

**EAST LYME ZONING COMMISSION
PUBLIC HEARING I
Thursday, FEBRUARY 17th, 2005
MINUTES**

Feb 24 20 05 at 2:45 (AM/PM)
Esther B. Williams
EAST LYME TOWN CLERK

The East Lyme Zoning Commission held the Application of Theodore A. Harris Public Hearing for a Special Permit for golf course residential accessory use pursuant to Section 12.1.4A of the East Lyme Zoning Regulations for property identified as 38 Holmes Road, East Lyme, CT, on February 17, 2005 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson opened the continued Public Hearing and called it to order at 7:30 PM.

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

ALSO PRESENT: Attorney Theodore Harris, representing the Applicant
Robert Pfanner, PE representing the Applicant
Jonathan Katz, Applicant
Alan Mess, PE, Barkan & Mess Associates-Traffic Engineers
William Mulholland, Zoning Official
William Dwyer, Alternate
Rose Ann Hardy, Ex-Officio, Board of Selectmen

ABSENT: Shawn McLaughlin, William Henderson, Alternate

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

Public Hearing I

1. Application of Theodore A. Harris for a Special Permit for golf course residential accessory use pursuant to Section 12.1.4A of the East Lyme Zoning Regulations at property described in the Application as 38 Holmes Road, East Lyme, Connecticut, East Lyme Assessor's Map 57.0, Lot 29.

Mr. Nickerson noted for the record that Mr. Salerno, Alternate was seated at the table.

Mr. Mulholland noted that the Legal Ad ran on 1/7/05 and 1/17/05 in the New London Day and that the sign was posted on the property as required.

Mr. Nickerson said that they had some correspondence regarding this application to read into the record.

Ms. Carabelas, Secretary, read the following correspondence into the record:

- ◆ Letter dated 2/17/05 to EL Zoning Commission from Wm. Mulholland, Zoning Official – Re: Special Permit Application/Residential Accessory Use – Walnut Hill Country Club – 38 Holmes Road, East Lyme, CT – stating that the applicant is proposing to construct 80 dwellings at the property cited and that the golf course was previously permitted by the Commission. The Commission also permitted 70 units of senior housing on the property in an area re-zoned SU-E. Five units of the new dwellings must be age restricted per the SU-E regulations. The drainage was reviewed by Town Engineering and a wetland permit has been issued.

Mr. Nickerson called for the applicant to give their presentation.

Attorney Theodore Harris, representing the applicant said that the sign was posted at least 15 days before the original hearing date as required and that it was repainted with the new public hearing date. He submitted a picture of the posted sign. This was entered into the record as **Exhibit 1**.

Mr. Nickerson said that he was also entering the plans, dated - Revised through 1/14/05 into the record as **Exhibit 2**.

Attorney Harris also submitted two different wetland permits that they received from the Conservation Commission. He noted that both involve principally road crossings. These were entered into the record as **Exhibit 3**. He continued that part of the units tonight require that they be restricted to elderly use. He submitted an amended document that takes into consideration this restriction stating that it is referred to in Section 10. This was entered into the record as **Exhibit 4**. He lastly submitted drawings of the elevations and floor plans of the units, which was entered into the record as **Exhibit 5**. He said that they would also be hearing from a Traffic Engineer later this evening and receive a report. He said that this application is for an additional 80 units of housing to be built as an accessory use to the golf course. He recalled to the Commission that this means that if the golf course is not built then there would be no housing. The golf course has to come first or there are no units. Part of the proposal tonight also results in the reduction of the size of the original clubhouse by the elimination of the banquet facilities. This overall results in the potential for a great reduction in the traffic impact. Community water and sewer as was originally proposed will serve the property. The first phase of the water has been approved by the DEP. The Town Water & Sewer Commission has approved this project. The sewer system is pending before the DEP and the mechanical portions have been approved and a draft permit is forthcoming in the month of April. He then introduced the owner, Jonathan Katz.

Jonathan Katz, 38 Holmes Road synopsised that in Fall 2002 he came before them for the golf course and it was approved in 2003. Finding that the financial backing was not readily there for a golf course, in June 2003 he applied for and was granted 70 units of housing under the active adult community status. While a lot of things have been done over the past two years, the golf course still is not built. He said that he has had to reduce the construction costs and add more housing. The clubhouse has been reduced to half of its original size and the tennis courts have also been eliminated. He said that he has kept the indoor/outdoor pools and walking trails. These units will be targeting people who like to have a second, seasonal home. They will have a minimal effect on the schools and traffic. He said that while he is cognizant of public comments, that this is necessary to complete putting the financial backing in place to do this project. His family has had a 54-year history in this Town and he seeks to continue it. He then introduced Robert Pfanner, Engineer for the project.

Robert Pfanner, 2 Ferro Court said that he is the engineer for the project. He explained on the plan the changes that Mr. Katz had mentioned and where the 16 +3 triplexes and duplexes would be combined into the existing system. Seventeen smaller units would go where the clubhouse banquet facility used to be. The pool area has been moved to where the tennis courts were going to go. The golf course has few changes and the setbacks of the houses are the proper distances from the golf course.

Mr. Mulholland asked if there was a rendering of the new clubhouse that they could see.

Mr. Katz presented a drawing and explained that it would now be a one-story rather than a two-story building. The walkout basement would be for golf cart storage.

Mr. Gada asked if there would be any difference between the SU-E buildings and the regular ones.

Mr. Pfanner said that the building materials and styles would be the same. The SU-E units would have a master bedroom on the first floor.

Mr. Katz explained the floor plans stating that they would have finished basements with walkouts and would be in the 2700-2900 sq. ft. range. All of them would have a golf course view.

Mr. Salerno asked if the five units that will have to be active adult units would be grouped closer to the other SU-E units.

Mr. Katz said that they could put them closer to the others as the other SU-E units are all closer to the pool and amenities so that the walk is shorter.

Attorney Harris introduced Alan Mess of Barkan & Mess Associates, Inc., Traffic Engineer for the project. Alan Mess, PE and President of Barkan & Mess said that he and his firm have specialized in traffic engineering for 25 years. He was asked to evaluate the traffic that would result from this development. He said that he compared the changed project to his original report especially with respect to the fact that the banquet facility has now been removed. The traffic that would have been associated with events held at that facility is

no longer a factor and greatly reduces the impact. He summed that there would be minimal impact of this development on the area roads. He explained that the report that they had was based upon 100 additional units and the number was now 80 units. He submitted an updated traffic report dated 2/16/05 which was entered into the record as **Exhibit 6**.

Mr. Salerno asked if the traffic study had taken into consideration the road improvements.

Mr. Mess said yes.

Mr. Pfanner noted that the road improvements would be from the upper drive of Holmes Road to the Salem Turnpike in Montville. The Salem Turnpike is 22' in width. He noted that these improvements were agreed to on the previous application and will be done.

Attorney Harris explained the detailed standards of Section 25.5 of the Regulations and how the density was calculated. The density calculation would allow 122 units and they are proposing 80. He said that including the golf course that there is close to 80% open space. He noted that they are also providing 254 parking spaces including the garages.

Mr. Pfanner explained the lighting. He said that they would have 12'-13' high light poles that would be placed every 300' all the way to the back as it is a long dark road.

Ms. Carabelas asked about foot traffic on Holmes Road.

Mr. Pfanner said that there really is not much as it is a steep road and the project will have an internal trail system that people will use.

Mr. Katz showed the trail system on the plan and said that it could also be used for horses and that it would connect to the Nehantic forest. During the winter it could be used for cross-country skiing. He cautioned however that he would not want anyone on the golf course area.

Ms. Carabelas asked if the power lines are above ground.

Mr. Katz said yes however the utilities would be under ground.

Mr. Nickerson asked about fire protection and school buses.

Attorney Harris said that the school buses do not enter the property as it is private property. The students, if any, would have to walk up to the bus stop. He offered as a comparison Pondcliff where he resides and the fact that there are perhaps six school age children total there.

Mr. Pfanner said that the two cul-de-sacs are a bit tight but the rest of the area is large enough to accommodate the fire trucks.

Mr. Nickerson explained the process for comments from the public and called for those who wished to speak in favor of the application.

Bob Jones, 5 Applewood Common said that he thinks that this would be a really nice project for this Town in terms of all of the aesthetics it would provide. He said that they heard about the fire truck and explained that we have a new fire truck coming that gets around the Pine Grove area and will certainly be okay here. He added that this will be phenomenal with regard to the tax base and with Holmes Road widened, traffic will not be a problem.

Dave White, 20 Nathan Hale Road, East Lyme said that he lived in Salem for seven years and he is sure that they heard the story about the golf course there. The people who wanted to build it ended up getting sued and backed out and the Town lost the golf course and the property eventually went to the Nature Conservancy. The Town of Salem hired a group to do a study to present things to them that could be done to enhance the Town and the tax base. The study came back and cited that the Number ONE thing for the Town to do was to bring a golf course in – and they had earlier killed it. The moral of the story here is that this is a great idea for this Town and he supports it and thinks they should support it and not lose it.

Mr. Nickerson called for anyone else wishing to speak in favor of the application –

Hearing no one –

He called for anyone wishing to speak against the application –

Mark Butterfield, 6 Upper Walnut Hill Road said that he has been here two times before since 2002 and that they have granted two special permits previously and the construction has not started in the two years. He feels that the applicant has not met the conditions of the special permit and that the time has expired. He also thinks that the explanation on the density and the underlying zone with the elderly calculation sounds like double dipping to him. A year ago they passed the residential use being an accessory to the golf course and this was to make sure that the golf course was put in prior to the residential development. There is still NO golf course there and he expects that they will enforce this as written regarding both the density issue and the golf course.

Terry Casey, 55 Holmes Road said that he has lived on Holmes Road for 27 years. He bought his original house from Bob Pfanner. He said that he sees the traffic as a major concern and he would like Zoning to consider the total impact of the traffic on Rte. 85. All of the roads there are country roads. They are very narrow with sharp S-turns. It is hard to do a traffic study and project it to traffic generated by these three projects that will take place on this property. He said that he estimates 30,000 rounds of golf per year here and that the traffic would be considerable. He also said that there is no shoulder and no place for people to walk on Holmes Road. They need to consider the safety.

Ron Capozza, 19 Holmes Road said that in June of 2003 they voted to change the zoning of part of this land to SU-E. According to their bylaws work has to be started within one year or an extension had to be in place by this Board. He said that he did not see an extension put in place by this Board and asked for an explanation about this. The extension would be granted if partial buildings or structures had been started.

Mr. Mulholland said that there was no extension requested and therefore not granted. He said that he would seek an opinion from the Town Attorney to see if they are compliant and if it is found that they are not, then they would have to re-apply.

Mr. Capozza continued that they were told two and a half years ago that they would have a large banquet facility and a championship golf course and nice housing. Now they have no banquet facility, a golf course and another 80 units of resort-targeted, age restricted housing? We've come a long way however he does not see where three-family housing fits into that area or the underlying area.

Stephen Slavtcheff, 33 Upper Walnut Hill Road said that he has lived here since 1960. He said that he has supported this project previously. He thinks that with three-tier units that they are going to be in demand by the casino workers. They could put two to three families in one unit there. This is a problem in Norwich and the surrounding Towns. If you approve this, then you should also approve the Oswegatchie Hills project because as least that was Affordable Housing. We don't want this. It is not reasonable to expand the condos. The golf course has been on paper for two and a half years and nothing has been done. You will keep expanding the housing before you see the golf course. Where are all of the tax dollars that all of this was supposed to bring in. You'll be bringing in people here who will tell you that they are taxpayers and they will demand services and who is going to pay for all of this? What if the condominium fails. The Town will have to provide services. Think about this. He said that he would say more but others have already covered it.

Patricia Butterfield, 6 Upper Walnut Hill Road said that almost three years ago Mr. Katz met with them and told them that they were going to have an elaborate golf course and some limited housing and he assured them that he had the financial backing to get this done. Very recently he sent them another letter telling them that he was naïve and he did not have the financial backing and that he needed to get the Zoning Board to approve what he is requesting tonight. She said that they are really not opposed to the golf course but rather their biggest concern is his continually requesting changes and what is going to happen with the housing. Others have touched on issues she was going to discuss. She is very concerned with the traffic issue and going up and down Holmes Road. It is narrow, they do not have sidewalks, and there are bicycle riders and horseback riders who utilize the road on a regular basis. It is a narrow road and you cannot pass two cars at once on it. The sign that was supposed to be changed was not changed until the last minute regarding the new date of the public hearing. Also, it does not appear that significant work was done to accommodate the specifics of the previous permits. The area is very rural. She said that she does realize that people can do what they want with their property as long as they follow the Zoning regulations.

Maureen Bell, 18 Upper Walnut Hill Road, said that she was not sure if they said that this public hearing was opened and continued at the last meeting or if it was cancelled.

Mr. Nickerson said that it was opened and continued.

Ms. Bell continued that she agrees with what was said previously about the density issue. It looks like double dipping to her no matter how you look at. Holmes Road is very narrow and she has two children who use the road. They have horses and ride there, as do others who live in the area. She said that she is also very concerned with the 'intent' of what is going to be done there. If the 'intent' does not come to pass then what will be done. She said that she was making the point that there can be a great difference between what is said and what the 'intent' is versus what finally does happen.

Andrew Radynski, 15 Upper Walnut Hill Road said that his house is on an S-turn and that he has had to rebuild the stone wall in front of his mother's house which is next door to his. He has had to do this twice, not in snowy or bad weather but in good weather when someone who has had a few beers, came flying down the street and hit the wall. With the additional traffic they will have to widen the road and that will take land from the people who live there. He said that he would like to say a few things about the letter that Mr. Katz sent to them. He said that the sign has been out there for about two years announcing the golf course. On Monday morning that sign was changed to say that the public hearing was changed to February 17, 2005. If he had not been out walking then he would not have known about this meeting. If a few of the people who live up there were not retired, then no one would have known about this meeting. He said that they should put it in the paper or something to get the word out. He said the letter that Mr. Katz sent to them said that there is 'zoning structure on the books' that would allow them to build hundreds and hundreds of units however, they are not doing that at this time. 'At this time' – what does that mean? – How far is this going to go? It was also noted that they do not have more land unless someone wishes to sell to them. What does this all mean – will we have housing and a minimal golf course? He said that he does not want more housing and that he is against this project.

Mr. Nickerson asked if anyone else wished to speak regarding this application – Hearing no one – he asked if there was any rebuttal from the applicant.

Attorney Harris said that there has been extensive discussion on the density calculation and that it is based on the SU zone and that he still feels that it was done correctly as they have done it. Second, there is some question of if work has been done. It is obviously a factual question and there was extensive work begun with the initial application and thereafter. He said that they would be happy to provide Mr. Mulholland with the details on the activities and the timing of them with respect to the permits.

Ms. Carabelas asked if they planned on applying for an extension due to no structures being up there.

Attorney Harris said no, as there has been substantial moving of earth and other work and it does not require both, as he reads the regulation.

Mr. Mulholland suggested that they entertain what he is giving them and that they go from there once they see what it is.

Attorney Harris said that they heard extensive discussion on traffic and if it is found necessary, the STC will review this and make recommendations if appropriate.

Mr. Mess, Traffic Engineer said that they based their study originally on 100 units and there are now only 80. They also originally wanted Holmes Road improved to Route 85 and suggested that the traffic flow in that manner. Agreeably, Holmes Road is a rural road that is narrow and winding. He said that if he had children and lived there that he would encourage them not to play or ride in the road. He added that most of the posted speed limits there are 25 MPH.

Ms. Carabelas said that no one polices that though. She asked if he saw an increase in the traffic.

Mr. Mess said that the roads are very lightly traveled and if you have 10 cars on them now and you get 20 them it does seem like an increase for this area because they are so lightly traveled.

Mr. Katz said that he wanted to thank everyone who spoke up. He said that he appreciates their opinion on these things and that he has continuously tried to keep his neighbors updated on what is going on and that he sent the letter so that they would know about this public hearing if they did not see the sign. He said that his sister has horses and that he realizes that the area is rural and that he is trying to provide trails that people can use and where kids can be safe. Someone expressed concern about the condo units and the number of people who would live in them. He said that they are not small units, they are rather large and that they would

be premium units on a golf course. They will not be inexpensive units. He said that they would have to pay for the amenity of the golf course. The only way that the golf course can get off the ground is with more housing.

Mr. Nickerson asked Mr. Katz if this was old family property.

Mr. Katz said yes, since 1951.

Mr. Nickerson said to Mr. Katz that if he did not have this love and passion for golf to put this golf course together, how many houses could he put in this type of acreage.

Mr. Katz said that in total they have about 340 acres of property including the property in Montville. If they were to assume 2-acre zoning it would be about 170 units technically although there would be topography and other issues. However, under other applications, with over 300 acres, they could have 500 to 600 units and leave 60% or more of open space. He cautioned that he does not have the where with all to continue to pursue that and that it would have to be some other developer who would be doing that if it comes to that. He said that he does not want it to come to that.

Ms. Carabelas said that when he said that he would have to put 70 units in to do the golf course –

Mr. Katz said it was 80 units.

Ms. Carabelas asked how these extra 80 units were going to give him the extra money to do the golf course. Mr. Katz explained that the investors come in and look at the total number and the golf course alone will cost \$10-\$12M. It costs money to build homes and you make a profit on them. They look at this and figure out if this profit is enough to offset the \$10M-\$12M that you have to sink in up front to build the golf course. It's the time value on these homes and they will not be built in one year – they have a five to seven year build out. There is a large cost factor and it is the reason why there are not a lot of golf courses being built. He emphasized that these 80 units cannot be built or under construction until the golf course is built.

Attorney Harris said that he would highlight some issues. They recognize that the roads are rural in the area. They have not heard that they are not safe, they have heard that they have to drive slowly and they all know this. He reminded them that they approved a larger scale project for this area with a full banquet facility and that with the current scaled down plan, there will be an even lesser impact on the traffic in the area and the neighborhood as well. He also said that any information and affidavits regarding the timing and nature of the work with respect to the permitting would be supplied to Mr. Mulholland as stated earlier.

Mr. Nickerson said that he saw some hands up in the back and because he did not want to cut them off, he would invite them to speak but would ask that they not repeat things that have been said previously.

Ron Capozza, 19 Holmes Road said that he would like to submit to them their Section 12A-3-5 of the regulations. This was entered into the record as **Exhibit 7**. He also said that the traffic that forms on Route 85 during the summer would go through the back way and cut through Walnut Hill and Grassy Hill so that they don't have to wait and it would cause the rural roads problems.

Mark Butterfield, 6 Upper Walnut Hill Road said that he would like to clarify for the record what Attorney Harris said about the density regulations and how they have been discussed at great length. These regulations are our regulations and they belong to the Town and they belong to the people. He said that he has been to every meeting on this subject and that he has not heard the word 'community' defined as a separate parcel just relating to the SU piece of property. The word 'community' applies to both the SU and SU-E and he has checked all of the records and nowhere has he found it specified. He said that he finds it unfair to not include them in the density calculation.

Bob Jones, 5 Applewood Common said to everyone that if this project does not go through and he has to sell this property then this could be another Oswegatchie Hills up there and there would be nothing that you could do about it. He thinks that this is something that they should all be thinking about.

Ms. Carabelas asked if another developer would have to come before them.

Mr. Mulholland said that it depended upon how they wanted to exercise the existing permits that have already been granted.

Andrew Radynski, 15 Upper Walnut Hill Road said that this sounds like blackmail to him – telling them that if they don't approve this then there would be all sorts of houses up there.

Mr. Nickerson said that was not what was said – he just asked Mr. Katz 'what if'.

Mr. Radynski said that he knew that - but there is no sewage up there and that he does not like where this is going. Also, all of that housing proposed up there is multi-family housing in a rural farm area. He said that it does not fit in with the character or environment that they are in.

Patricia Butterfield, 6 Upper Walnut Hill Road said that she wanted clarification regarding the permits that currently are valid or the extensions that will be granted, and the discussion about should the property need to be liquidated, and what Mr. Mulholland said regarding it depends upon the permits with a new owner.

Mr. Mulholland said that the attorney has said that they will provide affidavits on this and they will go from there to determine what is and what needs to be done and if a permit needs to be re-applied for.

Ms. Butterfield asked, as a resident and taxpayer how she would find out what the outcome of this is and how she would get this information.

Mr. Mulholland said that she was welcome to call his office and ask. He said that he would report back to the Commission his findings and that the information is all FOI and she should feel free to call his office and ask as he would be happy to give it to her.

Ms. Butterfield asked if she understood correctly that Mr. Katz is asking for a permit for the 80 units of housing and that he currently holds a permit for the 70 units of elderly housing however, nothing can be constructed until the golf course goes in first.

Mr. Mulholland said that was correct.

Mr. Nickerson asked Mr. Mulholland about the permit issue.

Mr. Mulholland said that the question of the validity of the permits is outside of this application for a special permit. He suggested that they close the public hearing and that as staff he will report back to them at their next meeting.

Mr. Nickerson said that he also wanted further clarification on the density calculation just to make certain that they all understood it.

Mr. Peck said that he wanted further clarification on the density also especially with reference to the word 'community' as was mentioned.

Mr. Mulholland said that he would bring them the information at their next meeting.

Mr. Nickerson said that they would close the public hearing and would wait until the next meeting to deliberate pending answers from staff on the permits and the density issues.

Mr. Nickerson called for a motion to close this public hearing.

****MOTION (1)**

Mr. Salerno moved to close this Public Hearing.

Ms. Carabelas seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Nickerson closed this Public Hearing at 9:35 PM.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary