

EAST LYME ZONING COMMISSION  
REGULAR MEETING  
Thursday, September 7, 2006  
MINUTES

The East Lyme Zoning Commission held a Regular Meeting on September 7, 2006 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT

PRESENT: Mark Nickerson, Chairman, Pamela Byrnes, Edward Gada, Rosanna Carabelas, Norman Peck, Marc Salerno, Joe Barry, Alternate, Bill Dwyer, Alternate

ALSO PRESENT: William Mulholland, Zoning Official

ABSENT: Pamela Byrnes, recused

PANEL: Mark Nickerson, Ed Gada, Norm Peck, Marc Salerno, Rosanna Carabelas, Mr. Balmer, alternate

Pledge of Allegiance

The Pledge was observed.

Public Delegations (None)

Regular Meeting

1. Application of Vespera Investments, LLC for a Special Permit and Site Plan to develop elderly housing on property identified in application as 16 Mostoway Road, East Lyme, Connecticut.

Dr. Byrnes recused herself from the Public Hearing  
Mr. Salerno & Ms. Carabelas both stated they had missed meeting but had familiarized selves.

Mr. Nickerson debated sitting an alternate. He asked Mr. Barry if he sat on the public hearings re: Vespera.

Mr. Barry responded that he was unsure.

Mr. Nickerson stated that the public record could be checked to verify. He asked Mr. Balmer if he sat on the public hearing re: Vespera.

Mr. Balmer clarified that he did not sit as part of the panel.

A general discussion ensued re: who sat on the Vespera public hearing.  
Mr. Nickerson solicited comment from the audience to determine the date of the hearing. It was established as the public hearing held on June 15<sup>th</sup>.

FILED IN EAST LYME TOWN  
CLERK'S OFFICE

Sept 11 20 06 at 3:05 AM PM

*Esther B. Williams*

EAST LYME TOWN CLERK

TOWN CLERK

Dr. Byrnes, from the audience, read the list of panel members from the June 15<sup>th</sup> public hearing: Nickerson, Carabelas, Salerno, Gada, Byrnes and Peck.

Mr. Nickerson stated the application can be heard with 5 members on the panel and asked for objections.

Mr. Barry stated that he was present at all meetings and he felt that an empty seat was a violation.

Mr. Peck stated he would be comfortable with 6 panel members.

Mr. Balmer stated that minutes should state who sat.

Mr. Nickerson invited Mr. Balmer to sit on the panel in lieu of Dr. Byrnes.

Mr. Nickerson opened the application for discussion.

Ms. Carabelas read the following correspondence into the record:

- Memo to the East Lyme Zoning Commission from Mr. Mulholland dated September 7, 2006. Re: Special Permit Application/Darrow Pond decision.
- Memo to the William Mulholland, Town of East Lyme Zoning Enforcement Officer from Bill Shear, PELS Town Engineer, dated September 7, 2006. Re: Darrow Pond, East Lyme, CT, dated April 15, 2006, revision August 28, 2006 prepared by Fanner & Associates, Darrow Pond drainage report, dated July 1, 2006, prepared by Fanner & Associates.

Panel read the suggested conditions.

Mr. Mulholland stated the suggestions re: pattern books met with the staff's approval. He stated the instructions from the panel were to try to understand what the streetscapes were going to look like.

Mr. Nickerson inquired about phasing; what was to stop this from being built differently from the permit if the LLC folded.

Mr. Peck responded that whoever took over the project would have to follow the same permit.

Mr. Nickerson hypothesized a situation where the homeowners had to take over the project themselves. He asked if there was a protection within the zoning or in the general state statutes to prevent this.

Mr. Mulholland stated his view was that if project were to fold, someone would pick it up at some point, but indicated that the staff should discuss it among themselves. Mr. Nickerson inquired how someone could be made to build the project if it was incomplete and the LLC went under.

Mr. Gada responded that someone couldn't be forced to build it, but if they did pick it up the uncompleted project, they would be required to follow the parameters of the Zoning permits.

Mr. Nickerson stated his concern was the town had the 'urban' part of the project, but not the rural, the common parts of the project.

Mr. Mulholland interjected that the project would not be built in a year.

Mr. Nickerson continued his concern that the project could be sold midway through the building process. He inquired if a bond could be attached or if the project could be mandated by stages.

Mr. Mulholland stated that it would be built in phases, as a matter of course.

Mr. Salerno asked if Mr. Mulholland knew what the phases were.

Mr. Gada clarified that the infrastructure could be considered Phase 1.

Mr. Mulholland stated that was his recollection of the testimony.

Mr. Nickerson inquired if the Zoning Commission could mandate the stages be linked with the building of common areas.

Mr. Peck stated if the project failed there would be development rights. The problem would be if it didn't sell and digging had been done. He posited that a bond would be appropriate to landscape and prevent the place from looking terrible and eroding. It would not need to be a tremendous amount of money.

Mr. Salerno inquired how the builder would get Certificates of Occupancy (COs) for the units.

Mr. Mulholland clarified a CO would be granted after an inspection from his office, a sign off from the health department and a sign off from the building official for the building itself.

Mr. Salerno asked if a builder could have units with COs even though there was still construction occurring elsewhere on the site.

Mr. Mulholland stated that was correct. He elaborated that his office tries to ensure they get a finish course on before they grant a CO. Those are things that they do downstairs. He stated that his office will entertain Temporary COs, but they are reluctant to do so, as it can bite you back over time.

Mr. Nickerson inquired if a condition could be put on the number of COs issued at a particular time.

Mr. Mulholland stated that was not within the regulations.

Mr. Nickerson further inquired re: requirement for bonds

Mr. Mulholland responds that section 24.8 discusses bonding for special permits. He further inquired what the commission was looking to bond.

Mr. Nickerson stated that in lieu of bonding he would be willing to accept an agreement stating a portion of common area be built to living areas. He declared he was not looking to put an extra cost on the project, but was looking to guarantee the Town would not get a big apartment complex without a rural 'orchard' portion.

Mr. Mulholland stated that the urban portion may indeed be what is built first, as it stands the greatest chance for the builder to recoup his investment.

Mr. Balmer stated that he did not see a problem with adding a bond. It's a guarantee and the cleanest protection. He stated that it did not have to be exorbitant.

Mr. Nickerson reiterated his support for this project and his intention to support it.

Mr. Balmer inquired of Mr. Mulholland if the amount of the bond could be left up to his office.

Mr. Mulholland stated it was his belief the Commission could make the condition to bond the infrastructure to return it to its natural state if the project was abandoned. He stated there was no way to insure the whole project is built in entirety.

Mr. Nickerson asked if the builder built one unit, would they be obligated to build 600.

Mr. Mulholland stated they could choose not to build it all at the same time, or for a while. There was no way to guarantee that this would ever get built in entirety.

Mr. Peck also stated the Commission was not able to guarantee the project would be built.

Mr. Gada interjected that they could guarantee that it gets built the way that it's written [in zoning].

Ms. Carabelas stated a bond could be required to ensure the area was landscaped nicely; holes are filled in, etc. She would be satisfied with that.

Mr. Balmer inquired of Mr. Mulholland if there was a requirement that once project is approved, it was subject to a time constraint.

Mr. Mulholland clarified there is a one year [under SUE v. SU] or the builder has to come back to the Commission. He stated that it is a large investment for any builder

to just to get to this point because of DEP permits, pattern books, etc. and any business person making that investment would try to go forward, in his view.

Mr. Balmer stated he felt a bond would be sufficient, a bond of some reasonable size would be enough.

Mr. Peck stated he recalled a suggestion from the public hearing that the large trucks use the North end of \_\_\_\_\_ road because it had been widened.

Mr. Mulholland stated that the part that crosses the dam is not wide enough. Improvements will occur on the other side. That would occur before any COs would be issued.

Mr. Peck inquired if it would make any sense to require the trucks to use any particular end.

Mr. Mulholland stated that it would not be necessary, in his opinion, but it was up to the Commission.

Mr. Nickerson asked if they would have to improve the road before any construction starts.

Mr. Mulholland stated that not necessarily, but he would require it before COs were issued. The town would insure the improvement to the town road for safety reasons.

Mr. Salerno stated he was concerned about the second entrance, up towards Upper Pattagansett Road. The preliminary plan had a breakaway gate; this plan seems to be connected to the road system. He further discussed his concern about traffic flow and opening the 'flood gates' to the North end of town. He felt people will use the road as a short cut. He stated he would not like to see it connected and would like to see a breakaway gate in place. The town does not need that extra traffic flow on such a small road.

Mr. Gada agreed with Mr. Salerno 100% and referenced the middle school as an example.

Mr. Nickerson stated he did not want to see this become a town road; rather it was private property and does not necessarily want the flow going through.

Mr. Mulholland stated there were two entrances proposed. One was to be gated and the other was under discussion of closing it off or installing a key card.

Mr. Salerno reiterated he wanted a breakaway gate.

Mr. Peck inquired why they took the breakaway gate out, granting access to Upper Pattagansett road.

Mr. Mulholland stated his recollection from the public hearing was they were to make it a key card gate or make it open.

Mr. Nickerson concurred with Mr. Salerno, that it initially be a closed gate. He stated it should be made a condition when a motion is made.

Mr. Balmer asked for clarification what a breakaway gate is v. a car gate

Mr. Salerno clarified it would be for emergencies only and contended that a car gate would still add traffic to the road.

Mr. Nickerson concurred.

Mr. Peck asked if there were any problems with the two waivers, sidewalk and the buffer. He stated he had no problem with the waivers.

Mr. Nickerson asked why there was a waiver being submitted.

Mr. Peck responded there was already a natural buffer in place.

Mr. Nickerson asked for the location of the buffer waiver, asking if it was in the back.

Ms. Carabelas asked if there were sidewalks.

Mr. Nickerson clarified the sidewalks were within.

Ms. Carabelas inquired if the Town would be getting 150 gallons of water to the town, per day.

Mr. Mulholland stated there was testimony that there would be large amounts of water from the project back into the town system.

Mr. Salerno clarified it would be 150,000 excess gallons.

Mr. Nickerson stated the water board must testify and it was not a concern of the Zoning Commission. He inquired if there was any other discussion. He asked if the Commission was settled on the bond.

Mr. Peck stated he believes the bond was appropriate and should be reviewed annually.

Mr. Mulholland stated that if the Commission decided to make a bond to let his office know what it was for.

Mr. Balmer clarified that it would be to put the land back in its original condition.

Mr. Nickerson asked Mr. Mulholland if the infrastructure would be built first.

Mr. Mulholland stated yes, it was his recollection.

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

**Mr. Peck moved to approve the application of Vespera Investments, LLC for a Special Permit and Site Plan to develop elderly housing on property identified in application as 16 Mostowy Road, East Lyme, Connecticut.**

**With the following conditions:**

- 1. The pattern books be modified by adding the following in order to clarify the composition and function of the Design Review Board (DRB) Function and to establish standards for "controlled variety" of building types, colors and other features on the site as per the attached language:**
- 2. The Condominium Declaration shall indicate that each unit shall be subject to the terms, conditions and obligations as contained in the pattern book.**
- 3. Streetscapes as shown in the pattern book shall be modified to reflect the actual dimensions as shown on the site plan.**
- 4. The access road leading towards Upper Pattagansett Road shall be for emergencies only, with a breakaway gate.**
- 5. The sidewalk waiver should be given as requested**
- 6. The landscape buffer waiver granted as requested**
- 7. A bond, to be determined annually by the Zoning Enforcement Official, to guarantee reclamation of soil and soil erosion control shall be put in force.**
- 8. Site plan should be modified to reflect those grading changes as contained in plans dated August 28, 2006 as reviewed by the town engineer.**

**Mr. Balmer seconded the motion.**

Mr. Mulholland clarified the language was part of the motion originally, including the appendixes.

Mr. Nickerson opened it for discussion.

A general discussion ensued whether the Zoning Commission would be able to weigh in on the state's decision to install a traffic light.

Mr. Nickerson asked if there were any other comments.

Mr. Gada stated that, in regards to the bonding issue, the town engineer and the Zoning Enforcement Officer should be actually named as a part of the motion.

Mr. Balmer stated he does not have a problem with the idea, but believes that it is understood and not something that needs to be included in the motion.

Mr. Nickerson asked Mr. Mulholland's opinion on Mr. Gada's statement.

Mr. Mulholland stated he would speak with town engineer regardless. He stated that the bond would have to be of a healthy size considering scope of the project. He asked for further clarifications what the bond would be for, specifically; soil erosion

control only or would it include the infrastructure or would it be for soil erosion control and reclamation. He stated he thought the motion referred to soil erosion control and reclamation only.

The Commission concurred it was for soil erosion control and reclamation only.

**Vote: 6 - 0 - 0. Motion passed.**  
Effective Thursday September 14<sup>th</sup>.

**2. Application of Terry Mitchell, agent for AHEPA 250, Inc. for a Special Permit and Site Plan to construct "non-profit subsidized elderly housing" in SU Zones at property identified in the application as 267 Roxbury Road, Niantic, Connecticut, East Lyme Assessor's Map 10, Lot 3.**

Joe Barry took the place of Mr. Nickerson on the panel.  
Ms. Carabelas acted as Chairwoman in Mr. Nickerson's absence

Mr. Peck asked if everyone had the paragraph in section 12 that states ceilings up to 40 feet can be allowed.

Mr. Mulholland clarified that the language is there as a cut out in the packet, but that the books will have to be updated.

Dr. Byrnes expressed her wholehearted support of the project.

Mr. Salerno echoed Dr. Byrnes

Mr. Barry stated that he too thought it was a welcome addition to the town.

Mr. Gada also concurred with the other commissioners, adding he was happy it was 100% towards affordable housing.

**Dr. Byrnes made a motion to approve the application of Terry Mitchell, agent for AHEPA 250, Inc. for a Special Permit and Site Plan to construct "non-profit subsidized elderly housing" in SU Zones at property identified in the application as 267 Roxbury Road, Niantic, Connecticut, East Lyme Assessor's Map 10, Lot 3. Including the requested waiver of the sidewalks and allowing for the height modification as requested.**

**Vote: 6 - 0 - 0. Motion passed.**

Mr. Nickerson returned as Chairman.

**3. Application of Theodore A. Harris for a Special Permit for a fast food restaurant at property identified in the application as 267 Flanders Road, Niantic, Connecticut. The property is further identified as East Lyme Assessor's Map 31.3, Lot 24.**

This application will be continued at a later time.

**4. Request of Howard & Diane Cioci to waive ownership requirements of the access way for back lots at property located at 359 Boston Post Road, East Lyme, Connecticut.**

This request will be continued at a later time.

**5. Approval of Minutes -**

Several edits were suggested:

- ~ Public Hearings should be closed as opposed to adjourned
- ~ Public Hearing 1 - 6 have unclear attendants; Mr. Dwyer would like to be listed as present on all.
- ~ Mr. Salerno would like the spelling of his name corrected to M-A-R-C

The Minutes approval was tabled for further research on attendants.

- ~ General discussion had re: a recording secretary.
- ~ Dr. Byrnes suggested a reminder of the Alternates' obligations be issued.
- ~ Ms. Carabelas took on the responsibility to call once a week re: the minutes being distributed, etc.

**Old Business**

1. Stormwater - Mr. Peck was volunteered to set up a presentation by the engineer responsible for the Fog Plain project/ experiment.
2. Aquifer Protection - General discussion
3. Subcommittee - Niantic Village - Ms. Carabelas suggested having Jon Rosa, National Director of NEMO present to the Town. Mr. Nickerson suggested a public forum panel in conjunction.
4. By-Laws subcommittee - no action taken
5. Rip-Wrap - Mr. Nickerson stated that a presentation will be ready for the next meeting.

**New Business**

Need to schedule:

1. Application of Three Belles, LLC for a Coastal Area Management Site Plan Review to construct an accessory structure at property identified as 119 Oswegatchie Hills Road, Niantic, Connecticut. East Lyme Assessor's map 22.3, Lot 27.
2. Application of Robert Griffin & Nancy Roberts for a Coastal Area Management Site Plan Review to demolish and reconstruct the existing single family dwelling at property identified as 6 Oak Street, Niantic, Connecticut. East Lyme Assessor's Map 22.10, Lot 36.
3. Application of Donald & Margaret Mager for a Coastal Area Management Site Plan Review to demolish and reconstruct a new single family dwelling on property identified as 78 East Shore Drive, Niantic, Connecticut. East Lyme Assessor's Map 5.19, Lot 38.

1. Business on the Floor

Presented by Mr. Salerno: Uses in Light industrial zone.  
Majority vote, approved.

In response to Mr. Salerno's concern that the industrial zones are being commercialized, a motion was made create a subcommittee called Light Industrial Zone Overview.

Mr. Salerno and Mr. Peck will be on the subcommittee

0. Zoning Official

0. Comments from Ex-Officio

0. Comments from zoning board liaison to Planning Commission

0. Comments from the Chairman

1. Adjournment

**Mr. Salerno moved to adjourn the meeting**

**Dr. Byrnes seconded the motion.**

**Vote: 6 - 0 - 0**

**Meeting adjourned at 10:33 pm.**