

**EAST LYME ZONING COMMISSION
REGULAR MEETING
Thursday, DECEMBER 1st, 2005
MINUTES**

PRESENT: Mark Nickerson, Chairman, Rosanna Carabelas, Secretary,
Pamela Byrnes, Norm Peck, Ed Gada, Marc Salerno,
Alternate,

ALSO PRESENT: Glenn Russo, Applicant
Attorney Edward O'Connell, Town Counsel
Attorney Joshua Foley, Town Counsel
William Dwyer, Alternate
Rose Ann Hardy, Ex-Officio, Board of Selectmen
William Mulholland, Zoning Official

FILED IN EAST LYME ^p
Dec 5, 2005 AT 4 M

L. A. Blais, etc
EAST LYME TOWN CLERK

ABSENT: Shawn McLaughlin, William Henderson, Alternate

1. Call to Order

Chairman Nickerson called the Regular Meeting of the Zoning Commission to order at 7:35 PM.

Pledge of Allegiance

The Pledge was 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 was no one.

Election of Officers

(Note: This was done after the Landmark Development Group, LLC decision was made.)

◆ **Chairman**

Mr. Nickerson explained that the Zoning Commission Bylaws state that the Election of Officers has to be done sometime in December. Traditionally, this is the only regular meeting that they have in December and as it happens this year, the Inauguration to swear in the newly elected people is not until Monday, December 05, 2005. While it would make sense to wait until the new member is seated, the Commission as it is seated now, is the new Commission only Mr. Salerno would be a regular member instead of an alternate. He asked what the Commission would like to do and said suggested that they could vote this evening and have it be effective for the next time that they meet. He asked Attorney O'Connell if there was a way in which Mr. Salerno could vote.

Attorney O'Connell said that under their Bylaws that an Alternate cannot be the Chair or Secretary or vote for the positions of Chair or Secretary if seated. Therefore, Mr. Salerno could not vote this evening.

Ms. Carabelas said that she did not see that there would be much of a change with Mr. Salerno seated and voting as a regular member from his not being able to vote this evening. While she would like Mr. Salerno to be able to vote, if they wait until the Special Meeting that they have scheduled for December 15, 2005, Ms. Byrnes cannot attend that meeting and therefore would not get to vote and she would like her to be able to vote. She added that she is not always certain that she can attend the meetings and if something comes up that she would also not be here. She suggested that they continue and vote this evening.

Mr. Nickerson said that was something to consider that Ms. Byrnes would not be able to attend their Special Meeting on December 15, 2005. He said that he would prefer not to have to schedule a third meeting in December just for the purpose of conducting elections however, he also would like Mr. Salerno to be able to vote.

Ms. Hardy asked to be recognized from the floor.

Mr. Nickerson called on Ms. Hardy for her comments.

Ms. Hardy suggested that if they had a quorum of members who would be attending the Inauguration on Monday, December 5, 2005 that they could hold a very brief meeting after that and elect officers and not have to schedule another meeting.

Mr. Nickerson polled the Commission and it was found that they would not have a quorum who could attend the Inauguration.

Mr. Gada suggested that they move forward and nominated Mr. Nickerson for the position of Chairman –

Mr. Nickerson asked Ms. Hardy to Chair this part of the meeting.

Ms. Hardy passed and suggested that Attorney O'Connell Chair the election instead.

Attorney O'Connell synopsised the Bylaws and legalities by saying that there is no Charter or Ordinance provision regarding dates. There are two Bylaw provisions stating that no alternate can hold or vote for the Office of Chair or Secretary of the Commission. The specific provision is that it must be done during the month of December. They have to interpret the provision not on the basis of what it meant to say but rather on what it did say. Based upon that, he said that he would be comfortable, legally with holding the elections anytime during the month of December.

Mr. Nickerson, based upon the consensus of the Commission, asked Attorney O'Connell to Chair the election of Chairman.

Attorney O'Connell opened the floor for nominations for the position of Chairman of the Zoning Commission.

****MOTION (1)**

Mr. Gada moved to nominate Mr. Nickerson for the position of Chairman of the Zoning Commission.

Ms. Carabelas seconded the motion.

Mr. Peck said that he would like to make a few comments. He said that he is in favor of this nomination and that this leadership has withstood the test of many appeals and has prevailed. This means that they are doing things right and he would like to see it continue this way.

Attorney O'Connell called for any other nominations, hearing none, he closed nominations and called for a vote, noting that Mr. Nickerson would abstain from voting for himself.

Vote: 4 – 0 – 1. Motion passed.

For: Mr. Gada, Ms. Carabelas, Ms. Byrnes and Mr. Peck

Abstained: Mr. Nickerson

◆ Secretary

Mr. Nickerson called for nominations for the position of Secretary of the Zoning Commission.

****MOTION (2)**

Ms. Byrnes moved to nominate Ms. Carabelas for the position of Secretary of the Zoning Commission.

Mr. Nickerson seconded the motion.

Vote: 4 – 0 – 1. Motion passed.

For: Mr. Gada, Mr. Nickerson, Ms. Byrnes and Mr. Peck

Abstained: Ms. Carabelas

Mr. Nickerson thanked everyone and said that he would like to affirm what Mr. Peck has said about how this Commission has handled the issues that they have been dealt with this year, such as the application they addressed this evening. He thanked everyone for their hard work and efforts to be fair and professional in the applications that they have been faced with this year.

Ms. Carabelas said that in sitting out in the audience and listening to how they arrive at their decisions that she was very proud of them as she found them addressing all of the things that she was thinking.

2. Approval of Minutes – Regular Meeting Minutes of November 17, 2005.

Mr. Nickerson called for any corrections to or discussion on the Zoning Commission Regular Meeting Minutes of November 17, 2005.

****MOTION (3)**

Ms. Byrnes moved to approve the Regular Meeting Minutes of the Zoning Commission on November 17, 2005 as presented.

Ms. Carabelas seconded the motion.

Vote: 5 – 0 – 1. Motion passed.

Abstained: Mr. Salerno

3. Affordable Housing Application of Landmark Development Group, LLC for (a) amendment of Section 32 of the East Lyme Zoning Regulations (“Affordable Housing District”) and (b) rezoning the property identified in the Application as land of Jarvis of Cheshire, LLC and Sargent's Head Realty Corporation, identified on East Lyme Tax Assessor's Map 27, Lot 14; Map 31, Lot 4; Map 31.2, Lots 3 & 8; Map 32.1, Lots 2 & 36; Map 32, Lot 1, from its existing Zoning Designation to an Affordable Housing District Designation.

Mr. Nickerson noted that Ms. Carabelas had recused herself to the audience for this application and that Mr. Dwyer, Alternate was seated for this discussion. Mr. Salerno, Alternate remained seated.

Mr. Nickerson called upon Attorney Foley, Town Counsel to briefly outline the three (3) possible motions that they have received.

Attorney Foley recalled to the Commission that the Landmark Application has three parts –

- ◆ The proposed amendment to the text of the Zoning Regulations – a new Section 32
- ◆ The request for a Zone Change, that applies to the entirety of the approximately 240 acres referenced in the application – and –
- ◆ The request for approval of a 'Preliminary Site Plan' according to the newly adopted regulations

Attorney Foley said that in Resolution One that the possible motion was for Denial of the Regulations with findings, Denial of the Zone Change and Denial of the Preliminary Site Plan. Also in this possible motion are suggestions of reasonable changes that can be made to the proposed text amendment that would protect the public interest in health and safety and better promote Affordable Housing in the Town of East Lyme.

In Resolution Two – the possible motion is for - Denial of the Regulations – again with Findings, Partial Approval of the Zone Change – with restrictions – to re-zone a designated portion of the applicant's property as described to an Affordable Housing District under Section 32 of the Town's current regulations – subject to two restrictions as itemized in the motion. This zone change could be approved with less area being used so that it would not affect the CAM area or Open Space areas. This would keep the zone change out of the conservation area. He noted that the Niantic River Gateway Commission must also approve this for the change to be effective. Lastly, there is Denial of the Preliminary Site Plan, with the same reasons cited as before.

In Resolution Three – the possible motion is for Approval of the Regulations with Modifications – this approves the text amendment but changes it to conform to what the Commission feels would be appropriate.

Ms. Byrnes and Mr. Nickerson asked if they are basically asking for the same things in each of these resolutions.

Attorney Foley said yes. For example, he noted that buffers and setbacks are addressed here as was previously discussed by the Commission members.

Ms. Byrnes asked what happened if this is approved with modifications – would their regulations change – for everyone?

Attorney O'Connell and Mr. Nickerson said that yes, it would change the regulations and it would be a change for everyone.

Attorney Foley continued that in Resolution Three there is Partial Approval of the Zone Change and that it is a bit more flexible and there is Denial of the Preliminary Site Plan for the usual reasons of Water & Sewer availability, insufficient information and failure of the CAM plan – but with findings of reasonable changes that can be made. He summed that they do not have to go with any of these as they are written – they are on a gradient scale as they can see and are offered as possible motions only.

Mr. Nickerson opened discussion and asked that they address the three areas that they must make decisions on. He then said that in Resolution Two that the Zone Change approval is confined to the sewer shed area and asked if there was a way to get the building done within the sewer shed area and have the Open Space connected to it.

Attorney Foley said that they could not write the Open Space into the Zone Change and if they increase the area outside of the sewer shed, that would make it denser.

Mr. Gada asked if there is a calculation of how much property falls within the sewer shed area – the acreage?

Mr. Mulholland said that was given to them early in the hearings but he does not recall exactly what that is.

Mr. Giannattasio presented exactly where the line for the sewer shed fell in his presentation.

Mr. Gada asked if there was any computation on how many buildings would fit in that area.

Mr. Nickerson said no.

Mr. Salerno asked if the acreage figure was available.

Mr. Nickerson said that in rewording and republishing the Regulations that would make them effective for everywhere throughout the Town and not just here, for this area – so in consideration of that – he said that he would not be in favor of that.

Mr. Salerno said that he agrees with Mr. Nickerson that the Regulations should not be changed.

Mr. Dwyer said that the existing Regulations for Affordable Housing, in his opinion are fine. They spent many hours on getting them to where they are and he feels they should not be changed.

Mr. Gada said that the existing Regulations trump here and he agrees with his fellow Commission members that they should not be changed for this application. The changes very well may not suit other areas in the Town.

Ms. Byrnes said that she went back after their last meeting and reviewed the Affordable Housing Regulations and that she likes what we have now as they provide for buffers and take into consideration the neighbors and public interest. She would not be in favor of changing our regulations for the reasons she just cited.

Mr. Nickerson said that they have a waiver of the buffer if necessary and asked if that was for neighboring properties of the same ownership.

Mr. Mulholland said that it was put in only in the event that the Commission wanted to use it. It does not say that it is necessary for them to use it.

Mr. Nickerson summed that the Commission members seem to be strongly in favor of not changing the Regulations and if so, then they could eliminate Resolution Three from their consideration and discussion. He wondered out loud if they could approve the Preliminary Site Plan when denying the changes that would be necessary with the Regulations and arrived at the conclusion that without approval of the Regulation changes that they could not approve the Preliminary Site Plan. This would leave them considering

Resolution Two which grants partial approval of the Zone Change. He said that he would be somewhat in favor of a partial Zone Change as it would not be adverse to the Affordable Housing Regulations.

Mr. Salerno said that there are other reasons beyond the Zoning Regulation Changes why the Preliminary Site Plan cannot be approved. Traffic and access have been cited as well as water and sewer issues. He asked again what the acreage was in the sewer shed area. He said that they need to know if it meets the ten (10) acre minimum.

Mr. Peck said that he recalled that 122 acres is the whole piece –

Mr. Nickerson said that he would guess that there is at least 40 acres there so it does meet the 10 acres.

Mr. Salerno suggested that if they reapplied that they could change things from what was represented here.

Mr. Gada said that if they were to suppose the 40 acres is correct, that four (4) acres would be open space. His question then, is how much can they put on 36 acres.

Mr. Peck commented that if they approve with modifications that they would have a zone change for the sewer shed.

Attorney Foley pointed out that all of the applicants' property within the sewer shed is proposed for Affordable Housing.

Mr. Peck and Mr. Salerno suggested that they take the whole sewer shed area and asked how they would have to define it.

Mr. Mulholland said that it would have to be pretty clearly defined as to what they are following such as property lines, sewer shed line –

Mr. Dwyer suggested that they identify it as **Exhibit #17** – if that is the map that they are following.

Mr. Gada said that he does not think that it is the responsibility of the Commission to designate the areas but rather to let the applicant know what they would consider favorable and to go from there – let the applicant come to them with this package.

Mr. Peck said that in Restriction #1 on Page 5 of Resolution #2 that he would like them to add after 'Town's sewer service district,' – *as determined by the Water and Sewer Commission on January 28, 2003 (Exhibit 17) and outside the CAM boundary area.*

Mr. Nickerson said that he thinks that they have tried to do that anyway and that they would just be defining it better.

Mr. Gada said that he does not think that it is for them to define –

Ms. Byrnes said that she thinks that it is not that hard for them to define and that she is in favor of the Commission defining it better so that there are no misconceptions.

Mr. Nickerson said that while it would be nice to have a complete package that he feels that it would be easy to say that this is the area – period.

Mr. Gada said that is fine as long as it is a defined area.

Mr. Mulholland offered – for clarification that Resolution Two speaks to the sewer shed specifically on this property.

Mr. Peck commented with respect to the statement of denial and then having someone come back all over again that Mr. Gada made, that sometimes the Town makes a zone change because they want a particular plan. This area is defined by the sewer shed and other boundaries.

Mr. Gada said that he understands what Mr. Peck is saying about the specific areas and that he can live with this as defined.

Ms. Byrnes said that she is comfortable with this regarding the zone change.

Attorney Foley said that when they are talking about the Conservation Zone and the Coastal Boundary that he thinks that they are using them interchangeably and he wants them to be clear that they are two very different things. The Coastal boundary is shown on the map and the Conservation area is defined by Statute. In this instance it is seen as a large rectangular area there (pointed out on the map).

Attorney O'Connell said that if this Commission approves a Zone Change and that Zone Change area involves a Conservation area that it would also mean that another approval is necessary from the Niantic River Gateway Commission.

Mr. Mulholland clarified that this is a Zone Change from RU-120 to an Affordable Housing District.

Mr. Nickerson said that it would seem that the denial of the Preliminary Site Plan would follow with the Partial Zone Change approval.

Mr. Salerno and Ms. Byrnes noted that they have issues with the traffic and the closeness of the road to many homes in the area.

Mr. Peck said that he thinks that the resolution states what is necessary. He noted that single access is not acceptable.

Mr. Nickerson said that the bottom line is that this is a denial of the Preliminary Site Plan and that it is not necessary for them to go into great detail on what they want to see in the plan or the type of roadway system that they think should be there. They agree that there are many items that have not been addressed or that are not acceptable.

Ms. Byrnes said that she is ready to make a motion.

****MOTION (4)**

Ms. Byrnes moved that WHEREAS on June 2, 2005, Landmark Development Group, LLC, ("Applicant") filed an "Affordable Housing Application" entitled "Riverview Heights (A Residential Community)" with the East Lyme Zoning Commission ("Commission") consisting of a set of plans for 840 total units of which 252 would be affordable housing units for sale, a drawing of the proposed units, an affordability plan and proposed amendments to Section 32 of the East Lyme Zoning Regulations. The land to be rezoned is identified on the application as land of Jarvis of Cheshire, LLC and Sargent's Head Realty Corporation, and is identified on East Lyme Tax Assessor's Map 27, Lot 14; Map 31, Lot 4; Map 31.2, Lots 3 & 8; Map 32.1, Lots 2 & 36; Map 32, Lot 1 The applicant's parcels are currently zoned as an RU-120; and

WHEREAS, the applicant has requested: (a) amendments to Section 32 of the East Lyme Zoning Regulations ("Affordable Housing District"); (b) the rezoning of the entirety of its identified property; and (c) approval of a "Preliminary Site Plan" in accordance with its proposed regulations; and

WHEREAS, the Commission, having determined that the application consists of a request for a text amendment to the zoning regulations and 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

WHEREAS, 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 and the applicant has submitted a coastal site plan in accordance with General Statutes 22a-109, the Commission has referred the application to the Department of Environmental Protection (DEP), Office of Long Island Sound Protection (OLISP). Pursuant to General Statutes 22a-106, the Commission must additionally review the application for potential adverse impacts on coastal resources and future water dependent activities; and

WHEREAS, pursuant to General Statutes 22a-19, the Friends of Oswegatchie Hills Nature Preserve, Inc. and Save the River, Save the Hills, Inc. have intervened in the hearing on 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

WHEREAS, the Zoning Commission held three public hearings on the Application and coastal site plan and listened to numerous hours of testimony during those hearings. Numerous exhibits were submitted by the applicant and various agencies and individuals for consideration during the hearing process. In making its decision, the Zoning Commission is considering and taking into account the testimony and exhibits submitted at the three hearings on the Application.

WHEREAS, for the purposes of this affordable housing application, the Commission will address this motion in three separate parts:

- A. The proposed amendment to the text of the zoning regulations;**
- B. The request for a zone change;**
- C. The request for approval of a "Preliminary Site Plan."**

A. THE PROPOSED AMENDMENT TO THE TEXT OF THE ZONING REGULATIONS:

WHEREAS, the Zoning Commission considers these proposed text amendments to be applicable to Affordable Housing Applications and Districts wherever they may be located in East Lyme and not just for this applicant's individual site, and having considered the fact that the Commission has adopted Section 32 of its Regulations for this purpose; and

WHEREAS, the Zoning Commission, having thoroughly reviewed the proposed amendments to the zoning regulations and having considered all the evidence submitted throughout the public hearings, finds the text amendments to be inadequate to protect substantial public interests in health and safety, and inadequate to promote affordable housing for the following reasons:

- 1. The applicants' proposed regulations do not require that the development be served by public water and sewer, which is deemed necessary to protect public health and which is required of all multifamily units by the current regulations. The applicant's regulations eliminate the requirement that the applicant provide letters from the Water and Sewer Commission indicating adequate facilities for water and sewer.**
- 2. The applicant's proposed amendments to the regulations eliminate the requirements currently required for "Conceptual Site Plan" approval including the requirement for a Special Permit, traffic impact statement and general traffic access and circulation information; dimensions of buildings, locations of utilities, a soil type survey and other information required by the Town's affordable housing regulations which the Commission has duly adopted and deems necessary to satisfactorily evaluate the application to protect the health and safety of the public.**
- 3. The applicant's proposed amendments eliminate the requirement that the applicant submit an affordability plan with its Conceptual Site Plan, which is deemed an essential component of an affordable housing application and required by CGS 8-30g.**
- 4. The applicant's proposed amendments eliminate the requirement that the applicant provide for any buffer area where the parcels adjoining the Affordable Housing District are zoned for multifamily use. The existing regulations provide for buffers of 100 feet between multifamily districts and the Commission deems it inequitable and discriminatory to eliminate that requirement in situations where the multifamily development contains affordable housing. The proposed amendments also provide that any buffers required by the regulations can be included in the calculation of required open space, thereby effectively lessening the amount of land**

dedicated to open space, which is in direct opposition to the Town's goal of increasing open space and preserving open space.

5. The applicant's proposed amendments include an extra level of review (Preliminary Site Plan review) that has a salutary effect of making the affordable housing development application process more accessible and affordable to developers which would result in the promotion of affordable housing in East Lyme. However, the Preliminary Site Plan review does not provide for any of the information currently required in the regulations and as described in # 2, above. The proposed Preliminary Site Plan regulations do not require adequate demonstration of public water and sewer facilities as described in # 1, above. In its current form, the proposed Preliminary Site Plan regulations require the applicant to provide even less information than the Town's regulations for a Conceptual Site Plan. The proposed Preliminary Site Plan regulations in their current form do not require the applicant to provide the information deemed necessary for the Commission to satisfactorily evaluate the application to protect the health and safety of the public. Additionally, an approval of a Preliminary Site Plan obligates the Commission to approve a Final Site Plan, if the Final Site Plan conforms with the Preliminary Site Plan. Without sufficient information accompanying the Preliminary Site Plan the Commission cannot properly determine "conformity" with a later submitted Final Site Plan, which it may be obligated to approve, and adequately protect the public interest in health and safety.

6. The applicant's proposed amendments eliminate the requirement for adequate fall zones that correspond to the height of the building which is essential to public safety.

BE IT THEREFORE RESOLVED, that the Zoning Commission hereby **DENIES** the application of Landmark Development Group LLC for a text amendment to the regulations for an Affordable Housing District for the reasons stated above. The above enumerated public interests clearly outweigh the need for the applicant's proposed regulations, especially in light of the currently existing regulations which adequately address these concerns.

BE IT FURTHER RESOLVED, in accord with the requirements of 8-30g(g)(1)(C), the Zoning Commission finds that reasonable changes can be made to the proposed text amendment which would protect the public interest in health and safety, and better promote affordable housing in the Town of East Lyme. More particularly, any regulations for an Affordable Housing District must include: (a) the requirement that the applicant provide proof that public water and sewer is available to the site; (b) that any provision for a Preliminary or Conceptual Site Plan must provide the Commission with adequate information as described in paragraphs #1, 2, 3 and 5 above, that would allow the Commission to adequately evaluate the proposed development to ensure its harmony with the relevant environmental, developmental, health and safety considerations and other considerations which it may consider; (c) the requirement that buffers and setbacks between any adjoining land owners are necessary, regardless of the adjoining use and that such buffers are not provided at the expense of open space preservation; and (d) a requirement that fall zones between buildings be commensurate with building height.

B. THE ZONE CHANGE REQUEST

WHEREAS, the applicant is applying for a zone change for the entirety of the identified parcels, approximately 240 acres, and the applicant's development proposes 840 units on approximately 120 acres, leaving approximately 120 acres for further development. It is evident by the proposed regulations and development plan submitted that high-density development is contemplated throughout the identified parcels and such approval of a zone change for the proposed lots would allow for the dense development of the entire property far in excess of what is currently proposed; and

WHEREAS, the Commission, having denied the applicant's proposed text amendments to the regulations, will evaluate the application for a zone change to an Affordable Housing District under Section 32 of its current regulations; and

WHEREAS, the Commission has determined that large portions of the land within the proposed zone change are outside of the Town's designated sewer service district as determined by the Water and Sewer Commission on January 28, 2003 (Exhibit 17) and that such areas by virtue of their lack of sewer service are inappropriate for the density of development proposed and would adversely affect the health and safety of the community; and

WHEREAS, the Commission has determined that large portions of the land within the proposed zone change are within the Coastal Boundary as described in General Statutes 22a-94 and as depicted on the applicant's Overall Site Plan (Exhibit 12). The development of the site at the density allowed by the proposed regulations would result in adverse impacts to the ecosystem and habitat of Long Island Sound, which includes the Niantic River. Pursuant to General Statutes 22a-106, the Commission finds that the characteristics of the site, including the proximity of its steep slopes to the Niantic River and the river's dependent environmental resources and the proposed site's freshwater wetlands and watercourses that feed into the Niantic River, the necessity for clear cutting and blasting on the site and the erosion and run-off into the river that would precipitate, the precarious condition of the Niantic River's dependent resources such as the struggling eelgrass and shellfish populations and the diminishing habitats for nesting and migratory birds along coastal waterways, all contribute to the potential for unacceptable adverse impacts on coastal resources, as defined by General Statutes 22a-93. The substantial evidence clearly demonstrates the potential for detrimental effects on coastal resources by rezoning the site to allow for high density multifamily structures and uses within the coastal boundary. The Commission deems such high density development in that area inappropriate at the density of development proposed and contrary to the health and safety of the community and would have an adverse impact on coastal resources and future water dependent development activities, if the proposed zone change is not significantly reduced in scope and location; and

WHEREAS, the Commission has determined that large portions of the land within the proposed zone change are within the Conservation Zone as described in General Statutes 25-109d (Exhibit 2); and that the Commission deems such high density development in those areas inappropriate for the density of development proposed and contrary to the purposes and standards of General Statutes 25-109f, if the proposed zone change is not significantly reduced in scope and location; and

WHEREAS, the Commission has determined that large portions of the land, if not the entirety of the designated land, within the proposed zone change are and have been the subject of many decades of persistent and explicit efforts by and on behalf of the Town to preserve the area as open space and that the proposed zone change would be antithetical to that purpose, if the proposed zone change is not significantly reduced in scope and location; and

WHEREAS, the Commission has determined that the land which is the subject of this application is and 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, if the proposed zone change is not significantly reduced in scope and location; and

WHEREAS, the Commission recognizes the need and benefit of an increased amount of affordable housing in the Town, and has weighed and balanced that need against the public's interest in the common health and safety and other above described public interests;

BE IT THEREFORE RESOLVED, that the Zoning Commission hereby APPROVES with RESTRICTIONS the application of Landmark Development Group, LLC for a request to re-zone a designated portion of the applicant's property as above described to an Affordable Housing District under Section 32 of the Town's current regulations, subject to the following restrictions:

Restriction #1: The zone change shall only apply to that portion of the applicant's property that is within the Town's sewer service district as determined by the Water & Sewer Commission on January 28, 2003 (Exhibit 17) and outside the Coastal Area Management (CAM) boundary area. The

balance of the applicant's property remains zoned as it is currently zoned. The Commission considers this a necessary restriction for the following reasons, all of which are required to protect public health and safety and for other reasons it may legally consider:

A. A zone change for the applicant's entire property would be contrary to the Town's policy of allowing dense multifamily development only where public sewer is available. By restricting the zone change to areas of the applicant's property within the sewer service district, the Town remains consistent with its policy and ensures that the occupants of any future development within the District could have safe and adequate sewer service;

B. The proposal is incompatible with local and state Plan of Development and the stated goals to preserve and protect Oswegatchie Hills. Chapter 478a of the Connecticut General Statutes designates the majority of the subject property as a "Conservation Zone". Further, the proposal is inconsistent with the long-standing efforts by the Town to preserve the Oswegatchie Hills as open space demonstrated by the evidence showing a long history of conservation efforts. By reducing the scope and location of the zone change to regions within the sewer service district and outside the Coastal Area Management (CAM) boundary area, which roughly corresponds to the area of the applicant's property outside the Conservation Area, the Town's goals of preserving the Oswegatchie Hills can be achieved while balancing the needs for affordable housing in East Lyme.

C. The proposal is incompatible with local and state, public and private efforts to preserve the environmentally unique and diverse qualities of the Oswegatchie Hills. The Commission finds that, pursuant to General Statutes 22a-19, the proposed activity is reasonably likely to have the effect of unreasonably polluting, impairing and destroying the surrounding natural resources, including the Niantic River's eelgrass and shellfish populations, the woodland habitats of nesting and migratory forest birds and the wildlife dependant on the site's vernal pools. By reducing the scope and location of the zone change to regions within the sewer service district, the riverfront and hillside woodlands can be preserved, while balancing the needs for affordable housing in East Lyme.

D. The proposal is incompatible with the purposes of General Statutes 22a-105, et seq., the Coastal Management Act, in that a zone change to the entire property would allow for activity that would have an adverse impact on coastal resources and water dependent uses, and that by reducing the scope and location of the zone change to regions within the sewer service district and outside the Coastal Area Management (CAM) boundary area, the zone change affects a significantly smaller portion of land within the Coastal Boundary, while balancing the needs for affordable housing in East Lyme.

Restriction #2: Pursuant to General Statutes 25-109g, this zone change approval must be approved by the Niantic River Gateway Commission to become effective.

C. THE REQUEST FOR APPROVAL OF A "PRELIMINARY SITE PLAN"

WHEREAS, the Zoning Commission has resolved to deny the application for a text amendment to the zoning regulations and has approved with restrictions the applicant's request for a zone change, see A and B above; and

WHEREAS, the applicant's request for approval of a Preliminary Site Plan cannot be adequately addressed by reference to the Town's current Regulations as no such category of site plan approval exists within Section 32 of those regulations; and

WHEREAS, the Commission recognizes that an affordable housing application need not be in strict compliance with existing zoning regulations (see *Wisniowski v. Berlin Planning Commission*, 37 Conn. App. 303 (1995)). Nonetheless, Section 32 of the Town's existing regulations, entitled "Affordable Housing District," adopted in accordance with General Statutes 8-30g (c), contains basic requirements that must be addressed in any "Affordable Housing Application" and contains provisions for approval of a Conceptual Site Plan, which is sufficiently similar to the applicant's

proposal, so that the applicant's proposal can be treated as an application for approval of a Conceptual Site Plan under the regulations; and

WHEREAS, the Commission finds that the applicant's Conceptual Site Plan for an Affordable Housing Development does not comply with Section 32 for one or more of the following reasons:

- 1. The application did not include a letter from the Water and Sewer Commission indicating adequate sewer capacity to serve proposed development, pursuant to 32.8.2 of the regulations;**
- 2. The application did not include a letter from the Water and Sewer Commission indicating adequate source of potable water to serve proposed development, pursuant to 32.8.3 of the regulations;**
- 3. The application was not accompanied by a Special Permit Application and evidence required thereunder.**
- 4. To the extent that the applicant's Coastal Area Management application sought preliminary site plan review, it was deemed inadequate by the Department of Environmental Protection, Office of Long Island Sound Programs, and was recommended for denial from that office;**

WHEREAS, the Zoning Commission concludes that all of the reasons enumerated above in Section B, above, that were found that weighed against the approval of the zone change application apply equally to the evaluation of the applicants' "Preliminary Site Plan" including but not limited to the need for open space preservation and the lack of access to Town sewer services; and

WHEREAS, the Zoning Commission concludes that the Preliminary Site Plan fails to adequately address the considerable difficulties in providing a single vehicular access to the site through the narrow, winding streets of the existing Golden Spur neighborhood and onto the state route system in manner consistent with public health and safety of the residents of Golden Spur, the future residents of the Affordable Housing Development and the users of the town and state roads; and

WHEREAS, the Zoning Commission finds, pursuant to General Statutes 22a-106, that the proposed use of the site, which is fully or partially within coastal boundary, will have potentially adverse impacts on coastal resources and future water dependent activities. The Commission finds the proposed coastal site plan review application inconsistent with the policies and standards of the Connecticut Coastal Management Act, the Town's Plan of Development, the Municipal Coast Program and the Harbor Management Plan based on severe onsite development constraints and the potential adverse impact on coastal resources and water quality. Additionally, the Commission finds that the proposed use would not adequately provide for future water-dependent uses and access for the public to future water dependent uses; and

WHEREAS, the Zoning Commission finds that, pursuant to General Statutes 22a-19, the proposed development at the site is reasonably likely to have the effect of unreasonably polluting, impairing and destroying the surrounding natural resources, including the Niantic River's eelgrass and shellfish populations, the woodland habitats of nesting and migratory forest birds and the wildlife dependent on the site's vernal pools. Any feasible and prudent alternative must demonstrate that the planned construction will not be likely to impair, pollute or destroy the above mentioned natural resources and would substantially mitigate the likelihood of unreasonably polluting the Niantic River and its surrounding and dependent natural resources.

BE IT THEREFORE RESOLVED, that the application for an affordable housing development Preliminary Site Plan (Conceptual Site Plan) is denied, and that there are no reasonable changes that can be made to the application that would adequately protect the above enumerated public interests; and

**BE IT FURTHER RESOLVED, that the Zoning Commission hereby DENIES the Coastal Site Plan Review Application of Landmark Development Group, LLC.
Mr. Dwyer seconded the motion.**

Mr. Peck asked Mr. Mulholland about the RU-120 Greenway Conservation District and said that he had not seen reference to it anywhere else.

Mr. Mulholland said that it should be RU-120 only as they had changed it long ago. He further said that he would see that it is straightened out in the office.

Mr. Peck asked that they change the motion in the very beginning to read RU-120; deleting Greenway Conservation District.

Ms. Byrnes accepted the change to the motion.

Mr. Dwyer also accepted the change for his second to the motion.

Mr. Nickerson called for a vote on the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Mulholland suggested that the zone change could be published on December 15, 2005 and become effective on December 16, 2005.

Attorney O'Connell suggested that they give enough time to put the maps together.

(Mr. Nickerson called for a ten-minute recess to discuss this with Town Counsel to make sure that they have the correct dates for publication.)

Once reconvened –

Mr. Nickerson instructed Mr. Mulholland to publish this decision on Wednesday December 14, 2005 for it to become effective on December 16, 2005.

Mr. Mulholland said that he would.

(Note: Ms. Carabelas rejoined the table and Mr. Dwyer was seated in the audience.)

Old Business

1. Stormwater

This is a work in progress.

2. Aquifer Protection

This is a work in progress.

3. Subcommittee – Niantic Village – CB Zones (Mark Nickerson & Marc Salerno)

Mr. Nickerson said that he hopes to be able to work on this in the near future.

New Business

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

There was none.

2. Zoning Official

Mr. Mulholland said that he thinks that this Commission has done a great job this year with the applications that it has had to work on. He said that they have done about two years worth of work in one and faced a number of challenges successfully. They will continue to see other applications and will have a small breather in the very beginning of the year and then it would pick up again.

Mr. Nickerson thanked Mr. Mulholland for his expertise and guidance.

3. Comments from Ex-Officio

Ms. Hardy said that she had no comments.

4. Comments from Zoning Board liaison to Planning Commission

There was no one present and no report.

5. Comments from Chairman

Mr. Nickerson thanked everyone again for their hard work. He also said that the Harley appeal was dismissed and that hopefully that will end the legal issues. He noted that the decision of the courts was their decision as well so hopefully this will now move forward.

Mr. Nickerson said that they might want to create a subcommittee to look at their Bylaws and make some changes such as waiting for new members to become full members before holding the election of officers.

Mr. Mulholland said that he could draft some verbiage on this for them to look over and decide upon. Mr. Nickerson asked that Mr. Mulholland do so.

6. Adjournment

****MOTION (5)**

Ms. Byrnes moved to adjourn this Regular Meeting of the East Lyme Zoning Commission at 10:30 PM.

Mr. Salerno seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary (Pro-Tem)