oswegatchie Hills area would be harmed by the plaintiffs proposed zone change and that the significant resources could not be protected.

The Court also found that municipal water and sewer were not available to the property and that these utilities would not be extended. Id. at 18. Development in such an area would be contrary to the town plan, and the plaintiffs did not demonstrate that alternatives such as community water and septic were feasible. Id. at 19. Judge Quinn concluded that the public interest in the adequate provision of these basic services "clearly outweighs the need for public housing." Id. at 21. The Appellate Court denied the plaintiffs certification to appeal in November, 2004.

**B. "LANDMARK II"**

While the appeal in Landmark I was still pending, plaintiffs filed a second application with the defendant Commission, this time seeking approval of a specific plan of development for a portion of the subject property – the construction of 352 housing units. The application was vague in that it did not contain a site plan as required by the

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Regulations. The Commission dealt with it in three parts – 1) an application for a text amendment to the zoning regulations; 2) an application for a zone change and 3) an application for approval of an “Affordable Housing Development”, and denied the application. The plaintiffs again appealed to the Superior Court. The court (Prescott, J.) again upheld the Commission’s denial and dismissed the appeal.

Just as Judge Quinn had in Landmark I, Judge Prescott found substantial evidence in the record to support at least three of the five reasons cited by the Commission, while noting that only one was required. Landmark II at 43. The court again found more than a theoretical harm to the public interest if the application were granted and that the record supported the denial. *Id.* at 21.

Specifically, the Landmark II Court found that the second application again failed to address open space considerations, adopting several paragraphs of the Landmark I decision. Judge Prescott also spent substantial time highlighting the myriad ways that development of the Oswegatchie Hills area as proposed by plaintiffs was inapposite to the Coastal Management Act and how such development would adversely impact coastal resources. Landmark II at 26-36. He also found that the public interest in protecting the portions of the property within the coastal boundary outweighs the public interest in affordable housing. *Id.*

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Finally, just as before, the court found that water and sewer service were not available to the site to support high density development. Id. at 36. The Landmark II court again adopted large portions of Judge Quinn's decision on this issue, a clear indication that the plaintiffs failed to address these inadequacies in their second filing. Judge Prescott held that the public interest in 1) preserving the area as open space, 2) protecting the unique nature of the site, and 3) ensuring the adequate provision of water and sewer service all clearly outweighed the need for affordable housing and dismissed the appeal. Id. at 26, 35 and 42. The Appellate Court denied Landmark's petition for certification.

### **C. THE CURRENT CASE - "LANDMARK III."**

On June 2, 2005, the plaintiffs submitted yet another application to the Zoning Commission which again significantly increased the size and scope of the development. The application proposed development would consist of 840 units, 232 of which would be affordable housing units for sale and 120 units would be affordable rental units. (ROR 2).

The Commission made the requisite referrals to the Planning Commission pursuant to General Statutes §8-3a and the Southeastern Connecticut Council of Governments pursuant to General Statutes §8-3b. Because Landmark's property was largely located within the Coastal Boundary as defined in General Statutes § 22a-94, a

referral was made to the Department of Environmental Protection (DEP), Office of Long Island Sound Protection (OLISP).

On December 1, 2005, following three public hearing sessions and debate and deliberations, the Commission denied the proposed text amendment and preliminary site plan and approved the zone change request with restrictions. First, the Commission determined that the proposed text amendments to the zoning regulations were inadequate to protect substantial public interests in health and safety, and inadequate to promote affordable housing. The proposed amendments would have eliminated the requirement that public water and sewer be available to the development which the Commission deemed necessary to protect the public's health and safety. Additionally, the proposed regulations contained no requirement for the submission of a "conceptual site plan" which the Commission deemed necessary and which it could (and did, in its existing regulations) require pursuant to General Statutes 8-30g (c). Finally, the proposed regulations eliminated the requirement that an applicant submit an affordability plan as is required by General Statutes §8-30g.

As to the proposed zone change, the Commission found that the applicant was applying for a zone change for the entirety of its 240 acre parcel. The Commission denied the zone change for the vast majority of the plaintiffs' property, for several reasons,

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including (1) large portions of the proposed zone change area was outside of the Water and Sewer Commission's sewer service district and that such areas were inappropriate for development at the density proposed; (2) large portions of the proposed zone change area were within the Coastal Boundary as defined in General Statutes §22a-94, and that development at the density proposed would result in adverse environmental impacts, and (3) most, if not all, of the proposed zone change area had been the subject of long-standing efforts to preserve the area as open space and that the zone change would be antithetical to that purpose.

Rather than deny the application zone change in its entirety, the Commission instead limited the proposed zone change to only that portion of the plaintiffs' property that was within the East Lyme Sewer Service District (SSD). This small portion, located in the northwest section of the 236 acre parcel, is within an area designed to flow to the Town of Waterford via Boston Post Road known as the "Golden Spur portion". This limited approval was subject to two restrictions: 1) that the zone change applied only to that portion of the applicant's property that is located within the Town's sewer service area, and 2) that the zone change must be approved by the Niantic River Gateway Commission as required by statute. These restrictions were necessary for four reasons.

First, a zone change for the applicant's entire 236 acre property would be contrary to the

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Commission's policy of allowing multifamily development only where public sewer is available. This restriction would ensure adequate sewer service for any future development in the Golden Spur portion. Second, the proposed zone change was incompatible with the local and state Plan of Development and long-standing Town goals to preserve and protect the Oswegatchie Hills as open space. Reducing the scope of the zone change to regions within the sewer service district and outside the Coastal Area Management (CAM) boundary achieves the Town's goals of promoting affordable housing while preserving the Oswegatchie Hills area. Third, the proposed zone change was reasonably likely to have the effect of unreasonably harming the surrounding environment, which was found to be incompatible with state, local, public and private conservation efforts. Reducing the scope of the zone change allowed for preservation of the riverfront, hillside and woodlands while balancing the needs for affordable housing. Fourth, the proposed zone change was incompatible with the Coastal Management Act (CAM), General Statutes §22a-105, et. seq., and reducing the location of the zone change would affect a significantly smaller portion of the CAM boundary area while advancing affordable housing.

Lastly, the Commission addressed Landmark's application for approval of a "preliminary site plan." The Commission found that the application did not comply with

§32 of the Regulations in that it did not include the required letters from the Water and Sewer Commission indicating adequate water and sewer availability, and was not accompanied by the required special permit application and its corresponding requirements.

The Commission denied the application on the grounds that: 1) it did not provide for adequate traffic and/or vehicle access; 2) the development would have potentially adverse impacts on coastal resources and future water dependent activities; 3) the development would be reasonably likely to cause unreasonable pollution, impairment or destruction of surrounding natural resources.

**1. Judge Frazzini's Decision.** Landmark appealed the Commission's decision on its 2005 application. Six years later,<sup>2</sup> on October 31, 2011, Judge Frazzini issued a 104-page Memorandum of Decision with detailed findings and rulings on the proposed regulation, the zone change and the site plan. ("Landmark III").

**a. The Proposed Regulation.** The Court found insufficient evidence in the record to deny the proposed regulation based on the issues of buffer and fall zones and the lack of a requirement for public water and sewer. However, the Court did find sufficient

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<sup>2</sup> Much of the intervening time was consumed with the parties good faith efforts to resolve their differences.

evidence to deny the regulation because, as proposed, the amendments would have allowed Landmark to get their development approved without the Commission having any information to determine if the development would cause environmental or coastal damage. Landmark III at 99-100.

The Court remanded the issue to the Commission and instructed it to adopt amendments to the zoning regulations consistent with its opinion, and to incorporate Landmark's proposed amendments. Those amendments would require that an affordable housing applicant provide adequate information that would allow the Commission to evaluate the proposed development regarding the relevant environmental, developmental, health and safety considerations. The Commission could use its own judgment as to what information is needed to make such evaluations, and at what stage the information should be provided. *Id.*

**b. The Zone Change.** The Court found insufficient evidence to support the denial of a zone change for the entire property based on lack of public sewers, but did find that there was sufficient evidence to support the denial of the zone change for the entire property based on *open space* and environmental and coastal concerns. *Id.* at 100. However, the public interest in protecting the environment and coastal areas could be protected by remanding the zone change issue to the commission.

The Court set out a 3-step process regarding the zone change:

1. First, the court instructed the Commission to amend the regulations as set forth above.
2. Following adoption of those amendments, Landmark was to submit a Preliminary Site Plan (PSP) or Final Site Plan (FSP) that provides the information necessary to assess the environmental concerns.
3. Armed with the PSP or FSP, and the environmental information, the Commission would then determine whether the public interest can be protected by expanding the zone change from the portion within the sewer district (i.e. what was already approved) or to the entire site plan area. The Court also ordered the Commission to rescind the rezoning unless it subsequently approves a site plan submitted by Landmark. *Id.* at 104.

**c. The Site Plan.** The Court found that there was insufficient evidence to deny the site plan based on the lack of public sewers, open space considerations, traffic issues and harm to coastal resources caused by the road and traffic thereon. The Court did find sufficient evidence to deny the site plan because LM had not yet shown that adequate potable water was available. However, the public interest in adequate waste disposal and potable water could have been protected by a conditional approval. The conditional

approval should have required that Landmark show, in a preliminary or final site plan under the amended regulations above, that public water and sewers can be provided to all or part of the development, or to the extent that relevant state agencies have approved community septic or water for the portions of the development not served by public water or sewer.

The Court found that there was sufficient evidence to deny a preliminary site plan based on the proposed draft regulations, because as drafted they would have allowed approval of an application before a developer would have provided sufficient information to allow the commission to assess potential environmental harm. The Court further held that the public interest could have been protected by a reasonable change to the application – treating and approving it as a conceptual site plan, and requiring LM to submit “information pertinent to environmental or coastal harm” in subsequent applications for preliminary or final site plan under the amended regulations.

The site plan was remanded and the Commission was instructed to approve a conceptual site plan conditioned on LM subsequently demonstrating, in its preliminary or final site plan application under the amended regulations, that (a) public water and sewers can be provided to the entire development, (b) the relevant state agencies have approved community water and septic, or that a combination of public and onsite water and waste

disposal can serve the entire development, and (c) that the state DOT approve the improvements recommended by Landmark's traffic engineers and that Landmark bear the full cost of those improvements.

So, following Judge Frazzini's decision, the parties had a clear direction moving forward:

(1) Adopt Landmark's proposed amendments to the affordable housing regulation with a provision that, at the conceptual preliminary or final site plan stage, an applicant must provide information necessary for the Commission to assess whether the development would cause environmental and coastal damage, and other matters relevant to public safety;

(2) Following adoption of the amendments, Landmark is to then submit a preliminary or final site plan that contains the information necessary for the Commission to assess the environmental, coastal, and other relevant public safety issues; and

(3) After Landmark submits its site plan according to the amended regulations, only then can the Commission determine whether the public interest can be protected by expanding the zone change that was already approved (for the portion of the development that would be within the sewer service area) to the entire area covered by the site plan drawings.

**2. The Amended Regulation.** On June 1, 2012, Landmark submitted two applications, one to the Zoning Commission to amend the regulation pursuant to Judge Frazzini's instructions, and one to the Water and Sewer Commission ("WSC") for a determination of sewer capacity pursuant to General Statutes §7-246a(a)(1).

Landmark submitted to the Commission a proposed text amendment to §32 of the Regulations regarding affordable housing, per Judge Frazzini's instructions. Following much back and forth between the parties, and a public hearing, Landmark and the Commission agreed to an amended §32 which was adopted in 2013. In accordance with Judge Frazzini's directions, the amended §32 consisted of Landmark's proposed text amendment, and (a) eliminated the automatic approval of a final site plan and (b) provided that an applicant had to provide information necessary for the Commission to evaluate potential environmental and coastal damage, and to assess public safety.

For purposes of this appeal, §32.9 is the operative regulation. ROR 4. Under the new regulation, an affordable housing application can be initiated by filing an application for approval of a conceptual site plan (CSP), a preliminary site plan (PSP) or a final site plan (FSP). The Commission has the discretion to hold a public hearing on an application for a PSP and/or an FSP. §32.9. Moreover, a zone change to an Affordable Housing District (AHD) cannot be approved without an approved FSP.

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Section 32.9.1 lists 15 items that are required to be submitted with a PSP, including coastal zone resources information (§32.9.1.h) location of wetlands and watercourses (§32.9.1.c) and a statement describing impacts on public health and safety (§32.9.1.0). An application for an FSP must contain everything required for a PSP, in addition to complying with the Regulation's site plan requirements (§24) as well as demonstrating how water and sewer service will be provided. As set forth infra, the plaintiff has not complied with this section.

**3. The Capacity Application.** Also on June 1, 2012, Landmark applied to the East Lyme Water and Sewer Commission (WSC) for a determination of availability of sewer capacity in the amount of 236,000 gallons per day (gpd) for its proposed development. The documents submitted with the application (which required the WSC to determine that sufficient capacity for a proposed use of land) showed an 840-unit housing development stuffed onto 36 acres, the majority of which was located within the SSD, i.e. the same as in Landmark's 2005 application. At the beginning of the public hearing Landmark amended its application to 118,000 gpd.

The Commission is aware that this Court has been monitoring the capacity appeal and will not belabor its long history here. For purposes of this appeal, the relevant facts are as follows: in 2016, following over a year of discovery motions and depositions related

to a different project, the Trial Court (Cohn, J.) issued a Memorandum of Decision on Landmark's second appeal. The Trial Court held that the Commission's grant of 14,434 gpd of capacity was an abuse of discretion, but that Landmark was not entitled to the full 118,000 gpd it sought. The Trial Court remanded the case to the Commission with vague instructions on how to proceed.

The Commission applied for and was granted certification to the Appellate Court on three issues: that the Trial Court erred in (1) disregarding its prior decision and Forest Walk v. Middlebury WPCA, (2) allowing supplemental evidence unrelated to Landmark's application and (3) holding that the Commission was obligated to consider capacity when processing sewer connection permits.

On August 21, 2018, the Appellate Court upheld the Trial Court. Landmark Development Group, LLC v. East Lyme Water and Sewer Commission, 184 Conn. App. 303 (2018). The Appellate Court held that the Trial Court's 2016 decision was a final decision for purposes of appeal, that the Trial Court did not act improperly in allowing discovery and admitting the supplemental evidence, and that based on that evidence, the Trial Court was not bound to follow its earlier rulings or Forest Walk. The appellate decision also upheld the Trial Court's ruling that Landmark was not entitled to the full 118,000 gpd of capacity. Nonetheless, on December 10, 2018, the Trial Court (Cohn, J.)

conditionally granted the full 118,000 gpd to Landmark. A copy of that decision is attached as Appendix A.

**4. The Current Affordable Housing Application.** On March 4, 2015, while the capacity application and appeals were ongoing, Landmark filed the affordable housing application which is the subject of the current appeal. ROR 2. This application, which Landmark acknowledges is a continuation of that first filed in 2005, was submitted pursuant to the new §32.9 of the Regulations. Landmark again seeks a zone change to AHD for a large portion of Landmark's land (123 acres) even though Landmark concedes that only a small portion – 336 acres – will ever be developed. The plaintiff also sought Preliminary Site Plan (PSP) approval for 840 housing units, of which 30% would be reserved as affordable housing.

The Commission held three public hearings during which it heard hours of testimony and took in over 60 exhibits. The Commission also granted the petition to intervene pursuant to General Statutes §22a-19 submitted by Friends of the River/Hills. ROR 23. In light of the Intervenors allegations regarding potential damage to inland wetlands and watercourses resulting from the Application, the Commission referred the Application to the East Lyme Inland Wetlands Agency ("IWA") for a report. The IWA report, dated July 27, 2015, found there was sufficient evidence in the record to determine

that the Application involved regulated activities that require an IWA permit. The report further recommended that the Applicant be required to apply for an IWA permit.

After the close of the public hearing, the Commission made a series of findings based on the evidence in the record and issued its decision. ROR PH 13. As to the proposed zone change, the Commission found (among other things) that (1) pursuant to the Frazzini decision and the amended Regulation §32.9 it could not approve a zone change without an approved FSP; (2) that Landmark had not applied for coastal site plan review and had not provided the information necessary to assess the environmental impacts of the proposed development; (3) there was sufficient evidence that large portions of the proposed zone change area were within the Coastal Boundary, and that the zone change was incompatible with the Coastal Management Act, and (4) that part of the proposed development may be located within wetlands and/or the upland review area, i.e. regulated activities, but that Landmark had not submitted sufficient evidence to properly evaluate those activities. Id.

The Commission granted the zone change subject to four conditions, all of which are consistent with the Frazzini decision and/or the amended regulation: (1) the zone change applied only to that portion of Landmark's property that was within the East Lyme Sewer Shed District (SSD); (2) Landmark must, before or contemporaneous with its

application for an FSP, apply and receive in IWA permit; (3) Landmark must, before or contemporaneous with its application for an FSP, apply for coastal site plan review and (4) when it applies for an FSP, Landmark must provide information necessary for the Commission to assess the environmental and coastal impacts of the proposed zone change. ROR PH 13.

As to the PSP, the Commission found that Landmark's application did not comply with at least five requirements of the new §32.9.1.c, i.e. the regulation for which Landmark was primarily responsible. Specifically, the application did not:

- (a) accurately depict the location of wetlands on the property,
- (b) did not contain information regarding the ownership, location and operation of the sewer and water systems, did not contain a sufficient stormwater management plan,
- (c) did not contain coastal zone resources information and
- (d) did not include information regarding any impacts on public health and safety.

Landmark also failed to provide information regarding environmental and coastal impacts, even though its access road runs through the Coastal Management Zone and did not provide for a second access/exit point in compliance with the Connecticut Fire Safety Prevention Code. ROR PH 13.

Based on the above (and other) findings, the Commission approved the PSP with conditions, all of which were consistent with the new regulation and/or the Frazzini decision. Id. Landmark then filed the instant appeal.

The Intervenors moved to dismiss the appeal based on jurisdictional and ripeness grounds, which this Court denied on September 18, 2018.

### **III. AGGRIEVEMENT AND TIMELINESS**

The two plaintiffs in this appeal are Landmark Development Group, LLC and Jarvis of Cheshire, LLC. The appeal claims the plaintiffs as landowners, applicants and intended affordable housing developers are aggrieved by the Commission's denial of the application. Proof of aggrievement is essential to a trial court's jurisdiction of a zoning appeal. Bethlehem Christian Fellowship, Inc. v. Planning and Zoning Commission, 58 Conn. App. 441, 443 (2000). The determination of aggrievement presents a question of fact for the trial court and a plaintiff has the burden of proving that fact. Id., 444. This includes establishing the status of each of the plaintiffs and their interest in the property.

The Commission leaves the plaintiffs to their burden of proof regarding their aggrievement and the timeliness of their appeal.

#### IV. STANDARD OF REVIEW

The standard of review in a judicial appeal under § 8-30g(g) is twofold in nature. See JPI Partners, LLC v. Planning & Zoning Board, 259 Conn. 675, 690 (2002). First, “the trial court determines whether the decision from which such appeal is taken and the reasons cited for such decision are supported by sufficient evidence in the record ... Specifically, the court must determine whether the record establishes that there is more than a mere theoretical possibility, but not necessarily a likelihood, of a specific harm to the public interest if the application is granted.” (Citation omitted; internal quotation marks omitted.) River Bend Associates, Inc. v. Zoning Commission, 271 Conn. 1, 26, (2004). “The sufficient evidence standard under the first prong of § 8-30g(g) requires the commission ‘to show a reasonable basis in the record for concluding that its decision was necessary to protect substantial public interests. The record, therefore, must contain evidence concerning the potential harm that would result if [the application were granted] and concerning the probability that such harm in fact would occur.’” AvalonBay Communities, Inc. v. Planning & Zoning Commission, 103 Conn.App. 842, 846-47 (2007), quoting River Bend Associates, Inc. v. Zoning Commission, *supra*, 26, quoting Kaufman v. Zoning Commission, 232 Conn. 122, 156 (1995).

The "sufficient evidence" standard of proof in affordable housing appeals is less than the "substantial evidence" test which applies to most other administrative appeals. Fuller, *Land Use Law and Practice*, § 51:6 (4th ed.)

The Supreme Court has also held that § 8-30g requires the Commission to show "a quantifiable probability that a specific harm will result if the application is granted." AvalonBay Communities, Inc. v. Planning & Zoning Commission, *supra*, 853-54, citing Kaufman v. Zoning Commission, *supra*, 156; see also Christian Activities Council, Congregational v. Town Council, 249 Conn. 566, 597 (1999).

In River Bend Associates, Inc. v. Zoning Commission, *supra*, 271 Conn. 26, the court described the court's second obligation: "If the court finds that such sufficient evidence exists, then it must conduct a plenary review of the record and determine independently whether the Commission's decision was necessary to protect substantial interests in health, safety or other matters that the commission legally may consider, whether the risk of such harm to such public interests clearly outweighs the need for affordable housing, and whether the public interest can be protected by reasonable changes to the affordable housing development." "Under subparagraphs (B), (C) and (D) of the statute ... the court must review the commission's decision independently, based upon its own scrupulous examination of the record. Therefore, the proper scope of review

regarding whether the Commission has sustained its burden of proof, namely that: its decision is based upon the protection of some substantial public interest; the public interest clearly outweighs the need for affordable housing; and there are no modifications that reasonably can be made to the application that would permit the application to be granted—requires the court, not to ascertain whether the commission's decision is supported by sufficient evidence, but to conduct a plenary review of the record in order to make an independent determination on this issue.” Quarry Knoll II Corp. v. Planning & Zoning Commission, *supra*, 256 Conn. 727.

**V. THE COMMISSION PROPERLY LIMITED THE ZONE CHANGE TO THE AREA WITHIN THE SSD**

**The Zone Change Cannot Be Approved at This Time.** As a preliminary matter, the Commission cannot make a final decision on the zone change at this point in the process, something of which Landmark is fully aware. As the Court emphasized in its September 18, 2018, decision on the Motion to Dismiss, §32.9 states that “[A]n *application for designation as an AHD cannot be approved without an approved FSP.*” (Italics in original). This regulation was enacted in conjunction with Landmark, using Landmark’s proposed text amendment, as per Judge Frazzini’s instructions. Regardless of when an application (either PSP or FSP) is submitted, Judge Frazzini made clear, and

§32.9 explicitly states, that the Commission cannot approve a zone change unless and until it approves an FSP.

Here we are still at the PSP stage. Landmark has not filed an application for an FSP and has not yet provided the environmental information. Under these circumstances, i.e. at a preliminary stage in the process, it is difficult to apply the standards of review set forth above.

The Commission has no basis to expand the zone change beyond the SSD. In seeking a zone change before it has an approved FPS, and before it has submitted the environmental information, Landmark misconstrues its own regulation. Section 32.9 does not allow for a zone change to be approved conditioned on an approved FSP. Rather, a zone change cannot be granted without an approved FSP. Such an expansive reading is contrary to Judge Frazzini's decision which unquestionably made a zone change decision dependent on the Commission getting information to allow it to assess the coastal and environmental consequences.

Judge Frazzini provided a mechanism to address these concerns - have Landmark provide, at either the PSP or FSP stage, the information necessary to assess the environmental and coastal impacts. Landmark III at 101. Armed with this information, the Commission can then determine whether the substantial public interest in avoiding

damage to coastal resources or the environment can be protected by expanding the zone change beyond the SSD. Id. This is consistent with the Regulation §32.9, which states that a zone change to AHD cannot be approved without an approved Final Site Plan (FSP). Landmark is attempting to circumvent the regulation that it drafted and ultimately agreed to, something this Court should not countenance.

Limiting the zone change to the SSD is consistent with Landmark's sewer capacity application. An application for determination of sewer capacity is statutorily tied to a proposed use of land. C.G.S. §7-246a(1)(a). Here Landmark applied for 118,000 gpd is for its proposed 840 unit development, which is proposed to be located within the SSD on the 36 acre development parcel. ROR 2. The capacity awarded by the Trial Court (Cohn, J.) (which the WSC still contends was improper) was for that proposed use within that proposed development area only. Landmark did not apply for sewer capacity for the entire parcel, or for the rest of its proposed zone change area - 87 acres – that it claims will not be developed. The grant of sewer capacity is strictly limited to the proposed development, which is located (mostly) within the SSD.

It is also important to remember that although Landmark now has its conditional sewer capacity, that grant is more symbolic than practical at the present time. A sewer line along Boston Post Road is the only way Landmark can connect to the East Lyme

system.<sup>3</sup> A small portion of Landmark's property abuts the Boston Post Road. However, currently there is no sewer line in that portion of the Post Road, so there is nothing to which Landmark can connect. The WSC has approved a sewer extension for that portion of Post Road, but that extension has not been constructed, and the WSC has no plans to do so.

The premature submission notwithstanding, the Commission's decision to limit the zone change to the SSD was supported by sufficient evidence. Although Landmark has scaled back its zone change somewhat - from the entire 236 parcel to 123 acres - those environmental concerns still exist as the access road and a large portion of the proposed AHD zone are located in the coastal management area.

The record is also rife with evidence that granting the zone change in its entirety would cause substantial and specific harm to the public interest in wetlands and the coastal zone resources. Moreover, as set forth infra, Landmark has not provided all of the documentation required for a PSP, which includes much of the environmental information.

**The DEEP Findings.** DEEP, acting through the Office of Long Island Sound Programs (OLISP), found multiple problems with the zone change and PSP applications.

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<sup>3</sup> Landmark has not received an easement or other permission from the neighboring properties on the west side of the hill to run a sewer line across their properties to connect to the sewer system on Route 161.

ROR 10. Primary was the lack of information from the applicant Landmark, a problem also noted by the Commission. By way of example, Landmark's proposed access road cuts directly through the coastal boundary and a portion of the proposed zone change also is within the coastal boundary. In spite of this, Landmark's 2015 application did not include a coastal site plan review or any information related thereto. ROR 10. Without this information, neither OLISP nor the Commission could conduct a purposeful, comprehensive review. OLISP did find both the zone change and PSP to be inconsistent with the policies and standards of the Coastal Management Act. Due to the dearth of information, DEEP/OLISP found the application to be "flawed and premature" and recommended both the zone change and PSP be denied. ROR 10 at p.3. As Judge Prescott noted in Landmark II, the public interest in protecting the portions of the property within the coastal boundary outweighs the public interest in affordable housing. Landmark II at 21.

Based on the scant information provided, OLISP did find that significant development of the area would impact coastal resources. Specifically, the wide, steep access road would cause runoff affecting downstream wells, and sedimentation and erosion impacts to vernal pools and inland wetland habitats, among other problems. ROR 10.

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Landmark did not supply information regarding the operation and maintenance of sewage disposal as required by section 32.9.1.f. As noted above, even though Landmark now has its capacity allocation, there is no sewer to connect to unless Landmark itself builds the extension. Thus it is likely that an on-site community sewer system will be required, and would be located outside the development area, i.e. in the remaining 87 "undeveloped" acres of the proposed zone change area. However, OLISP noted that many portions of that area are particularly unsuitable for such systems. ROR 10, appendix A, p.9. An environmental engineer retained by the Intervenors also noted that the area was "severely limited" regarding on-site septic. ROR 45. Landmark did not refute these findings or present any evidence to the contrary.

**Location of Wetlands.** As part of its application Landmark was required to accurately provide the location of wetlands and watercourses in accord with section 32.9.1.c.2. However, the Commission heard testimony from a soil scientist and was presented with evidence that *one of Landmark's proposed buildings was located directly in a wetland.* Landmark did not attempt to refute the location of the wetlands or any of the environmental issues. ROR 48.

**VI. THE MODIFICATIONS ATTACHED TO THE PSP DO NOT CONSTITUTE A DENIAL**

In its claim of appeal, and throughout these proceedings, Landmark contends that its applications for a zone change and PSP are merely preliminary or “macro” planning documents, not conduct. Since the zone change and PSP will not directly or immediately lead to development, or conduct, the argument goes, then there is no basis to deny the applications, even if it does not comply with the newly adopted regulation. Put another way, Landmark argues against the Commission’s implementation of the very regulation that it drafted and agreed to.

Landmark contends that zone change merely establishes the boundary of the affordable housing district, nothing more. However, it has not satisfactorily explained (1) how the Commission can grant a zone change at this stage, without an approved FSP, in contravention of sec. 32.9, and (2) why a zone change is needed for 123 acres when supposedly only 36 acres will be developed for housing. Similarly, as to the PSP, Landmark failed to meet 5 of the 15 requirements of 32.9.1, yet appealed when their application was approved conditioned on supplying that very same information later in the process.

As it has throughout the process, Landmark wants to have it both ways – comply with Judge Frazzini’s instructions regarding the amended regulation, then ignore the parts

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not in its favor when advantageous. Nowhere is this more evident in its application for a PSP.

Section 32.9.1 sets forth 15 requirements that a PSP and zone change application must contain. Landmark did not

- accurately depict the location of wetlands (32.9.1.c)
- provide the location and ownership of sewage disposal and water supply (32.9.1.f)
- supply an adequate stormwater management plan (32.9.1.g)
- provide coastal zone information and information regarding (32.9.1.h)
- address impacts on public health and safety (32.9.1.o).

The Commission also found that the PSP did not provide a secondary emergency access point as required by the Connecticut State Fire Prevention Code. Landmark will undoubtedly claim that this is a traffic issue that cannot be raised on remand in light of the Frazzini decision. This is not the case. The 2005 application, which was the subject of Judge Frazzini's decision and analysis, dealt with the proposed main entrance to the development from Boston Post Road, and modifications to the existing road and surroundings. It did not in any way address a second, emergency access, an obvious matter of public health and safety.

Rather than deny the application as incomplete, the Commission approved Landmark's PSP subject to seven modifications all of which are consistent with both §32.9 and Judge Frazzini's decision. They do not require Landmark to provide anything more than is already required for a PSP or FSP, and do not impede or impair Landmark from moving forward with an FSP.

By way of example, modifications 1 requires Landmark, before or when it applies for an FSP, to apply for an IWA permit, something Landmark admits it would have to do anyway. Modifications 2 and 4 address Landmark's failure to provide coastal zone information and apply for coastal site plan review, and merely push back that requirement to the FSP stage. The modifications do not require Landmark to do anything more than they should have done at the PSP stage, or than they would otherwise have to do at the FSP stage.

## **VI. CONCLUSION**

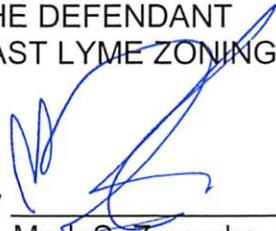
Although the Court held that Landmark had the statutory right to appeal pursuant to 8-8g(f), the issues raised by Landmark are not yet ripe for adjudication. As shown, a zone change cannot be approved without an approved FSP, which has not yet been applied for, let alone approved. Landmark's request for a zone change now directly

contradicts its own zoning regulation. In light of that regulation, and the Frazzini decision, there is no basis for the Court to grant a zone change at this point in the proceedings.

Similarly the modifications attached to the approved PSP do not mandate Landmark to do or provide anything that was not already required for its PSP or will be required for its FSP. Any claims now on appeal regarding the PSP will undoubtedly be before the Commission again when Landmark submits its FSP.

For the reasons stated herein the Commission requests that the appeal be dismissed.

THE DEFENDANT  
EAST LYME ZONING COMMISSION

By 

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**CERTIFICATION**

This is to certify that a copy of the foregoing was emailed and mailed, postage prepaid, on this 24<sup>th</sup> day of May, 2019, to the following:

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Mark S. Zamarka

DOCKET NO. LND-CV-15-6064232	:	SUPERIOR COURT
LANDMARK DEVELOPMENT GROUP LLC AND JARVIS OF CHESHIRE LLC	: : :	LAND USE DOCKET AT HARTFORD
V.	:	
EAST LYME ZONING COMMISSION	:	MAY 24, 2019

**INTERVENORS' BRIEF**

**I. INTRODUCTION**

This case is part of an ongoing dispute between the Plaintiffs, Landmark Development Group, LLC and Jarvis of Cheshire, LLC (hereinafter “the Applicants”), the Defendant East Lyme Zoning Commission (hereinafter “the Commission”), and the “Environmental Intervenors”<sup>1</sup> over a proposed residential housing development alongside the Niantic River in the Oswegatchie Hills area of East Lyme. This area is a unique and environmentally sensitive parcel of land where several judicial decisions have noted profound environmental concerns. In the present case, the Applicants have submitted an Application for Rezoning of 123.2 Acres to an Affordable Housing District (“AHD”) and Preliminary Site Plan Approval (“the Application”). The Commission conditionally approved the Application, but limited the requested zone change to the portion of the property located within the East Lyme Public Sewer Service District (“PSSD”). The Applicants now seek judicial review of the Commission’s conditional approval and allege that the Commission illegally restricted the AHD zone to the PSSD and placed inappropriate conditions on the Preliminary Site Plan approval. However, the Applicants’ request for judicial review is unripe for adjudication because the Commission’s decision was not final.

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<sup>1</sup> The Environmental Intervenors are Connecticut Fund for the Environment, Inc., Friends of the Oswegatchie Hills Nature Preserve and Save the River Save the Hills.

Rather, its decision was preliminary and non-binding because the Commission cannot, under a regulation that was negotiated and agreed to by the Applicant, render a final decision until it has approved a Final Site Plan. An earlier court order also conditions approval of the Applicants' requested zone change on the Commission's receipt of mandatory environmental information in either a Preliminary Site Plan or a Final Site Plan pursuant to an earlier judicial order. Because the Applicants have not submitted this information in their Preliminary Site Plan, the Commission cannot make a final decision on the application until it has received a Final Site Plan that includes the requisite information.

Moreover, the Commission's decision to limit the Applicants' requested zone change to the PSSD was necessary to protect substantial public interests in health and safety as authorized by Conn. Gen. Stat. § 8-30g and to protect the public trust in the land, water and other resources of the state as authorized by the Connecticut Environmental Protection Act, Conn. Gen. Stat. § 22a-19. The Commission supports its decision with substantial evidence in the record that has not been rebutted, or even meaningfully addressed, by the Applicants. Thus, this Court should either dismiss or deny the Applicants' appeal.

## **II. STATEMENT OF FACTS**

This case is the Applicants' administrative appeal from the Commission's decision to conditionally approve the Applicants' Preliminary Site Plan and application to rezone their property as an AHD. *See Conditional Approval of Zone Change and Approval with Modifications of Preliminary Site Plan Application ("Conditional Approval") (ROR PH 13 August 20, 2015 Zoning Commission Decision).*

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 Oswegatchie Hills makes up one of the largest areas of undeveloped open space in East Lyme and along the Southeastern Connecticut Shoreline. *See Landmark Dev. Grp., LLC v. E. Lyme Zoning Comm'n*, 2004 WL 2166353, at \*1 (Conn. Super. Ct. Sept. 7, 2004, Quinn, J.) (“*Landmark I*”). As such, East Lyme has long recognized the importance of preserving Oswegatchie Hills as open space in its Town Plan of Conservation and Development. *Id.* at \*12. In addition, the General Assembly designated Oswegatchie Hills as a Conservation Zone and has also established the Niantic River Gateway Commission to safeguard the natural character of the area. *Id.* at \*8.

In short, the Oswegatchie Hills are a “property that includes and borders upon natural resources of significant value to both the residents of East Lyme and the State as a whole.” *Landmark Dev. Grp., LLC v. E. Lyme Zoning Comm'n*, 45 Conn. L. Rep. 63, 2008 WL 544646, at \*10 (Conn. Super. Ct. Feb. 2, 2008, Prescott, J.) (“*Landmark II*”). Coastal resources observed near the Applicants’ property include shorelands, inland wetlands and watercourses such as vernal pools, shellfish concentration areas, and rocky shorefront and estuarine embayments. (ROR, Exh 10 *CT DEEP Referral Response* at 5). These resources provide critical habitat for a host of terrestrial and marine flora and fauna. (*Id.* at 11). For example, the vernal pools and wetlands in this area provide habitat for amphibians and wood frogs. (*Id.*). The Niantic River itself supports a diverse assemblage of fish, ranging from freshwater to saltwater fish that includes popular fishing species like striped bass, bluefish, and hickory shad. (*Id.* at 9).

Development within the Oswegatchie Hills “would severely impact the public interest in preserving this unique and important property. . . .” *Landmark II*, 2008 WL 544646 at \* 11. The Niantic River is acutely sensitive to nitrogen loading from nonpoint sources such as septic systems and stormwater runoff. *Id.* High levels of nitrogen would overload the Niantic River and cause nuisance algae blooms that would suffocate aquatic life and lead to eelgrass demise. *Id.* The eelgrass beds are particularly vital to the maintenance of the ecosystem and marine life of the Niantic River. *Id.* Fish species like the aforementioned bass, bluefish, and shad, would be similarly jeopardized by excessive nitrogen loading of the river. *Id.*, at \*9. In turn, adverse effects to the Niantic River will lead to the decline of the coastal resources of Long Island Sound because the two watersheds “form an integrated natural estuarine ecosystem.” *Id.* \*10. Hence, any pollution runoff from the Oswegatchie Hills will invariably result in detrimental impacts to the Niantic River and Long Island Sound.

Yet, despite the environmental sanctity of the area, and the fact that any development would disturb the integrity of the natural area and degrade the water quality of the impacted waterbodies, the Applicants have on three prior occasions sought the Commission’s approval to develop affordable 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 the comprehensive plan for the town in 1967, an open space acquisition plan in 1974, a

1977 report recommending purchase of the property outright by the town for preservation, East Lyme's 1987 revision to its plan of development, the legislature's designation of the area as a "Conservation Zone," 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.

Moreover, as Judge Quinn concluded, 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." (Citing *Landmark I*).

The third case was decided in 2011 by Judge Frazzini, and the instant matter is a remand of that proceeding.

Here, the Applicants seek to construct a high density affordable housing development. 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. In his 2011 decision, Judge Frazzini found,

[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.

*Landmark Dev. Grp., LLC v. E. Lyme Zoning Comm'n*, 2011 WL 5842576, at \*41 (Conn. Super. Ct. Oct. 31, 2011) (*Landmark III*). The court also ordered the town to amend their zoning regulations to require that all AHD applications must include the submission of pertinent environmental and coastal management information. The Commission complied with this order through its adoption of § 32.9 of the East Lyme Zoning Regulations (“Regulations”).

It is important 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 by the Applicants. At the hearing, 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).

On March 4, 2015, the Applicants reapplied for a zone change and included a Preliminary Site Plan. The Intervenors submitted an environmental intervention under Conn. Gen. Stat. § 22a-19, and were granted status as parties by the decision of the Commission on May 21, 2015. Subsequently, on May 21, June 4, and June 18, 2015, the Commission held public hearings regarding the Application. Evidence was entered into the record from a variety of sources, including but not limited to the Connecticut Department of Energy and Environmental Protection (“DEEP”), the Intervenors, and the East Lyme Harbor Management/Shellfish Commission.

## **Coastal Management Act**

The Director of the Office of Long Island Sound Programs of DEEP submitted a letter stating 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.

## **Stormwater and Wetlands**

Steve Trinkaus, a licensed professional engineer of Trinkaus Engineering, LLC, provided testimony on behalf of the Intervenors. Mr. Trinkaus found that "the design proposed by the applicant[s] will cause adverse physical and chemical impacts to the down gradient wetlands and

watercourses on [the] site.” (ROR Exh. 26, *Letter to Friends of the Oswegatchie Hills Nature Preserve and Save the River Save the Hills from Trinkaus, May 2, 2015*). He stated that the Applicants’ stormwater management proposal consists of four Water Quality Basins. However, because all four Basins are located on steep slopes, the “discharge of concentrated flow onto this slope . . . will cause a channel to be eroded in the upland area as the natural slope does not currently experience concentrated runoff.” (*Id.*). Thus, the concentrated flow discharge from all Basins will “result in eroded material being conveyed and discharged into the down gradient wetlands.” He also pointed out that for the proposed drainage discharges along the access driveway, “there is no water quality treatment proposed . . . so pollutants . . . will be discharged directly into the Niantic River.” Furthermore, since the Applicants propose 36 acres of impervious parking spaces, the site “will generate substantial pollutant loads during every rainfall.” (*Id.*). The Applicants failed to respond to or rebut this evidence in any matter, leaving it uncontested.

### **On-site sewage disposal**

Mr. Trinkaus further provided testimony about the impact of on-site sewage disposal systems on the site in a June 16, 2015 letter. (ROR Exh. 44, *Trinkaus Engineering LLC letter, June 16, 2015*). Based upon a review of a previous plan submitted to develop the property, he was able to determine the soil and depth of bedrock information. He concluded that subsurface systems would have to rely on engineered soils and would greatly increase potential adverse impacts to freshwater wetland systems due not only to the systems themselves, but to the construction. (*Id.*)

### **Wetlands Location**

Testimony by Soil Scientist John Ianni established that the Applicants had failed to properly identify and delineate a significant vernal pool containing wetland that was on their property. Mr. Ianni discovered a vernal pool on the adjoining property that extended significantly onto the Applicant's property in the area of the Application's building No. 5. (See ROR PH 12 *Transcript of June 18, 2015 Public Hearing* pp. 73-74, and ROR Exh. 48. *Friends of Oswegatchie Hills Presentation*). Yet again, the Applicants did not seek to rebut, contradict, or respond in any manner to this evidence that the Application had severely and substantively mischaracterized the location of wetlands on the site.

The Chairman of the East Lyme Harbor Management/Shellfish Commission also provided evidence of the harmful environmental impact of the development. He stated that "[t]he soil and bedrock conditions amid steep slopes on this hill do not provide good conditions for on-site sewage disposal and high-density development in this area would result in increased levels of non-point source pollutants, including excess nutrients and coliform bacteria that would threaten existing shellfisheries." (ROR Exhibit 22 *Harbor Management Referral Response*, May 13, 2015). Accordingly, the Chairman urged the Commission to deny the zoning change request. Once again, the Applicants failed to address or rebut this evidence.

After holding the public hearings, the Commission conditionally approved the Applicants' application on August 20, 2015. In relevant part, the Conditional Approval provided:

- a. The change of the zone shall apply only to the portion of the Applicants' property that is located within the PSSD of East Lyme;
- b. The Applicants must submit a Final Site Plan in accordance with § 32.9.2.
- c. The Applicants must, prior to or contemporaneous with applying for Final Site Plan approval, (1) apply for and receive an Inland Wetlands Permit from the East Lyme Inland Wetlands Agency; (2) provide an accurate depiction of wetlands

locations on the property and submit an application for coastal site plan review pursuant to Conn. Gen. Stat. § 22a-105(b); and (3) provide the Commission with the information necessary for the Commission to assess the environmental and coastal impacts of the proposed zone change including, *inter alia*, a stormwater management plan and a plan that resolves property drainage issues.

(ROR PH 13 August 20, 2015 *Zoning Commission Decision*). The Commission advanced the following reasons, among others, for its recommended limitation of the Applicants' zone change:

- a. The Applicants have not submitted the information necessary for the Commission to assess actual environmental or coastal resources impacts;
- b. Notwithstanding the Applicants' failure to submit environmental information, the Commission has determined that there is sufficient evidence in the record that the Applicants' proposed zone change for the entire property would pose an adverse impact on coastal resources and water quality;
- c. There is sufficient evidence in the record that the proposed zone change is likely to impact or affect wetlands and/or watercourses;
- d. There is sufficient evidence in the record that at least part of the proposed development may be located in a wetlands area;
- e. Pursuant to Conn. Gen. Stat. § 22a-19, there is sufficient evidence in the record that the proposed zone change would result in activity that is reasonably likely to unreasonably affect the public the public trust in land, air, water or other natural resources, and that feasible and prudent alternatives exist.

(*Id.*)

Subsequent to the Commission's publication of their Conditional Approval, the Applicants filed their appeal pursuant to Conn. Gen. Stat. §§ 8-8 and 8-30g, arguing that the Commission had no legal right to limit the Applicants' requested zone change to the PSSD. The Intervenors filed a Motion to Dismiss the Applicants' claim, but that motion was denied on September 18, 2018. Memorandum of Decision, *Landmark Dev. Grp., LLC v. E. Lyme Zoning Comm'n*, No. LND-CV-15-6064232-S (Sep. 18, 2018) (Berger, J.).

### **III. STANDARD OF REVIEW**

This administrative appeal arises under Conn. Gen. Stat. §§ 8-30g and 22a-19. Section 8-30g provides, in relevant part, that “the burden shall be on the commission to prove, based upon the evidence in the record compiled before such commission, that the decision from which such appeal is taken and the reasons cited for such decision are supported by sufficient evidence in the record.” Conn. Gen. Stat. § 8-30g(g). The statute continues,

The commission shall also have the burden to prove, based upon the evidence in the record compiled before such commission, that (1) (A) the decision is necessary to protect substantial public interests in health, safety or other matters which the commission may legally consider; (B) such public interests clearly outweigh the need for affordable housing; and (C) such public interests cannot be protected by reasonable changes to the affordable housing development, or (2) (A) the application which was the subject of the decision from which such appeal was taken would locate affordable housing in an area which is zoned for industrial use and which does not permit residential uses; and (B) the development is not assisted housing. If the commission does not satisfy its burden of proof under this subsection, the court shall wholly or partly revise, modify, remand or reverse the decision from which the appeal was taken in a manner consistent with the evidence in the record before it.

Conn. Gen. Stat. § 8-30g(g).

The Connecticut Environmental Protection Act provides that in any administrative or licensing proceeding, no conduct shall be authorized that is reasonably likely to unreasonably pollute, impair or destroy the public trust in the air, water or other natural resources of the state. Conn. Gen. Stat. § 22a-19. The failure to comply with an environmental requirement of a regulatory scheme constitutes a violation of CEPA. *See, Finley v. Inland Wetland Commission of the Town of Orange*, 289 Conn. 12, 41-42 (2008) (finding that town’s failure to require compliance with soil and sedimentation regulations constituted a violation of CEPA).

#### **IV. LANDMARK'S PRELIMINARY SITE PLAN IS NOT RIPE FOR APPEAL TO THE SUPERIOR COURT**

As argued previously, the Intervenors believe that this Court lacks subject matter jurisdiction to hear this matter because it is unripe for adjudication. Accordingly, the Intervenors respectfully seek this Court's reconsideration of their ripeness argument in light of the current and continuing posture of the case and new information from the transcript record.

Whether or not the Applicants gets a positive ruling on this appeal, neither the site plan nor the AHD can be final because:

- (1) Judge Frazzini's ruling requiring additional environmental information in a preliminary or final site plan is the law of the case until appealed,
- (2) The regulations drafted and agreed to by the Applicants explicitly address this question, and
- (3) Principles of ripeness, finality and justiciability apply to Conn. Gen. Stat. § 8-30g in the same manner they would apply to any statute.

Regardless of the result, the Applicants will have to submit information on coastal, stormwater and wetland impacts and respond to the concerns raised by Frazzini and the Commission and ultimately pursue a final site plan. Thus, any decision by the court would be wholly hypothetical and would have no concrete impact upon the rights of the parties.

Ripeness is an issue regarding justiciability that implicates the court's subject matter jurisdiction. *Hamilton v. United Services Automobile Assn.*, 115 Conn. App. 774, 781, *cert. denied*, 293 Conn. 924 (2009). The rationale behind the ripeness requirement "is to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a *concrete way* by the challenging parties." *Nizzardo v. State Traffic Comm'n*, 259 Conn. 131, 144-45

(2002) (Internal quotation marks omitted; emphasis added). Thus, “in determining whether a case is ripe, a trial court must be satisfied that the case before [it] does not present a *hypothetical injury* or a claim contingent upon some event that has not and indeed may never transpire.” *Chapman Lumber v. Tager*, 288 Conn. 69, 86-87 (2008) (Internal quotation marks omitted; emphasis added).

It is important to note that this proceeding does not involve a conceptual site plan. The conceptual site plan was addressed in the proceedings before Judge Frazzini. The result of those proceedings was as follows:

Without the types of information sought by the DEP . . . 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. East Lyme Zoning Comm’n*, No. HHBCV064016813S, 2011 WL 5842576 at \*42 (Conn. Super. Ct. Oct. 31, 2011) (emphasis added)).

Thus, according to Judge Frazzini’s decision, a final approval is not allowed until substantial additional environmental information has been provided. Because it has not been, and to the extent it has been it is wholly inadequate and inaccurate, the Applicants are just rehashing arguments that they made, and lost, in the earlier appeal.

The law of the case doctrine addresses the binding effect of a court's prior ruling in the same case and holds that until reversed, a judicial ruling will bind the parties and cannot be

further contested. *Bowman v Jack's Auto Sales*, 54 Conn.App. 289, 293 (1999) *citing* 2 E. Stephenson, *Connecticut Civil Procedure* (2d Ed.1971) § 354, p. 185. While the law of the case is a flexible doctrine, it is well established that a judge should be hesitant to overrule his or her own rulings in a matter, and even more so to overrule a decision of a separate judge. *Id.* *citing Breen v. Phelps*, 186 Conn. 86, 99 (1995). Section 8-30g of the General Statutes allows for, but does not require, a conceptual site plan and is silent on the need for a preliminary or final site plan. Judge Frazzini's decision, however, explicitly addresses the matter and requires information to be submitted in a preliminary or final site plan before the AHD is finalized. Because the Applicants have provided no new substantive environmental information, they should not be allowed to challenge or modify Judge Frazzini's earlier ruling on the limited extent of the zone change.

Moreover, after Judge Frazzini's decision, the Applicants negotiated and agreed to the AHD regulations that provided that an application for AHD designation may not be approved without a final site plan. As set forth above, the Applicants' attorney clearly stated, "[I]n April 2013, Landmark and this Commission reached a settlement which was approved by another Superior Court judge, it's (inaudible) Section 32 revised form and that is at tab 3 or your March 4, 2015 materials. That is the regulation upon which we're going to proceed in tonight's proceeding" (ROR, PH 11 *Transcript of June 4, 2015 Public Hearing*, p. 20). Under these Regulations, the Commission cannot make a final decision on the status of an AHD application until it has approved a Final Site Plan. East Lyme Zoning Regs. § 32.9. Allowing the Applicants to negotiate and agree to a regulation, and then turn around and challenge it as discriminatory or somehow inappropriate, would violate fundamental principles of fairness and finality. It would also be a substantial waste of scarce and valuable judicial resources.

The Application failed to include information necessary for the Commission to assess environmental or coastal resource impacts as required by the earlier decision and the regulation. This was substantially documented by letters from DEEP, the East Lyme Harbor Management/Shellfish Commission, a wetlands scientist, the wetlands commission, and an engineer. *See supra*, at pp. 7-9. Therefore, final approval of the Applicants' approved Preliminary Site Plan is wholly conditioned on the Commission's receipt of a Final Site Plan that *includes* the requisite additional information. Because Landmark has neither submitted its Final Site Plan, nor the mandatory environmental information in its Preliminary Site Plan, the Commission's Conditional Approval is not a final decision. It follows that the Commission's current decision cannot be felt in a final, "concrete" way by the Applicants. *Nizzardo*, 259 Conn. at 144-45.

Likewise, in accordance with our Supreme Court's decision in *Tager*, the injury alleged by the Applicants is "hypothetical" because the Commission's approval of the Preliminary Site Plan is preliminary and nonbinding. *Tager*, 288 Conn. at 86-87. Until the Applicants submit a Final Site Plan to the Commission for its review, the Commission cannot make a final decision on their AHD application. East Lyme Zoning Regs. § 32.9. Until the Applicants reach this final phase of the application process, the Applicants' alleged injury is purely hypothetical.

The Applicants' submission of a Preliminary Site Plan was a purely voluntary first step in their quest to receive Final Site Plan approval and to rezone their property to AHD. Under Connecticut's General Statutes, there is no distinction between the "preliminary" and "final" site plan, and no separate procedures for appeal. Instead, they generally refer to a "site plan." *See generally* Conn. Gen. Stat. § 8-3(g) and § 8-8 *and compare to* East Lyme Zoning Regulations, §

32.9. Thus, there is no indication of any intent to allow appeals from preliminary or non-final site plans.<sup>2</sup>

Our Supreme Court's discussion in *Gerlt v. Planning & Zoning Comm'n of South Windsor*, 290 Conn. 300 (2009) is particularly relevant to the nature of the Preliminary Site Plan. In *Gerlt*, the Court found that a decision by a zoning commission to approve a "general plan of development" for the development of 232-acre property did not "constitute a [final] site plan governed by § 8-3(g) and [was] intended to be preliminary and nonbinding." *Id.* at 303. Importantly, the general plan of development is a direct analogue to the Preliminary Site Plan in this case. *See, e.g.*, Memorandum of Law in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction, *Landmark Dev. Group v. East Lyme Zoning Comm'n*, No. HHD-CV-15-6064232-S (Nov. 3, 2015) at 7-8. Like the Preliminary Site Plan, the general plan of development in *Gerlt* requires information on building layout, streets, water systems and impacts, open space and the intensity of development. *Gerlt*, 290 Conn. at 304 (similar to the function of the Preliminary Site Plan, the "purpose of the general plan is to provide for commission approval at an early stage in the planning of a project before [extensive] engineering is completed.") (alteration in original); *Id.* at 311 (likewise, the general plan was "primarily for the benefit of the developer," which holds true for the purpose of the Applicants' Preliminary Site Plan).

The *Gerlt* Court proceeded to affirm the trial court's view that the general plan served "to provide a mechanism for a voluntary, preliminary and informal review of the proposed

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<sup>2</sup> Moreover, another indication of this matter's lack of ripeness is that a full application was not submitted to the inland wetlands agency prior to any site plan proceedings, as required by Conn. Gen. Stat. § 8-3(g). Instead, the Commission indicated this was a requirement at the final site plan stage. Thus, it is clear that for the purposes of appeal and finality under 8-3(g), which gives the Commission its sole jurisdiction to require a site plan, the Final Site Plan was treated by the Commission, and indeed even the Applicant, as the actual site plan for purposes of a final decision and the Connecticut General Statutes.

development and that the commission's approval was advisory and did not vest any rights in [the developer]." *Gerlt*, 290 Conn. at 306. The ultimate holding in *Gerlt* was that the general plan could not contain provisions that were unable to be "revisited during . . . subsequent site plan proceedings." *Id.* at 311-12. In the instant matter, the goal of the Preliminary Site Plan is to advise the Applicants on what they must do in order to submit a successful Final Site Plan. The Preliminary Site Plan does not give the Applicants the right to develop today. The Commission has made a preliminary decision to limit the AHD district in light of sufficient environmental reasons in the record. Under *Gerlt*, and general principles of ripeness and justiciability, the Conditional Approval is a preliminary, advisory decision.

While Conn. Gen. Stat. § 8-30g allows appeals by "any person whose affordable housing application is denied, or is approved with restrictions which have a substantial adverse impact on the viability of the affordable housing district," there is nothing in that language or case law that waives the requirement that courts only hear appeals from final decisions or approvals with restrictions. That is, there is nothing in Conn. Gen. Stat. § 8-30g that states or implies that appeals are allowed from non-final or advisory decisions. Thus, pursuant to principles of ripeness and justiciability and our Supreme Court's holding in *Gerlt*, this Court does not have jurisdiction over a Preliminary Site Plan that is entirely voluntary, preliminary, and nonbinding.

Nor can the Applicants make the argument that even if the Preliminary Site Plan is not a final decision, that the zoning decision, independent of the Preliminary Site Plan, is somehow final. As set forth above, the unambiguous plain language of Section 32.9 of the AHD, which was crafted on Judge Frazzini's order, provides that "[a]n application for designation as an AHD cannot be approved without an approved FSP." Thus, a final zoning decision is wholly dependent upon a final site plan.

Thus, pursuant to principles of ripeness, justiciability and law of the case as well as the AHD regulation negotiated, and agreed to, by the Applicants, this appeal should be dismissed as unripe.

**V. UNDER THE DOCTRINE OF PRIMARY JURISDICTION, THIS COURT MAY POSTPONE ITS EXERCISE OF JURISDICTION**

The Intervenors have argued above that this Court does not have jurisdiction over this matter because the Applicants have not presented an issue ripe for appeal. However, if the Court decides that it does have jurisdiction, this Court may forbear from exercising its jurisdiction under the doctrine of primary jurisdiction until the Commission has received and ruled on essential information required by § 32.9 of the Regulations and Judge Frazzini's remand.

Under the doctrine of primary jurisdiction, both a trial court and an administrative agency possess concurrent jurisdiction over a complaint. *Second Injury Fund of the State Treasurer v. Lupachino*, 45 Conn. App. 324, 342-43 (1997). However, a court may abstain from exercising its jurisdiction where judicial review of an administrative proceeding is “materially aided by, the resolution of threshold issues, usually of a factual nature, which are placed within the special competence of the administrative body.” *City of Waterbury v. Town of Washington*, 260 Conn. 506, 575 (2002) (quoting *Golden Hill Paugussett Tribe of Indians v. Weicker*, 39 F. 3d 51, 58-9 (2d Cir. 1994)). In such case, “[c]ourt jurisdiction is not thereby ousted, but only postponed.” *Lupachino*, 45 Conn. App. at 349 (quoting *U.S. v. Phila. Nat'l Bank*, 374 U.S. 321, 353 (1963)) (alteration in original).

Here, this Court should permit the Commission to exercise its primary jurisdiction. To date, the Applicants have not submitted mandatory environmental materials or a Final Site Plan for the Commission's review. In 2011, Judge Frazzini held that “[t]he public interest may be protected . . . by directing the commission on remand to reconsider the zone change request for

the site plan area after Landmark has submitted a preliminary or final site plan and *provided* the information that the commission deems necessary to assess environmental damage to the area, coastal resources, and the interests protected by the coastal management act and conservation zone statute.” *Landmark Dev. Grp., LLC v. East Lyme Zoning Comm’n*, No.

HHBCV064016813S, 2011 WL 5842576, at \*29 (Conn. Super. Ct. Oct. 31, 2011) (emphasis added). In addition to Judge Frazzini’s order, the Regulations similarly require the Applicants to submit the mandatory environmental, coastal, and sewer-related information.

Importantly, the submission of the Final Site Plan and related information will, for the first time ever, provide the Commission with particularized knowledge of the extent of the environmental and coastal concerns associated with the Applicants’ proposed development. The Applicants have a legal obligation to submit this information, but they have failed to do so. Once the Commission actually receives this information, it may review it and act accordingly. At that time, the Commission will be able to resolve any “threshold issues” of a “factual nature,” *City of Waterbury* at 58-59, including whether its initial recommendation to limit the AHD to the PSSD was appropriate. However, because the Applicants have not yet reached this phase of the application process and have also failed to submit environmental information, it would be advantageous for this Court to permit the Commission to retain primary jurisdiction. Once the Commission renders a final decision on the Applicants’ application, this Court will have of a complete record of the Commission’s *final* factual findings and conclusions before it, should the Applicants decide to appeal any unresolved issues in that future decision.

**VI. THE COMMISSION IS JUSTIFIED IN LIMITING THE APPLICANTS' AHD ZONE TO THE PSSD.**

Notwithstanding the ripeness argument, the Commission's decision to limit the Applicants' requested zone change to the PSSD is justified in light of the record and Judge Frazzini's rulings in *Landmark III*. The Commission also relied upon substantial evidence in the record to demonstrate that its decision was necessary to protect substantial public interests in health and safety.

In *Landmark III*, Judge Frazzini found that there was sufficient evidence in the record to deny a zone change for the entire Applicants' property in order to prevent adverse impacts on environmental and coastal resources. *Landmark III*, 2011 WL 5842576, at \*41. The court found that (1) environmental and coastal impacts were of substantial public interest that the Commission could consider, and that (2) these impacts clearly outweighed the need for affordable housing. *Id.* In addition, the court ordered East Lyme to amend its Regulations to require AHD applications to disclose environmental and coastal management issues so that the Commission could adequately assess these issues. *Id.* at \*40. East Lyme has complied with that order by adopting § 32.9 of the Regulations. Pursuant to the amended Regulations, the court also ordered the Applicants to provide adequate information regarding environmental and coastal issues in their preliminary site plan or final site plan. *Id.* Importantly, the court found,

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.

*Id.* at \*41 (emphasis added). In conformance with this order, the parties negotiated and agreed to the AHD regulation to achieve exactly this. *See infra* p. \_\_. However, the Applicants have failed to comply with the terms of the order or with the negotiated AHD regulation.

To date, the Applicants have failed to submit the mandatory information in their Preliminary Site Plan or otherwise. Because the Commission has not obtained this information, it cannot proceed 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 . . . . *Id.* Accordingly, the Commission’s most recent decision to limit the Applicants’ AHD zone to the PSSD was not premised on the consideration of any new facts different from those before the Commission in *Landmark III*. Therefore, the Commission’s decision to limit the requested zone change is factually and legally identical to its previous decision to do so—a decision that was upheld by Judge Frazzini.

There is substantial evidence in the record to support the Commission’s decision that its Conditional Approval was necessary to protect substantial public interests in health and safety. Accordingly, the Commission has met its burden of proof under Conn. Gen. Stat. § 8-30g. Conn. Gen. Stat. § 8-30g provides, in relevant part,

The commission shall . . . have the burden to prove, based upon the evidence in the record compiled before such commission, that (1) (A) the decision is necessary to protect substantial public interests in health, safety or other matters which the commission may legally consider; (B) such public interests clearly outweigh the need for affordable housing; and (C) such public interests cannot be protected by reasonable changes to the affordable housing development . . . .

Conn. Gen. Stat. § 8-30g(g). Our Supreme Court has clarified that the § 8-30g burden requires a zoning commission to show “that there is more than a mere theoretical possibility, but not

necessarily a likelihood, of a *specific* harm to the public interest if the application is granted.” *River Bend Assoc., Inc. v. Zoning Comm’n of Simsbury*, 271 Conn. 1 (2004) (emphasis added).

Here, the Commission has sufficiently demonstrated that specific harms to public health and safety will occur if the AHD zone is not limited to the PSSD. Pursuant to § 32.9 of the Regulations, adequate information was required by the Commission with respect to the following:

- (1) the correct location of the wetlands and watercourses on site, as required by **Regulation § 32.9.1.C**;
- (2) coastal zone resources information, as required by **Regulation § 32.9.1.H**.
- (3) preliminary stormwater management plan by **Regulation § 32.9.1.G**
- (4) water supply location, sewage disposal, and how sewage systems would be operated and maintained, as required by **Regulation § 32.9.1.F**;

The Applicants have failed to provide any of this information, and the Commission cites that failure as a reason to support its decision to protect valid public interests.

#### **§ 32.9.1.C – Location of wetlands**

Specifically, there is credible, un rebutted testimony on the record that the Applicants have failed to provide the correct location of wetlands. Soil Scientist John Ianni on behalf of the Intervenor Friends of the Oswegatchie Hills Nature Preserve (FOHNP) stated that he had identified a wetland on the property of FOHNP that had significant resources including wood frog and spotted salamander breeding. (See ROR PH 12 *Transcript of June 18, 2015 Public Hearing* pp. 73-74, and ROR Exh. 48. *Friends of Oswegatchie Hills Presentation* pp. 1-3; 14-16; 19-34). He further stated that wetland extended on to the Applicants’ property specifically in the area proposed by building No. 5 in the Applicants’ plan and as a result he concluded that there were “significant unmapped wetland resources on the land of the Landmark Development, specifically the area of proposed building number 5.” (*Id.*) Additional testimony from Mike Dunn of FOHNP presented pictures that were taken of the unidentified wetland from FOHNP property that showed that the

wetland extended substantially into the footprint of building No. 5. (ROR PH 12, *supra*, pp. 75-78; ROR Exh. 48. *Friends of Oswegatchie Hills Presentation* pp. 103; 19-34). The Applicants made no attempt to rebut this evidence or respond to it in any manner.

### **§32.9.1.H – Coastal Zone Management Application**

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 2). Thus, DEEP reviewed the information, found the Application to be “flawed and premature,” and on that basis recommended denial of the proposed zone change and preliminary site plan. (*Id.* p. 3).

OLISP finds the proposed zone change and site plan at this location inconsistent with the policies and standards of the CCMA based on severe development constraints, the potential to adversely impact resources and water quality, and inconsistency with the Town's Plan of Development, Municipal Coastal Program and Harbor Management Plan. The proposal would allow for inappropriately intensive development to be proposed in the Oswegatchie Hill region of East Lyme in an area incapable of supporting intensive development without potentially significant environmental consequences. A coastal site plan evaluation to address CCMA consistency has not been submitted, and basic details of environmental and coastal resource information are missing.

The subject site is characterized by both shallow depth-to-bedrock and steep slopes which, as noted previously, would necessitate significant alterations of the site to provide suitable land for road access, community septic, or water and sewer service, and the inhabited structures. Such alteration of this natural area would create significant stormwater runoff that would adversely impact coastal resources and water quality. Such a development could also cause potential sedimentation and erosion, nitrogen loading, and impacts on SAVs, finfish, shellfish and wildlife on the site, along Latimer Brook, the Niantic River, and ultimately Long Island Sound.

(*Id.* at pp. 2-3). Information from the Harbor Management/Shellfish Commission further provides that high-density development would threaten species due to excess coliform bacteria and nutrient loading. (ROR Exhibit 22 *Harbor Management Referral Response*, May 13, 2015).

Thus, the Applicants have failed to comply with Judge Frazzini's order to submit environmental information to enable coastal review and DEEP has unambiguously recommended denial based upon these grounds.

#### **§32.9.1.G – Preliminary Stormwater Management Plan**

Steve Trinkaus, of Trinkaus Engineering, concluded that, the site plans and stormwater did not meet the requirements of Section 32.9.1.G because (1) the stormwater management report makes statements that the water quality basins will have an infiltrative component to them but no factual evidence in the form of soil testing has been provided to support this and (2) the plan proposes to use drywells to infiltrate roof runoff but no soil data is provided to show this concept will work. (ROR Exh 44, *Trinkaus Engineering LLC letter, June 16, 2015*).

He specifically found that “the [stormwater] design proposed by the Applicant[s] will cause adverse physical and chemical impacts to the down gradient wetlands and watercourses on [the] site.” (ROR Exh. 26, Trinkaus Letter, *supra*). He stated that the Applicants' stormwater management proposal consists of four Water Quality Basins. However, because all four Basins are located on steep slopes, the “discharge of concentrated flow onto this slope . . . will cause a channel to be eroded in the upland area as the natural slope does not currently experience concentrated runoff.” (*Id.*). Thus, the concentrated flow discharge from all Basins will “result in eroded material being conveyed and discharged into the down gradient wetlands.” He also pointed out that for the proposed drainage discharges along the access driveway, “there is no water quality treatment proposed . . . so pollutants . . . will be discharged directly into the Niantic

River.” Furthermore, since the Applicants propose 36 acres of impervious parking spaces, the site “will generate substantial pollutant loads during every rainfall.” (*Id.*).

DEEP also noted that the large amount of impervious surface would create significant stormwater that would negatively impact water resources and that the preliminary stormwater plan, showing a conventional stormwater plan, would not address that. (ROR, Exh. 10 pp. 6-7). They also pointed out that the stormwater basin sizing relied heavily on siting the basins within suitably well drained soils, which is unlikely given on-site soil and rock conditions. (*Id.*). “Contrary to the claim that propose water quality basins are located in "moderate to moderately rapid permeability soils with deep ground water table", the USDA -NRCS selected soil interpretations (attached) in fact note the primary Hollis-Chatfield and Charlton-Chatfield soils as very limited for infiltration systems.” (*Id.*).

The Applicants failed to respond to or rebut this evidence in any matter, leaving it uncontested that their preliminary stormwater plan was inadequate to prevent significant stormwater damage.

**§32.9.1.F – Sewage disposal locations, ownership, operation and maintenance.**

The Applicants have also failed to supply adequate information about sewage disposal and how sewage systems would be operated and maintained. This is in contravention of § 32.9.1.F of the Regulations. Nonetheless, the East Lyme Harbor Management/Shellfish Commission and DEEP have entered evidence into the record that found that on-site septic is not a viable option. This finding has gone un rebutted by the Applicants. The Harbor Management/Shellfish Commission provided that on-site sewage disposal and high-density development in the area outside of the PSSD would result in increased levels of non-point source pollutants that would harm shellfisheries. (ROR Exhibit 22 *Harbor Management Referral Response*, May 13, 2015).

DEEP has similarly found that the Applicants' proposed development would necessitate significant alterations of the site to prepare the land for road access and community septic. (ROR, Exh 10 *CT DEEP Referral Response* at 5). These alterations would create substantial stormwater runoff that would cause nitrogen loading of the Niantic River. As such, both the DEEP and the Harbor Management/Shellfish Commission recommended the denial of the Applicants' requested zone extension.

### **Reasonable Changes**

Lastly, Conn. Gen. Stat. § 8-30g(g) requires an agency to demonstrate that its decision against affordable housing cannot be protected by reasonable changes to the affordable housing development. Here, the Commission has proposed a reasonable change to the AHD to protect environmental and coastal resources by limiting the Applicants' development to the PSSD. This decision simultaneously follows Judge Frazzini's holding, protects significant public interests, and permits the Applicants to proceed with their AHD application.

### **VII. THE COMISSION APPROPRIATELY FOUND THAT THE DENSE DEVELOPMENT WAS INCONSISTENT WITH EAST LYME REGULATIONS AND CEPA**

Because the development is inconsistent with Judge Frazzini's decision and with the environmental provisions of East Lyme's AHD regulation, it is also inconsistent with CEPA.

Under CEPA, our legislature has stated that it is the "policy of the state of Connecticut . . . to conserve, improve and protect its natural resources and environment and to control air, land and water pollution in order to enhance the health, safety and welfare of the people of the state."

Conn. Gen. Stat. § 22a-1. In any administrative proceeding such as this one, the Commission

shall consider the alleged unreasonable pollution, impairment or destruction of the public trust in the air, water or other natural

resources of the state and no conduct shall be authorized or approved which does, or is reasonably likely to, have such effect as long as, considering all relevant surrounding circumstances and factors, there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare.

Conn. Gen. Stat. § 22a-19(b).

A violation of the environmental provisions of the Regulations is a violation of § 22a-19 of CEPA. Our Supreme Court has held that when there is a regulatory scheme in place for purposes of environmental protection, any conduct that fails to comply with those regulations violates CEPA. *City of Waterbury v. Town of Washington*, 260 Conn. 506, 557 (2002) (“when there is an environmental legislative and regulatory scheme in place that specifically governs the conduct that the plaintiff claims constitutes an unreasonable impairment under CEPA, whether the conduct is unreasonable under CEPA will depend on whether it complies with that scheme.”). In 2008, our Supreme Court additionally held that a party can demonstrate a violation of CEPA when an administrative agency has failed to comply with the statutes or regulations that govern the environmental impacts of the proposed conduct in question. *Finley v. Inland Wetlands Comm’n of Orange*, 289 Conn. 12, 40 (2008) (“an intervenor pursuant to § 22a-19 can prevail . . . by proving that the commission’s decision was not based on a determination . . . that the development complied with governing statutes and regulations and would not cause such harm [to the wetlands].”). The *Finley* Court held that because the Orange Inland Wetlands and Watercourses Commission (IWCC) did not make a determination that the proposed development met the applicable wetlands regulations, the intervenors had successfully demonstrated that the IWCC did not comply with CEPA. *See id.* at 43.

Here, it is evident that § 32.9 of the Regulations gives rise to an environmentally-based regulatory scheme that is meant to provide the Commission with information about wetlands and

watercourses, stormwater control, sewage disposal, and coastal resources information. Pursuant to the Regulations, adequate information was required by the Commission with respect to the following: (1) the correct location of the wetlands and watercourse on site, as required by Regulation § 32.9.1.C; (2) water supply location, sewage disposal, and how sewage systems would be operated and maintained, as required by Regulation § 32.9.1.F; (3) preliminary stormwater plan required by Regulation § 32.9.1.G; and (4) coastal zone resources information, as required by Regulation § 32.9.1.H. However, the Commission has received un rebutted information about environmental harm in each of these areas from DEEP, the East Lyme Harbor Management/Shellfish Commission and the intervenors, and has not yet received any contrary information from the Applicants. Unless and until the Applicants provide complete and adequate submissions in each of these areas, their conduct has been shown to be reasonably likely to unreasonably impair, pollute or destroy the natural resources of Oswegatchie Hills in violation of *Washington* and *Finley*

CEPA also requires consideration of feasible and prudent alternatives to the destructive conduct. In this case, the Commission identified limitation of the development to the PSSD as such an alternative.

## VIII. CONCLUSION

For the reasons presented above, the environmental Intervenors respectfully request that this Court dismiss or deny the Applicants' appeal.

INTERVENORS  
CONNECTICUT FUND FOR THE ENVIRONMENT  
SAVE THE RIVER – SAVE THE HILLS  
FRIENDS OF OSWEGATCHIE HILLS NATURE PRESERVE



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**CERTIFICATION**

I certify that a copy of the above was or will immediately be mailed or delivered electronically or non-electronically on July 11, 2018 to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

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By: Roger F. Reynolds, Esq.

## Jennifer Lindo

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**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

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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**<sup>®</sup>

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.  
Save the Sound  
900 Chapel Street, UM Level  
Suite 2200  
New Haven, CT 06510  
Ph: (203) 787-0646 x105  
[rreynolds@savethesound.org](mailto:rreynolds@savethesound.org)

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

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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](mailto: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

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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.

A handwritten signature in blue ink that reads "Kristin S. Lambert". The signature is written in a cursive style.

Kristin S. Lambert President

October 1, 2020

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

I am writing to you to express my opposition to the proposed amendment to the East Lyme affordable housing regulations related to the Landmark Development property.

Thank you for your consideration.

A handwritten signature in black ink that reads "Jonathan G. Lincoln". The signature is written in a cursive style with a large initial "J" and a stylized "L".

Jonathan G. Lincoln  
37 Hillwood Dr.  
Niantic, CT 06357



September 30, 2020

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

I am writing to you as President of Save the River-Save the Hills to oppose the Application of Landmark Development Group, et. al., for Amendment to the East Lyme Affordable Housing (AHD) regulations. We are a non-profit 501(c)(3) grassroots environmental organization based on the Niantic River Estuary in Connecticut. Our organization is dedicated to preserving the health of the Niantic River Estuary, its Watershed in the towns of East Lyme, Montville, Salem and Waterford, and the natural beauty of the Oswegatchie Hills.

It is our longstanding position that the best use of the fragile coastal forest is as open space to protect the Niantic River Estuary of Long Island Sound. The land and the water are natural treasures, to be protected now and for future generations.

The Niantic River estuary is a unique habitat for Long Island Sound. While the River is safe for swimming and fishing, the habitat struggles due to nitrogen pollution coming from the people living in the watershed (the area of land that drains to the Niantic River via streams, rivers, and groundwater), coupled with rising temperatures.

The Connecticut Department of Energy and Environmental Protection (CTDEEP) has listed the Niantic River on the impaired waters list of the State of Connecticut (Clean Water Act, 33 U.S.C. §§1313 and 1315); the river is impaired as a habitat for marine fish, other aquatic life, and wildlife. Potential causes for this impairment include eutrophication resulting from nutrients, with sources such as industrial point-source discharges, illicit discharges, remediation sites, ground-water contamination, and insufficient septic systems (Connecticut Department of Energy and Environmental Protection, 2012). Other more general sources of elevated nutrients include atmospheric deposition, stormwater runoff, and ground-water discharge from developed areas, including discharge from septic systems adjacent to the Niantic River.

The proposed text changes to East Lyme's existing AHD regulations appear to be a blatant move by Landmark Development to avoid providing detailed environmental information and development plans to the town's regulatory agencies for their review and final decisions.

Past judicial decisions in the ongoing litigation (Superior Court, Judge Frazzini, J.) have already found that insufficient information was submitted by Landmark Development to the Zoning Commission to make a final decision on the proposed development. The judge remanded the decision back to the Commission to create a preliminary and/or final site plan process to gather such environmental information. Reverting to the use of a Master Plan approval process, with watered-down provisions, as proposed by Landmark, would allow the developer to obtain approval to build in Oswegatchie Hills before providing the meaningful environmental information required by judges who have already ruled that Landmark should provide this information to the Zoning Commission.

Zoning regulations are designed to be applied fairly to ALL proposed projects in town. For five years, the Town of East Lyme and other developers have effectively used the existing AHD regulations, which Landmark Development participated in writing, to obtain several affordable housing approvals in town.

We respectfully request that you recognize the proposed text changes for what they are - self-serving changes aimed at pushing through one project - and not accept them.

*Fred Grimsey*

Fred Grimsey, President  
Save the River-Save the Hills

**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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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

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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.