

EASTLYME ZONING COMMISSION

Regular Meeting, January 6, 2022. 7:30 PM

East Lyme Town Hall, main room

Members Present: Chairman Terence Donovan, Norm Peck, Bill Dwyer, Anne Thurlow, Debbie Jet-Harris, Terry Granatek, Jay Ginsberg, Alt., Denise Markovitz, Alt.,

Members Absent: Dave Schmitt, Alt.

Also Present: Bill Mulholland, Zoning Official, Rose Ann Hardy, Ex-Officio

Call to Order: Chairman Donovan called the meeting to order at 7:30 and the Pledge of Allegiance was recited

I. PUBLIC DELEGATION: none

II. EXECUTIVE SESSION-Pending Litigation

1. Drabik Amateur Radio Tower

2. Landmark

MOTION: (Peck/Thurlow) to go into Executive Session for the purpose of discussing Pending Litigation. (7:31) Vote: APPROVED unanimously.

Executive Session ended at 7:55 with no action.

FILED

Jan 11, 2022 AT 11:13 (AM/PM)
Brooke Stearn ATC
EAST LYME TOWN CLERK

III. PUBLIC HEARINGS: none

IV. REGULAR MEETING

1. Drabik Amateur Radio Tower Resolution

Attorney Zamarka stated the Drabik appeal was upheld by the court and remanded to the Commission for a satisfactory outcome and an authorized settlement which is the subject of the proposed resolution.

MOTION: (Peck/Dwyer) to accept the resolution as presented by the town attorney and attach to the minutes of the January 6, 2022, regular meeting. Vote: APPROVED unanimously.

2. Approval of Minutes

a) Approval of Minutes of November 18, 2021

Denise Markovitz was seated for D. Jett-Harris

MOTION: (Markovitz/Peck) to approve the November 18, 2021, minutes as presented.

Vote: APPROVED Unanimously.

b) Approval of Minutes of December 9, 2021

D. Jett-Harris was reseated

MOTION: (Thurlow/Dwyer) to approve the December 9, 2021, minutes as presented.

Vote: APPROVED Unanimously.

V. OLD BUSINESS-none

VI. NEW BUSINESS

- 1. Any Business on the floor, if any by the majority vote of the Commission-none**
- 2. Zoning Official**

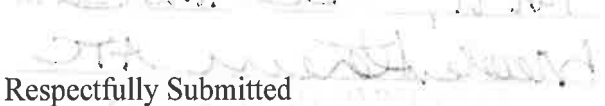
B. Mulholland informed the Commission that Attorney Zamarka will provide a training session and refresher for all members
- 3. Comments from Ex-Officio:**

R. Hardy informed the Commission the BOS had several budget transfers at their last meeting. The Town Assessor is recovering from a serious car accident, and they have been filling in with part time help.
Covid 19 test kits and masks will be coming next week, and residents will have to sign up for the distribution.
The BOS will be working on appointments for vacancies on the town's Boards and Commissions. The SCORE resolution still needs more work
The potential purchase of the Hathaway Property is being discussed.
- 4. Comments from Zoning Board liaison to the Planning Commission-no report**
- 5. Comments from Chairman**

T. Donovan asked the members to think about live broadcasting the meetings.

VII. ADJOURNMENT

MOTION: (Dwyer/Thurlow) to adjourn at 7:56. Vote: APPROVED unanimously


Respectfully Submitted
Sue Spang,
Recording Secretary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, after the close of the public hearing the Commission made the following findings:

1. the Application did not include documentation from a professional telecommunications systems engineer regarding the minimum height needed in violation of ZR 31.2.4; and
2. the Applicant has not demonstrated the need for a 175-foot tower, and proposed tower is greater than the minimum height necessary to meet the technical transmission requirements in violation of ZR 31.4.B and ZR 31.7.B; and
3. the proposed tower would be located in a residential zone and will have an adverse effect on the surrounding residential area; and
4. the Applicant has not demonstrated the need for an amateur radio tower in the Town of East Lyme; and
5. the Application did not include a report indicating why at least one alternate site within one mile is not suitable in violation of ZR 31.7.B; and
6. the approved tower to be located on Mostowy Road is an equally suitable location for amateur radio communications equipment and advances the purpose of ZR 31 by minimizing the number of towers.

WHEREAS, based on the foregoing the Commission voted to deny the Application; and

WHEREAS, the Applicant filed a timely appeal in the Superior Court for the Judicial District of New London ("Court") entitled "John Drabik v. East Lyme Zoning Commission", bearing docket number KNLCV196042862S (ACC), and

WHEREAS, following the submission of briefs and a trial to the Court, on July 15, 2021, the Court issued a Memorandum of Decision ("Decision") upholding the Applicant's appeal and making the following rulings:

1. There is a strong federal presumption in favor of amateur radio communications;
2. Pursuant to federal law, local zoning authorities may regulate the height and location of amateur radio antenna towers;
3. Federal law requires a zoning authority to reasonably accommodate amateur communications with the minimum practicable regulation necessary to accomplish their purposes;
4. Federal law requires a local zoning authority to attempt to negotiate a satisfactory compromise with an applicant;
5. The Applicant submitted substantial evidence as to why a 175-foot tower was the minimum height necessary to provide the desired coverage, and why the proposed site was the only suitable location for the tower;
6. The Commission relied on flawed evidence in finding that the Mostowy Road tower was an equally suitable location for the Applicant's proposed tower;
7. The Commission failed to attempt to negotiate a satisfactory compromise with the Applicant, and that federal law preempted the Commission's decision to deny the Application; and

WHEREAS, the Court remanded the Application to the Commission with instructions to reconsider the Application and to attempt to negotiate a satisfactory compromise which reasonably accommodates the Applicant's desired amateur radio coverage; and

WHEREAS, following negotiations, the Applicant and the Commission have agreed to resolve the appeal, and the Commission will grant the Application, subject to the following conditions:

1. The tower will be 155 feet tall;
2. The tower will be painted gray to blend in with its surroundings;
3. No costs shall be awarded to either party.

WHEREAS, Practice Book §14-7B(j) states that before a settlement of a land use appeal can be entered by the Court, the terms of the settlement must be approved at a public meeting of the Commission.

THEREFORE, IT IS HEREBY RESOLVED, that the East Lyme Zoning Commission agrees to settle the appeal presently pending in the Superior Court for the Judicial District of New London entitled "John Drabik v. East Lyme Zoning Commission", bearing docket number KNLCV196042862S (ACC), on the following terms and conditions:

1. The tower will be 155 feet tall;
2. The tower will be painted gray to blend in with its surroundings;
3. No costs shall be awarded to either party.
4. The Commission's attorney is hereby authorized to execute and deliver such documents as may be required to implement this settlement in the Superior Court and appear in the Superior Court on behalf of the Commission in proceedings relating to this settlement.