

**EAST LYME ZONING COMMISSION
REGULAR MEETING
Thursday, June 1, 2006
AMENDED MINUTES**

AMENDED AT REQUEST
OF ZONING COMM +
RE-FILED 6/22/06 @
3:30 PM
EHL Bulmer
TOWN CLERK

The East Lyme Zoning Commission held a Special Meeting, on June 1, 2006 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT.

PRESENT: Mark Nickerson, Chairman, Rosanna Carabelas, Secretary,
Marc Salerno, Pamela Byrnes, Norm Peck, Ed Gada,
William Dwyer, Alternate, Joe Barry, Alternate, Bob
Bulmer, Alternate

ALSO PRESENT: William Mulholland, Zoning Official
Atty. Theodore A. Harris, Applicant
Atty. Edward O'Connell, Town Counsel
Atty. Joshua Foley, Town Counsel
Karl Frey, Principal

ABSENT:

PANEL: Rosanna Carabelas, Acting Chair, Pamela Byrnes, Acting
Secretary, Marc Salerno, Ed Gada, Joseph Barry,
Alternate, Bob Bulmer, Alternate

Pledge of Allegiance

The Pledge was observed.

Public Delegations

There were no public delegations.

Regular Meeting

****MOTION (1)**

Ms. Byrnes moved to add item 11 to the agenda concerning By-Laws.

Mr. Salerno seconded the motion.

VOTE: 6-0-0

Motion Carried.

Mr. Nickerson stated that he would like to temporarily amend the Public Delegation section of the current By-Laws to the current practice of "Set aside time for the public to address the Commission on items not on the Agenda." Mr. Nickerson stated that he would like to form a sub-committee to review the By-Laws and to currently revise if necessary.

****MOTION (2)**

Ms. Byrnes moved to amend the wording of the By-Laws so that time would be set aside time for the public to address the Commission on subject matters not on the agenda and the Commission not discuss agenda items at that time. Also for a sub-committee to be formed to review the By-Laws and revise where appropriate.

Mr. Salerno seconded the motion.

Vote: 6-0-0

Motion Carried.

Mr. Nickerson, Ms. Byrnes, and Mr. Peck volunteered to be on this sub-committee.

1. Application of Atty. Theodore A. Harris, agent for Vespera Investments, for (a) approval of a zone change to the property known as 38 Hope Street, located at 38 Hope Street, Niantic, Connecticut, from a Light Industrial District to an Affordable Housing District, and (b) approval of a site plan for an Affordable Housing Development to be known as 38 Hope Street, containing approximately 150 units. The property is further identified as East Lyme Assessor's Map 11.2, Lot 122.

2. Application of Atty. Theodore A. Harris, agent for Vespera Investments, for a Coastal Area Management Site Plan Review to construct 150 units of Affordable Housing at property located at 38 Hope Street. The property is further identified as East Lyme Assessor's Map 11.2, Lot 122.

Mr. Nickerson and Mr. Peck recused themselves from the panel.

Ms. Carabelas assumed the duties of chairing the meeting.

Ms. Carabelas sat alternate members Mr. Barry and Mr. Bulmer.

Ms. Carabelas noted that Town Counsel was asked to give a synopsis of the standards for Affordable Housing and asked Mr. O'Connell to take the floor.

Mr. O'Connell stated that this application consisted of two requests; a zone change and a site plan approval. He noted that in the state statutes there is a reversal of the burden of proof on the Commission's denial of an application for an Affordable Housing application and an appeal from the denial to the Superior Court. An appealing applicant has to persuade the court that the Commission abused its discretion and was in error when it acted on an application. The Commission must persuade the court that the denial is necessary to protect a substantial public interest in public health and safety and that the substantial public interest outweighs the need for Affordable Housing. The Commission would also have to persuade the court that there are no restrictions or modifications that could be reasonably made that would permit the application to be granted. The Commission's decision to deny an application must contain all the reasons for denial because only the matters and findings that are in the motion to deny are considered by the reviewing court. The reasons that should be stated in the denial should be why the public health and safety would be harmed, why the need for affordable housing is outweighed by those considerations, and why no modifications or revisions could be made. These reasons need to be the collective reasons of the Commission. The Commission's decision must be based on the evidence submitted. There is one exception to the reversal of proof being if property is located in an industrial zone and the Town's regulations do not allow for residential uses in the industrial zone, then the burden of proof is on the applicant if there is an appeal.

Mr. O'Connell stated that he has prepared a number of different resolutions for the Commission's consideration of the 38 Hope Street and has color-coded them. The red being most restrictive and green being most liberal.

Mr. O'Connell stated that there are four possible resolutions the first (pink copy) being a possible motion for a denial of the application for the zone change and the denial of the site plan, the second (yellow copy) being a possible motion for a denial of the application with findings of reasonable changes that the Commission might want to consider be made, the third (blue copy) being an approval of the application with four restrictions, and the fourth being a possible motion for approval with three restrictions. He stated that the first pages of all of the four resolutions are all similar with the exception of the title.

Mr. O'Connell summarized the different resolutions and discussed the restrictions.

Ms. Carabelas asked if any Commission member had questions for Mr. O'Connell.

Ms. Byrnes inquired about the process regarding approvals about the well and if there is an approval would the State DEP be involved in approvals and improving the well situation.

Mr. O'Connell stated that the State Department of Public Health would be advising the East Lyme Water & Sewer Commission, which is in charge of the enforcement of the easement. He noted that the Zoning Commission's considerations and deliberations cannot take into account the fact that a municipal water well is on the site and near the project and that there are various easements and considerations and that

easement need not to be determinative in the considerations and deliberations. The Department of Health and the Water & Sewer Commission would have it's own parallel track of review.

Ms. Byrnes inquired if there was evidence submitted into the record that proves that the Water & Sewer Commission has approved this application.

Mr. Mulholland stated that there is a letter in the record.

Mr. Bulmer inquired as to whether the concerns regarding the radius around the well could be delegated to the Water & Sewer Engineer or the Town Sanitarian.

Mr. O'Connell stated that he did not think that they could delegate that responsibility because the conditions that are to be set need to be within the Commission's purview not the purview of another commission.

Mr. Barry stated that his main concern was the traffic impact, and he did not feel that the traffic patterns or flows were addressed the resolutions as they were in the traffic study. He stated that he felt that there were concerns as to misrepresentations due to the time that the study was done during Thanksgiving weekend.

Ms. Byrnes stated that the precedent and appeals have been looked at and knowing that the substantial public interest specific and quantified as they affect the health and safety of the public, have traffic issues in fact held up as needing a narrow window that can be deliberated.

Mr. O'Connell stated that it is very rare that traffic standing alone constitutes such a danger to public health and safety that it outweighs the need for affordable housing.

Mr. Barry stated his concerns regarding traffic issues.

Ms. Carabelas called for a ten-minute recess.

Ms. Carabelas called the meeting back to order.

Ms. Carabelas stated that the Commission could talk about the different motions and how they would like to amend them or if the Commission decided they would like to have more time to consider the motions the other option would be to not vote on the application at this meeting but have a decision on June 10, 2006 unless the applicant would grant an extension. She noted that Mr. Harris approved another extension so that the Commission would have another sixty-five days to make a decision.

Mr. Gada stated that since the motions were color coded he suggested that a pole be taken by the Commission as to which motion they would like to consider by color and the pre-dominant motion would tell them if the Commission is ready or not to make a vote.

Ms. Carabelas inquired if Mr. Gada had a preference as to which one he would choose to discuss.

Mr. Barry stated that he was in favor of affordable housing and at the last meeting he mentioned some restrictions that he felt would be acceptable and they were outlined in the motion regarding the well area. He noted that the motion is consistent with the Department of Public Health, Town and State, where they say to maintain the land within that area to be restored back to its natural occurring open space and it be utilized for low impact recreation. His concern was that the traffic study was a misrepresentation of fact and did not agree with it. He would like to see a study done during the busy time of day.

Ms. Carabelas stated that she did not feel comfortable not having the expertise in that area where the Department of Health and the Water & Sewer Commission would to make a determination in distance from the well. She noted that she felt that the Department of Health and the Water & Sewer Commission should make the determination as to the distance away from the well.

Ms. Byrnes stated that recommendations would be given by the Water & Sewer Department.

Mr. Salerno stated that the Commission would have to take into account a fifty-foot (50') easement where no drainage can flow. He agreed that the Water & Sewer Commission had the expertise and not the Zoning Commission to determine the distance from the well area.

Ms. Byrnes stated that the Commission has set a precedent for making zone changes with the Sea Spray project on Liberty Way. She stated that in regard to the well there is a process laid out by the State that is a parallel process that is done by people who have expertise in this field. Ms. Byrnes stated that there is a great need for affordable housing in town.

Mr. Bulmer stated that he was interested in knowing what the impact would be on the Town as a whole as far as the tax base is concerned. He noted that the property take \$39,638 in taxes which would be lost. He stated that he felt that the Town needed affordable housing, but industrial land should not be changed to affordable housing. He stated that he did not support the project.

Ms. Carabelas stated that there couldn't be a more proper area for affordable housing. She noted that this project would assist the efforts to improve the downtown area of Niantic. She stated that she was concerned about the traffic issue and the well issue as well, and she noted that she too would have to rely on the experts to do the right thing.

Mr. Barry stated that there is a misconception of affordable housing, and that this project is only 30% affordable housing. It is a very minimal part of this project that is going to be affordable 46 units out of 150. The emphasis is not on the affordable aspect of the project.

****MOTION (3)**

Mr. Salerno moved to approve the Application of Atty. Theodore A. Harris, agent for Vespera Investments, for (a) approval of a zone change to the property known as 38 Hope Street, located at 38 Hope Street, Niantic, Connecticut, from a Light Industrial District to an Affordable Housing District, and (b) approval of a site plan for an Affordable Housing Development to be known as 38 Hope Street, containing approximately 150 units. The property is further identified as East Lyme Assessor's Map 11.2, Lot 122 as submitted to the Commission with four restrictions:

- 1. That within a two hundred foot (200') radius of a municipal well located on the property ("Well Area"), there shall be no storage, maintenance or placement of any chemicals, biological substances, or other hazardous materials, including but not limited to fuels, petroleum products, fertilizers, pesticides, herbicides, paints, solvents, cleaners, manure, compost, sanitary waste, sewage or storm water runoff that may potentially impact the water quality of the water drawn from the well, nor install any facilities for the handling, storage or transport of said materials;**
- 2. That within the Well Area, there shall be no septic system or sanitary sewer pipes other than interior building plumbing;**
- 3. That within the Well Area, there shall be no drainage of surface or subsurface water into the Well Area that may potentially impact the water quality of the water drawn from the well;**
- 4. That within a fifty-foot (50') radius of said municipal well, there shall be no building or parking. Instead, the area in such radius is to be restored as nearly as possible to naturally occurring open space.**

Mr. Gada seconded the motion.

Mr. Barry stated that the biggest concern is the north parking lot contaminating the well. He noted that fifty-feet was not enough to protect the well.

Ms. Carabelas stated that the containment of runoff and contaminants is so much more advanced now days.

Mr. Barry stated that he was not speaking of runoff. He was speaking about saturation into the ground.

VOTE: 4-2-0
Motion Carried.

Ms. Carabelas called for a five-minute recess.

Mr. Nickerson and Mr. Peck returned to the panel.

Old Business

1. Stormwater – None

2. Aquifer Protection

Mr. Nickerson stated that there was a meeting held and it went well. There is information that the sub-committee would like to present to the Commission.

3. Subcommittee – Niantic Village

Mr. Nickerson stated that he sat in on the Town Hall chat and there were a lot of questions regarding Main Street and the Niantic Village.

Ms. Byrnes stated that she reviewed a letter dated May 4, 2006 from Mario DiLoretto to Mr. Mulholland regarding reseeding the ground cover and riprap slope across from Stop & Shop. He stated in his letter that he was willing to move right away to improve the area. Ms. Byrnes noted that the riprap is still present.

Mr. Mulholland stated that the DOT has agreed the minute a permit is applied for. Mr. DiLoretto should be contacted to find out what the status is.

Mr. Nickerson stated that he would sign that letter.

New Business

1. Any business on the floor, if any by the majority vote of the Commission. – None

2. Comments from the Zoning Official

Mr. Mulholland stated that his office is very busy due to the time of the year.

3. Comments from the Ex-Officio – None

4. Comments from the Zoning Board Liaison to Planning Commission – None

5. Comments from the Chairman – Mr. Nickerson that there is a NEMO presentation on June 20, 2006 that is regarding the EDC Commission and what their responsibilities are. He noted that he would like to see the Commissioners attend. He noted that the next Planning Commission does not have zoning referrals on their agenda and that he would not be attending. Any member could take his place if they wished.

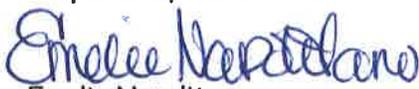
****MOTION (4)**

Ms. Byrnes moved to adjourn the Special Meeting of the East Lyme Zoning Commission.

Ms. Salerno seconded the motion.

Vote: 6-0-0 Meeting was adjourned.

Respectfully submitted,


Emelie Napolitano,