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**EAST LYME ZONING COMMISSION
PUBLIC HEARINGS I-IV
Thursday, AUGUST 2nd, 2007
MINUTES**

Esther B. Williams

EAST LYME TOWN CLERK

The East Lyme Zoning Commission held a Public Hearing on the Application of Landmark Investment Group LLC ("Landmark") for approval of a text amendment to Section 32 of the East Lyme Zoning Regulations adding a section entitled "Affordable Housing District"; Application of Landmark to rezone land of Jarvis of Cheshire, LLC and Landmark Development Group LLC from its existing zoning designation to an Affordable Housing District in connection with a proposed Affordable Housing Development to be known as "River View Heights VI a Residential Community"; Application of Landmark for approval of a Preliminary Site Plan for the construction of between 1548 and 1720 units under the newly proposed Section 32 of the Zoning Regulations and Application of Landmark for approval of a Coastal Management Site Plan on August 2, 2007 at the Middle School Auditorium, 37 Society Road, Niantic, CT. Acting Chairman Carabelas opened the four continued Public Hearings and called them to order at 7:40 PM.

PRESENT: Rosanna Carabelas, Acting Chairman, Pamela Byrnes, Acting Secretary, Ed Gada, Marc Salerno, Norm Peck, Robert Bulmer, Alternate

ALSO PRESENT: Attorney Michael Zizka, Representing the Applicant
Glenn Russo, Principal, Landmark
Attorney Edward O'Connell, Town Counsel
Attorney Joshua Foley, Town Counsel
Attorney Paul Geraghty, Representing the Interveners
William Mulholland, Zoning Official
Joe Barry, Alternate (Left early)

ABSENT: Mark Nickerson, Chairman, William Dwyer, Alternate

PANEL: Rosanna Carabelas, Acting Chairman, Pamela Byrnes, Acting Secretary, Ed Gada, Marc Salerno, Norm Peck, Robert Bulmer, Alternate

Pledge of Allegiance

The Pledge was observed.

Public Hearings I-IV

1. Application of Landmark Investment Group, LLC ("Landmark") for approval of a text amendment to Section 32 of the East Lyme Zoning Regulations adding a section entitled "Affordable Housing District" (AHD) – and –
2. Application of Landmark to rezone land of Jarvis of Cheshire, LLC and Landmark Development Group LLC from its existing zoning designation to an Affordable Housing District. The application is in connection with a proposed Affordable Housing Development to be known as "River View Heights VI – a Residential Community". The property to be rezoned is located immediately southeast of River Road, Hill Road and Calkins Road, west of the Niantic River and Quarry Dock Road, and east of King Arthur Drive and is further identified in the application – and –

3. Application of Landmark for approval of a Preliminary Site Plan for the construction of between 1548 and 1720 units under the newly proposed Section 32 of the zoning regulations – and –

4. Application of Landmark for approval of a Coastal Management Site Plan.

Acting Chairman Carabelas said that Ms. Byrnes would be the Acting Secretary this evening and that she had seated Bob Bulmer, Alternate at the table this evening. She then explained the process of the public hearing and the sequence of events.

Ms. Carabelas then asked Ms. Byrnes to read correspondence that had been received from Representative Ed Jutila into the record:

- ◆ Letter dated 8/02/07 to Mark Nickerson, Chairman, EL Zoning Commission from Representative Ed Jutila - Re: Public Hearing on Application of Landmark Development – stating that there are many reasons why the Hills should not be developed mainly centering on damage to the environment and threats to public safety and noting that there are other more suitable properties available in the Town for Affordable Housing. This was also entered into the record as **Exhibit 20**.

(Please note that the auditorium acoustics make the tape sometimes difficult to understand)

Ms. Carabelas said that she would then like to introduce the esteemed Attorney General of Connecticut, Mr. Blumenthal:

Attorney General Richard Blumenthal thanked the staff and Commission for the opportunity to once again speak on this matter. He also thanked everyone from the community for attending and doing the community proud. He said that he is present to oppose with every ounce of his authority the application before them from Landmark Development Group for Oswegatchie Hills. He said that they are at a critical junction, a turning point for the entire State of Connecticut on the outcome of this decision and that he urged them to reject this proposal and to pledge the full weight of his authority and office in the State of Connecticut in supporting them and siding with them and providing whatever help they can should they reject this proposal. The reason for the rejection of this proposal is mandated by law because there is no adequate provision for sewer or water or public health and safety and based on those reasons which Judge Quinn cited in her rejection, are the reasons that he urges them to reject this application. The area is home to fish and birds that migrate to and make their home here and the river and its estuary the Niantic River, Long Island Sound and other streams and rivers that are vital to this area. He said that the need for affordable housing does not outweigh the need to preserve this land. All of Connecticut has a stake in these resources and he said that he agrees with the 2004 decision of Judge Quinn. Affordable Housing can and must be done but not at this site. He said that we are all stewards of the environment, especially when it is a treasure such as this one is. He said that he stands beside them in going forward in defending this monstrous irresponsibility and thanked them for having him this evening and all of the time that they have continuously invested in the protection of this property. (Note: A copy of this was later submitted and entered into the record as **Exhibit 20A**)

Ms. Carabelas then introduced Andrea Stillman, State Senator.

Andrea Stillman said that she appreciates the opportunity to speak and that even though she is not a resident of East Lyme, as a State Senator and resident of Waterford she has followed this for many years and wanted to register her dissent to this proposal by Landmark Development LLC. She said that in her years as Senator that she has repeatedly registered her remarks in opposition to this application along with Betsy Ritter and Ed Jutila. She said that naturalists, environmentalists and others have repeatedly pointed out the magnificence of this natural resource. Because Oswegatchie drains directly into Long Island Sound, preservation is critical. She thanked the Attorney General for his remarks this evening and other times that he has come to give testimony. This parcel has received so much recognition, money and resources at so many levels that it is worth fighting for. Many areas up the Connecticut River from here have received special Federal recognition – Gillette Castle, and soon Eight Mile River. She represented to them that the Oswegatchie Hills rises to that same level of intensity and importance. She urged them to place upon Oswegatchie Hills the prestige that it deserves. Affordable Housing is needed but not on this important piece of property. She urged them again to reject this application and noted that Betsy Ritter was also present this evening and would like to speak.

Ms. Carabelas then called for Ms. Ritter to speak –

Betsy Ritter thanked them for the extraordinary time that they have given to this and noted that while she represents the 38th District and recognizes the value of local government, she noted that she is from Waterford and that the Town of Waterford has the same appreciation for the water and local estuary. Waterford is adjacent to East Lyme and the area is absolutely worth the time spent on the preservation of it. She said that she has spent time with Representative Jutila seeking monetary support of this piece of property and that also as a representative of a shoreline Town she has a particular interest and concern for this jewel of Connecticut. This extends beyond water and air quality to Regional Planning which includes the ability to look for the better areas for Affordable Housing in the State of Connecticut. As a supporter of the process, she said that she does not feel that anyone can say that Affordable Housing is not needed in this State – however, it is not needed in an area if it does not make sense in terms of traffic and safety for the community area and if it would strangle the community resources that you are trying to protect. This application would undo decades of planning. She thanked them for all of the time that they have spent on this, for allowing her to speak and pledged her continued support.

Ms. Carabelas said that she thought that they also had some staff reports that needed to be entered.

Mr. Salerno noted for the record that he was not present at the last meeting however he has made himself familiar with the record.

Ms. Carabelas then asked Ms. Byrnes to read into the record correspondence that had been received from the Town Planner:

Ms. Byrnes read the following correspondence into the record:

- ◆ Letter dated 8/02/07 to Mark Nickerson, Chairman, EL Zoning Commission from Meg Parulis, Director of Planning - Re: Application of Landmark Investment Group for Affordable Housing Oswegatchie Hills – stating that she has enclosed copies of the Environmental Review Team Report and Niantic River Watershed Protection Plan referenced in both the Planning Commission and Office of Long Island Sound referrals. She noted the key highlights on watershed issues, Planning considerations, Topography & Geology issues, Eastern CT Conservation District Review concern of the cumulative effects of development in this relatively confined area and the effects on the Wetlands and Fisheries as seen by the Environmental Review Team. This was entered into the record as **Exhibit 21**.
- ◆ Ms. Carabelas noted that **Exhibit 22** of the record was a copy of Chapter 126a – Affordable Housing Land Use Appeals - as submitted by Barbara Johnston earlier this evening.

Ms. Carabelas then called upon Michael Giannattasio, Director of Public Works asking if he had anything that he wished to submit for the record.

Michael Giannattasio, Director of Public Works, Town of East Lyme said that on behalf of the Water & Sewer Commission that he would like to submit three documents in addition to the Referral letter **Exhibit 6** that they had already entered into the record.

Ms. Carabelas entered the following three documents into the record as submitted by Mr. Giannattasio:
Exhibit 23 – Dated 8/31/05 as prepared by Fuss & O'Neill – Sewer Service boundary lines comparison – current sewer shed line as compared to the applicants'
Exhibit 24 – Map of the Sewer Service and Sewer Contract Areas for the Town of East Lyme dated May 1999
Exhibit 25 – Report on the Water Pollution Control Plan dated 1985

Ms. Byrnes asked Mr. Giannattasio if it was possible for him to summarize briefly what the difference is in the lines and what they have been seeing and what the map shows.

Mr. Giannattasio used **Exhibit 24** showing the three lines that represent the sewer shed in the Town of East Lyme – the orange line is the original sewer shed boundary line accepted in 1985; the green line is the line

that is slightly changed and that was accepted by the East Lyme Water & Sewer Commission in May of 1999 and the black dash line is the line that the applicant has submitted with his original plan indicating what the applicant feels falls within the sewer shed.

(Note: A brief break was taken here)

Mr. Bulmer said that he would like to have something on the record – he stated that for all those present that he is up to speed with all of the testimony and that he was present in the audience at the last meeting and heard what was presented.

Ms. Carabelas called upon Attorney Zizka to present any other information that he had.

Attorney Zizka said that he wished to ask Mr. Giannattasio some questions. He noted that as with any record of proceedings that each has a separate record that must be established.

He asked Mr. Giannattasio if he was present when Attorney Blumenthal spoke regarding Judge Quinn.

Mr. Giannattasio said that he was present for Attorney General Blumenthal.

Attorney Zizka said that Attorney Blumenthal said that he thought that Judge Quinn had rendered a well reasoned decision based upon the facts which he thought were similar to the present case – he asked Mr. Giannattasio if he recalled at the time that Judge Quinn rendered her decision the Water & Sewer Department had entered into the record a letter stating that none of the Landmark properties are in the sewer shed.

Mr. Giannattasio said that he did not.

Attorney Zizka asked if he did not recall that being the case.

Mr. Giannattasio said that he did not.

Attorney Zizka asked if he was aware of the fact that Judge Quinn relied upon the letter that said that none of these Landmark properties fell within the sewer shed when making her decision.

Mr. Giannattasio said that he was not and that he has not read any of the past records by the courts.

Attorney Zizka asked Mr. Giannattasio if he was aware that the Water & Sewer Commission previously took the position that none of the Landmark properties fell within the sewer shed.

Mr. Giannattasio said that he was in not so inclined (? difficulty hearing)

Mr. Russo asked Mr. Giannattasio if the Town had taken the position that none of the property fell within the sewer shed – would that have been a false statement.

Mr. Giannattasio said that as he stated currently under this application and a previous application, there are three phases of the sewer shed on this applicants' property, one – the sewer avoidance area; two is in the sewer shed that may cause the current discrepancy in the findings and three the area that has been designated as in the sewer shed.

Mr. Russo said that he is trying to establish a simple way for the public to understand in looking at the decision that stated that none of his property fell within the sewer shed and if it is a true and accurate statement – true or false.

Mr. Giannattasio said that he was not going to be forced to comment on something that he did not write, say or read at this time. He said that he is still saying that there are three distinct sewer sheds on this property and that's his opinion.

Mr. Russo said that he could take that as false –

Ms. Carabelas asked Mr. Russo to move on –

Mr. Russo said that in reality that he did not want to respond to the statement because the letter that was submitted that stated that none of the property fell within the sewer shed was false and that Mr. Giannattasio has submitted maps this evening that show that in fact his property does fall within the sewer shed area and contradict that previous memo.

Mr. Giannattasio said that he did not want to carry on a characterization that he had not said.

Mr. Russo said that he would attempt to bring the public up to speed on what was presented at the last meeting. He explained the property location in relation to the highway exit ramps and that under the smart growth principle you would want high density development next to the highway and utilities such as the Orchards is. The Water & Sewer Department has approved a sewer extension right in front of his property. Then they have turned around to say that there is none. And, similar to the Darrow Pond project, this property is located in close proximity to shopping and in fact, this property abuts a CA zone. So, this is an

ideal site and makes sense to have it here. The property is 236 acres in total and there are very large areas that are developable.

He showed slides of the slope analysis and the wetland areas. He then explained the sewer shed area and how it lays out in his property and how they came up with the area by superimposing the Town's mapping on their property. He pointed out the area that could gravity feed into the sewer shed area and noted that the area immediately near the river does not fall in that area at all. There are also existing wetland road crossings that were used by a quarry long ago and they are proposing utilizing those same crossings. There also would not be any units in the wetlands. The open space areas are large areas; one is connected to the Towns' and it can go through to the river and quite literally one could walk open space from Latimer Brook all through the entire property and along the river. He said that they would make it available to the public and also have walking trails. Townhouses are proposed closer to the water with short cul-de-sacs. While they are entitled to water & sewer from the Town, they would also propose doing an on-site septic with a satellite treatment plant which would produce a nitrogen level of drinking water quality. He noted that the Town approved a 600 unit development with on-site septic (Darrow Pond) and the State DEP and DPH has a process that is very stringent with respect to this. The Town has a history of approving high density multi-family development and they are proposing basically the same thing.

Mr. Russo then said that at the last meeting there was a discussion about the offer to the Town to purchase the area that was designated for open space acquisition. He presented a slide of the letter that was sent to Mr. Fraser in 2004 citing the offer to the Town of the specific parcel of land at fair market value, which was never responded to.

Ms. Carabelas said to Mr. Russo that this does not relate to this application –

Mr. Russo explained that in 2004 they had application three with a Phase I and as it was brought up at the last meeting that there was no offer, he said that this letter shows that an offer was made to the Town to purchase the area that they had designated for open space acquisition and they did not receive a response.

Ms. Carabelas said that it was not the Zoning Commission purview –

Mr. Russo said that it was brought up as the Zoning Chairman brought it up at the last meeting.

Mr. Salerno said that granted that the letter does not have much to do with this application, but it was sent contingent upon approval of the application and this Commission does not work that way.

Mr. Russo said that was not the situation, it was based upon the parcel of land that the heated conversation arose at the last meeting and this states the portion of property that they wanted was offered.

Attorney Zizka, Counsel for the applicant said to Mr. Salerno that the reason that this is important, not only because of what happened the last time, but because part of the reasons given by this Commission for denials in the past is because there has been a plan for open space acquisition. The point here is that the development of this parcel has never prevented that open space acquisition and has never prevented the Town from acquiring it.

Mr. Salerno said that the only reason why he said it was because the letter said upon approval.

Attorney Zizka said that is correct and that it is also correct that the Zoning Commission does not have the power of purchase. They just needed to demonstrate here that the applications have not prevented the acquisition of the area that the Town has said they wanted to acquire for open space.

Mr. Russo said that at one time that they were asked if they would consider selling it to the Town and they said that they would consider it at fair market value. The property was three acre zoned at that time but in the middle of this, the Town re-zoned the property and put a buffer on the waterfront saying that it can't be used –however, the taxes would still have to be paid on this property. Next the Town imposed other restrictions and the 236 acres became 23.6 acres which amounts to nothing short of trying to steal the property. He said that he filed against this and got this overturned. He then said that Mr. Bulmer was rather forcefully questioning his Attorney at the last application regarding the water & sewer and that four people from the Town testified incorrectly at that hearing that public sewers were not available to the property.

Ms. Carabelas asked if it pertains to this application.

Mr. Russo said that he has a right to build his record and to put into the record what he desires to put in.

Ms. Carabelas said that they have records of the previous applications.

Mr. Russo said that he could put his record together as he wants and that Mr. Bulmer previously cited that four (4) of their staff members stated that his property falls outside of the sewer shed which is false

information. He showed the mapping and asked if any of the Commissioners believes that his property falls outside of the sewer boundary - . He said that it is a point of misinformation put out by the Town staff, just as Ms. Parulis in citing that a large area of the property falls into a designated open space area when in fact it does not. The Town says - when a portion of the property falls within the sewer shed that none of it does and then they say that all of the land falls within the open space acquisition area when in fact only a small portion does. He then synopsisized the prior application showing all of the area that they were leaving open and the plans that were denied by the Commission, stating that when all of the conditions were looked at there were very few places left to build when in fact his largest neighbor is Deerfield Village which is subsidized housing.

Ms. Carabelas said that at the last meeting they asked about the traffic going through the narrow roads in the neighborhood.

Mr. Russo said that they are close to the highway and that the concern that they have is how to get there. They are analyzing that neighborhood to provide that information. He noted that they have not seen Mr. Giannattasio's report or Ms. Parulis's until this evening even though they filed their application in May. They need time to look at this and to digest it. They are working on improvements to the area and moving the traffic through.

Mr. Peck said that they have said that they are proposing to use the existing wetland crossings and asked how wide these crossings were.

Mr. Russo said that being conservative that they are probably from 10' to 12' in width.

Mr. Peck asked that he put back the map showing the slopes and said that he thought that he saw a significant amount of development in the slope area.

Mr. Russo said that they can put buildings with walk out basements in that area and that a vast majority of units are not in that area. Roads are not usually in sloped areas. He noted that building where slopes are present also depends upon the contours of the land and how they run (east-west, north-south).

Mr. Peck said that he thought that he had said that they would not be building in areas with slopes.

Mr. Russo said that he believed that he said that they would try to avoid, not eliminate building in the sloped areas.

Mr. Salerno said that it looked like a road was on the side of a slope.

Mr. Russo said that the road is flat but follows the contour and falls into a 10% slope. The 25% goes perpendicular to the contours, not parallel to the contours. With reasonable grading on the site, it allows them to build. He said that they have large areas of land that are less than 25% and that he can calculate for them the areas that are 25% or greater.

Mr. Salerno asked if the slopes are ledge as that is usually what he sees.

Mr. Russo said that he would suggest that the 25% slopes are not limited to just ledge.

Ms. Byrnes said that if it was ledge that they would be blasting up there.

Mr. Russo said that he could guarantee that anywhere in the State of Connecticut on 236 acres of land that there would be blasting.

Mr. Salerno asked how much blasting.

Mr. Russo said that he did not know and that he could guarantee that there would be blasting on the Darrow Pond site also and that he was not sure that was something that was required of their application.

Attorney O'Connell, Town Counsel noted that Mr. Russo is allowed to make his presentation but not to cross-examine the Commissioners.

Mr. Russo said with all due respect to the attorney that he did not believe that he was cross-examining, he was just asking questions.

Attorney O'Connell said no questions.

Mr. Salerno asked how much area would have to be clear-cut to do this development.

Mr. Russo noted that his Attorney is taking notes and that they would get back to them on that.

Ms. Byrnes said that she certainly appreciates them wanting accuracy but that she takes exception to a statement that was made by a member of his team after the last public hearing in the newspaper that said that they are against Affordable Housing. She said that she takes exception to that statement as their track record shows that they are not against Affordable Housing and that they are concerned with public safety and public health concerns and that those are the things that they are evaluating here and they want clear and honest information. She said that they are not against Affordable Housing and that is not what this discussion is about.

Mr. Russo said that he was not aware of the article or the member of his team who said that.

Ms. Byrnes said that it was in the New London Day the day after the hearing and that he had also said it this evening that they are against Affordable Housing.

Mr. Russo said that he would have to look into that article but his history in dealing with this Town in Affordable Housing is that they do not appear to like them and that is his opinion.

Mr. Bulmer said that he is confused by the application as they said that they would put in a septic system and then they said that they would use Town water & sewer – which is it.

Mr. Russo said that they filed the application with an alternate plan that if they could not get public water & sewer that they would do the septic.

Mr. Bulmer asked if they have done the study for a public septic system.

Mr. Russo said that they have the capability to do it but that it has not been done as yet as this is a preliminary site plan and they have done what Darrow Pond has done.

Mr. Bulmer said that he has calculated what 1500 units effluent would be per day and that it does not seem viable to put that amount over a 20-acre site as was stated at the last meeting.

Mr. Russo said that the information that he is requesting is not required here and that he would have his engineer come to the next meeting to explain how the system would work.

Mr. Bulmer asked if they are asking them to make a decision based on incomplete information.

Mr. Russo said that the Commission did not require Darrow Pond to get/give any of this information that they are requiring of them and that his engineer will explain what is needed at the next meeting. This Commission did not require Darrow Pond to provide the information that they are now asking here.

Mr. Bulmer said that he wanted to move onto something else and read into the record a letter dated 6/8/07 from Beth Hogan – Chair of the Water & Sewer Commission regarding a referral on the application (Exhibit 6 of the record). He said that he thinks that this answers some of the questions.

Mr. Russo said that the sewer map and boundaries were presented and that he believes that they were presented accurately and that he stands behind what was presented. He said that they would work on the information that has been requested.

(Note: A brief break was taken here)

Ms. Carabelas said that they had a housekeeping matter to take care of here. They would need to vote to accept and approve the intervention application of Save the River Save the Hills Inc. and Friends of Oswegatchie Hills Nature Preserve Inc.

****MOTION (1)**

Ms. Byrnes moved to accept the intervention application of Save the River Save the Hills Inc. and Friends of Oswegatchie Hills Nature Preserve Inc.

Mr. Bulmer seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Ms. Carabelas called upon Mr. Geraghty.

Attorney Paul Geraghty said that he represents the Interveners, Save the River (Fred Grimsey) and Friends of Oswegatchie Hills (Marvin Schutt). He said that at this point that he would defer his comments to Mr. Grimsey who is one of the experts.

Ms. Carabelas said that she also would like to enter into the record **Exhibit 26** – the Slide Presentation as presented by Glenn Russo (8/2/07) with open space and the letter to Mr. Fraser dated 9/04 and attachments.

Fred Grimsey, President of Save the River, Save the Hills, 35 Oswegatchie Road, Waterford, CT said that he has a number of items to enter into the record. He first introduced Dr. Robert DeSanto who has been a scientist since the 1970's and who has served on many Commissions and who has done a report for them and would do a presentation this evening.

Robert DeSanto, said that he is the Director of the Institute of Environmental Stewardship, LLC, 16B Center Street, Waterford and that this evening he is serving as a consultant for Mr. Grimsey and his group Save the River. He said that he has 11 copies of his report and asked that one be entered into the record.

Ms. Carabelas entered Mr. DeSanto's Report dated July 30, 2007 'Water Pollution and Ecological Impacts to Latimer Brook, The Niantic River and Their Watershed resulting from the Proposed Riverview Heights VI Complex, Oswegatchie Hills, EL, CT as **Exhibit 27** of the record. She also entered an overall site plan of the area dated 12/1/05 of the area into the record as **Exhibit 28**. This was also submitted by Mr. DeSanto.

Mr. DeSanto referenced **Exhibit 21** a report by the Environmental Review Team that provides invaluable information. He said that there are details in the report that he would show in his presentation. He gave a background of the type of work that he does. In this case he said that he focused on 1720 units of housing development arriving at essentially eight (8) conclusions which are in his report with the accompanying bibliography. He said that the area of Latimer Brook is an important fishery nursery and wildlife area. This is described in detail in the report. He said that the drainage from this site tends northerly and eventually ends in the Latimer Brook area and the river. He said that 1720 housing units on 236 acres results in high density land use of 7.1 units per acre with an associated predicted population of 4300. Based on that and ITE standards, it is estimated that the proposed development would generate 1,019,216 vehicle trips a year. This traffic would generate toxic residues that will degrade the environment and have negative impacts on surface and ground waters. These toxic residues are created through friction during use of the vehicle as cars wear out. The best way to see this is to take a sample of snow as it acts as a sponge. He said that he did that on February 3, 2004 and took two liters of snow in a protected area and from a drive area that had been plowed up a couple of times in the Wal-Mart parking lot. He shook these up so that they could see that the first was relatively clear and the other discolored and murky with vehicle residue. He said that was what they had to plan for when they deal with storm water management. He said that he did another study on 3/18/07 at Chapman Farms where he collected random samples of snowfall from clean areas. This water was quite clear. Snow was also taken from the furrow near the road that had seen six passes of the plow. He said that they could see the caked matter that was collected. His report deals with these materials. He said that those particles will be moved off of the road and parking areas and enter the surface and ground waters, Latimer Brook and the river and that the 'treatment train' that is proposed would not adequately remove these contaminants. He said that 17 contaminants would be released and that while some of this data comes from 1972 it could still be used as the construction of automobiles has not changed that dramatically. Asbestos is still the best material for brakes and replacement of that material is copper which may solve one problem but it also creates another. In this application the impervious areas seem to be the same as they were for the 2005 application – 32% of the land would be impervious if there is a full build-out. He said that in light of these impacts that he felt that they should deny this application and that anything like it should be denied.

Mr. Bulmer asked if he still lived in East Lyme.

Mr. DeSanto said that he was almost embarrassed to say no – but he moved to Niantic River Road in Waterford to be near his daughter; which is only five minutes away and now actually spends more time in this Town.

Mr. Bulmer asked if he could give them an understanding of what he sees is the effect of all of this pollution on the alewife population.

Mr. DeSanto said that if he assumes that there is full build-out that he predicts that there would be a rapid decline but that it would be noticed over time. He said that while others might refute that, he would say that it would be different as the wildlife would be living in a more toxic environment.

Mr. Salerno asked if the analysis is based on pollutants from autos and run-off from tar.

Mr. DeSanto said that it is based on parts of moving vehicles that wear out.

Mr. Salerno asked if it considers nitrogen loading.

Mr. DeSanto said that there is nitrogen loading from vehicles but it does not consider pollutants from pesticides run-off or run-off from shingles or asphalt.

Mr. Salerno asked if he felt that the effects could actually be worse.

Mr. DeSanto said that initially it would be far worse as you would consider the leaching of the new asphalt.

Mr. Salerno asked about drainage in any area – if they have eight feet of soil with bedrock, how much drainage would they have before it heads down the hill.

Mr. DeSanto said that an eight foot over burden would create a 'sink' which is fine as long as the sink does not break. It is good for a period of time but at some point it fails and you are storing materials on site.

Mr. Salerno asked where the water goes that does drain.

Mr. DeSanto said that it would go to the bedrock and then eventually to the river. He added that the most dramatic is the surface water as there are gully areas that the water just runs through. Also, some of the particles cannot be filtered out unless the wetland areas are used.

Mr. Peck asked if the project was approved and the real engineering started and the DEP/DPH people got involved – did he think that with all of the information that was just provided that this would pass and that all other aspects that would have to be met would pass.

Mr. DeSanto said that his experience has shown him that you cannot depend on someone else to do something. The Vortech system and the technology works but it fails if the maintenance is not done and it is frequently the maintenance that is not done. He said that you could not trust someone to see that the maintenance is done. He said that they have the jurisdiction to make decisions that cross all boundaries. (Copy of the synopsis of the eight points presented attached at the end of Minutes)

Mr. DeSanto submitted the large tri-fold map of the ecological impacts on Latimer Brook and the river for the record. This was entered into the record as **Exhibit 29**.

Ms. Carabelas entered the Natural Resources Inventory report on Oswegatchie Hills dated May 2007 into the record as **Exhibit 30**.

Fred Grimsey said that he had other items to read and enter into the record. He submitted for the record a 1997 letter as the Chair of the open space task force noting the interest in this property as open space and also submitted a letter from David Leff to him dated 7/29/07 indicating that there is still interest in this property. This was entered into the record as **Exhibit 31**.

Mr. Grimsey also recalled that Mr. Leff had said to him that they (the DEP and Mr. Russo) could not come to an agreement on the fair market value so someone from another part of the State would establish the fair market value and they would split the cost of the appraisal. When this came through, Mr. Russo did not like the appraisal and would not pay for his half of it.

Mr. Grimsey said that he had other items for the record. He said that he has a letter written to him from a Robert Askins of CT College noting the importance of the forest birds and the large expanse of space that is needed for the birds to fly. This area is important for migratory birds. This letter outlines his study of the area for bird habitats. He submitted this letter that was written to him from Dr. Askins (with resume) dated 8/2/07. This was entered into the record as **Exhibit 32**.

Mr. Grimsey said that he has also been working with a Dr. James Kremer and that he has a letter from him dated 7/14/07 regarding nitrogen loading and the eel grass beds throughout the State. He noted that eel grass beds are important in the scalloping in the river. This letter was submitted with the report on recreational fishing and eel grass in the State by Dr. Kremer. It was entered into the record as **Exhibit 33**.

Mr. Grimsey said that he has two letters from Eric Kanter of the Waterford East Lyme Shellfish Commission. The first is dated 8/16/04 with an update dated 8/2/07. These letters noted that there is an issue with the overall health of the Niantic River and that it is under attack by the development along the Niantic River. This affects its' ability to cleanse itself. He noted that the river is frequently closed and must be closed with rainfall of one inch or more. The Commission sold over 700 permits the previous year and they feel that they are stewards of the river. The letter of 8/2/07 reiterated the concerns of the previous letter. These were submitted and entered into the record as **Exhibit 34**.

Mr. Grimsey said that his last exhibit comes from Dr. Milan Keser who is the head of the environmental lab at Millstone. The letter is dated 7/31/07 and addressed to him and states that it is written as a resident of East Lyme. This letter notes that the Niantic River has declined dramatically over the years and that the loss of eel grass in the river and other rivers has a direct correlation to the amount of development along the river. He said that he does not support the zone change and does not find Oswegatchie Hills a suitable place for Affordable Housing. Affordable Housing should be located in a section of Town that would not impact natural resources. This letter was submitted and entered into the record as **Exhibit 35**.

Mr. Grimsey said that while he is all for Affordable Housing that he could not support it in this area.

Attorney Geraghty said that he has a half hour presentation and that his engineer, Mr. Gerwick would be the other presenter that he would have for the next meeting.

Ms. Carabelas said that they would be continuing this to the next meeting.

Marvin Schutt, President of Friends of Oswegatchie Hills Nature Preserve said that Don Henne who passed away recently submitted a letter on 4/19/06 for the previous application that was withdrawn. He said that the letter was written to Mr. Mark Nickerson, Chairman of the Zoning Commission. He then read this letter into the record. It focuses on habitat and the population of birds and various species in the area. A study noted rare plants and he feels that this area represents a full bio-diversity of the area. It was noted that non-source point pollution, dog waste and other pollutants would upset this bio-diversity. The area is a migratory route for many birds and fish. The eel grass beds are of great concern and he applauds the conservation partner challenge to protect the Hills and habitat. This letter was entered into the record as **Exhibit 36**.

Ms. Carabelas said that at this late hour that they have other business to attend to and that they would continue these hearings to September 6, 2006 and that the public would have the opportunity to speak at that time also.

Collette Grimsey 35 Oswegatchie Road, Waterford asked what the format would be like at that meeting and if Mr. Russo would be speaking.

Ms. Carabelas said that Mr. Russo would have an opportunity for rebuttal and any other information that he might wish to present.

Mr. Mulholland explained that the interveners would speak as well and the general public. He said that he would expect that they would close the public hearing then as they will be close to the end of the time frame.

Ms. Byrnes asked if they could open where they left off and allow the public to speak who have not been able to do so.

Attorney Foley, Town Counsel said that if they want to do that, that they would have to set a time frame for it such as an hour and that they have to allow the applicant to speak as it would be unfair to cut him off.

Attorney Zizka said that he understands that Attorney Geraghty has an engineer that is going to give testimony at the next meeting and that it would be impossible for them to respond to it immediately without knowing what it is. He said that they would agree to this and the public speaking as long as there is a subsequent meeting (beyond Sept. 6, 2007) as well to allow them the time to prepare a response.

Mr. Mulholland said that he would suggest that they see where they are on September 6, 2007 and go from there.

Mr. Russo said that his thought is that if they pick up where they have left off and let the public speak, and then they would answer all of the questions that were asked and see where this leaves them.

Attorney Geraghty said that he would speak with their engineer and see if a copy of his presentation that would be given on September 6, 2007 could be sent to Attorney Zizka ahead of time so that they could prepare for any rebuttal.

Attorney Foley said that by his calculations the public hearing has to close by September 15, 2007. By having the hearing on September 6, 2007 it does allow another week.

Mr. Mulholland noted that school would be back in session when they hold their next meeting and that he would immediately begin working on a place to hold their September meeting as he was not certain that this area would be available.

Ms. Carabelas called for a motion to continue all four (4) Public Hearings.

****MOTION (1)**

Mr. Gada moved that all four (4) Public Hearings be continued to the next meeting of the Commission.

Mr. Bulmer seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Ms. Carabelas adjourned these four (4) public hearings at 11:50 PM and continued them until the next meeting of the Commission on September 6, 2007.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary



Robert S. De Santo, Ph.D.

Director, Institute of Environmental Stewardship, LLC

Before:

The East Lyme Zoning Commission

August 2, 2007

Oswegatchie Hills Proposed Development

This testimony pertains to the proposed 1,720 housing unit Riverview Heights development (see Fig.2), which is the subject of this Pubic Hearing. My analysis of the proposed development is detailed in: "Water Pollution and Ecological Impacts to Latimer Brook, The Niantic River and Their Watershed, Resulting from the Proposed Riverview Heights VI Complex Oswegatchie Hills, East Lyme, Connecticut," and dated July 30, 2007.

- ✓ 1. The property is adjacent to Latimer Brook and The Niantic River. Latimer Brook has a total drainage basin of 17.738 square miles above its mouth at the Golden Spur in East Lyme (see Fig. 3). Latimer Brook and The Niantic River are important natural fisheries and wildlife resources, especially as they relate to their nursery functions of Alewife that provide significant support to the immediate region and to the Long Island Sound (see Page 13).
- ✓ 2. Based on my study of the United States Geological Survey Quadrangle Map (see Fig. 1) and the Soil Survey of New London County (see Soil Conservation Survey 1983), site drainage tends northerly and easterly that leads from the proposed development area into Latimer Brook and the Niantic River.
- ✓ 3. The proposed development of 1,720 housing or dwelling units on approximately 236 acres results in a High Density Residential/Multifamily land use of 7.1 units per acre (see Arnold and Gibbons 1996) and an associated predicted population of 4,300 (see Append. N-3).
- ✓ 4. Based on the Institute of Transportation Engineers (see ITE 2003) standards, the proposed development will generate 1,019,216 vehicular trip ends a year, or 2,800 Average Daily Trip Ends (see Append. N-2). This traffic will unavoidable generate chronic toxic residues that, through resuspension, storm bypass, and off site deposition will degrade the existing environment with direct negative impacts on surface and ground waters.
- ✓ 5. Presently proposed stormwater treatment is not adequate and can not be considered an appropriate "treatment train" for such intense urbanization as this proposal would generate. The chronic traffic related pollution will result in undesirable changes and chronic ecological damage to the natural resources of the environment and of the Latimer Brook/Niantic River fishery resources, in particular (see Fig.9).
- ✓ 6. Chronic contamination by approximately 1,093 pounds per year of at least 17 known undesirable compounds will enter the surface and ground waters of Oswegatchie Hills from this developed site (see Tables 1 through 5).

Attachment
Synopsis of Presentation - 8/2/07

Zoning Commission

Part of
Exhibit 27