

**EAST LYME ZONING COMMISSION  
REGULAR MEETING  
Thursday, JANUARY 6th, 2005  
MINUTES**

**PRESENT:** Mark Nickerson, Chairman, Rosanna Carabelas,  
Secretary, Ed Gada, Shawn McLaughlin,  
Norm Peck, William Henderson, Alternate

FILED IN EAST LYME  
*Jan 13, 2005 AT 1:20 P*

*L. Blair, Jr.*  
EAST LYME TOWN CLERK

**ALSO PRESENT:** Glenn Russo, Applicant  
Attorney Edward O'Connell, Town Counsel  
David Coonrod, LS, Representing the Applicant  
John Bonelli, General Contractor for the Applicant  
William Mulholland, Zoning Official  
Marc Salerno, Alternate  
William Dwyer, Alternate  
Rose Ann Hardy, Ex-Officio, Board of Selectmen

**ABSENT:** Pamela Byrnes

**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.

**Regular Meeting**

**1. Call to Order**

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

Mr. Nickerson noted for the record that he had seated Mr. Henderson at the table and that Mr. Henderson has been either seated or present in the audience throughout the entire Landmark Application hearings.

Mr. Henderson stated for the record that he was present for the 20 hours of testimony and that he took 16 pages of his own notes during that time.

Mr. Nickerson also noted that Mr. Peck has missed one of the Landmark Application meetings however he had already stated that he had listened to the tapes and familiarized himself with the record of the meeting that he had missed.

Mr. Peck stated for the record that he had listened to the tapes and gone over everything that he had missed. He added that he had also taken his own notes throughout the hearings.

**2. Approve Meeting Minutes from December 2, 2004 Regular Meeting.**

Mr. Nickerson asked that they come back to this after completing Items 2. and 3. on the agenda.

(Note: This was addressed after Items 2. and 3. were completed.)

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

**Ms. Carabelas moved to accept the Zoning Commission Regular Meeting Minutes of December 2, 2004 as presented.**

**Mr. Gada seconded the motion.**

**Vote: 4 - 0 - 2. Motion passed.**

**Abstained: Mr. Peck and Mr. Henderson**

3. **Application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC for approval of the proposed development of the residential community as shown on plans entitled "River View Heights, (a residential community)" as an Affordable Housing development as defined in Connecticut General Statutes 8-30g(a)(1).**

Mr. Nickerson said that he would need a motion on the table first before any discussion. He called for a motion.

(Note: This motion copy was obtained from the Zoning Administrative Staff rather than to re-type it and have to re-proof it for errors.)

**\*\*MOTION (1)**

**Ms. Carabelas moved that the Application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC for approval of the proposed development of the residential community as shown in plans entitled "River View Heights, (a residential community)" as an affordable housing development as defined in Connecticut General Statutes 8-30g (a)(1) be denied for the following reasons:**

**WHEREAS on June 3, 2004, Landmark Development Group, LLC, and Jarvis of Cheshire, LLC, filed an "Affordable Housing Application" entitled "Riverview Heights (A Residential Community)" with the East Lyme Zoning Commission ("Commission") consisting of a cover letter dated May 12, 2004 and a set of plans for 352 total units of which 232 would be market-rate condominium units and 120 units would be affordable housing rental units. The application incorporated by reference a formerly submitted Affordability Plan from the applicants' previous 2002 application for an amendment to the East Lyme zoning regulations ("regulations") and a change of zone. The property consists of Tax Map 27, Lot 14; Map 31, Lot 4; Map 31.2, Lots 3 and 8; Map 32.1, Lots 2 and 36; and Map 32, Lot 1. The currently proposed development is designated by the applicants as "Phase 1" of a multi-phased affordable housing development. The applicants' parcels are currently zoned as a RU-200 Greenway Conservation District; and**

**WHEREAS, the applicants have not requested approval of a particular site plan, nor have they requested a zone change for the subject property, nor have they requested a special permit pursuant to Section 32 of the Town's Regulations ("Affordable Housing District"), nor have they requested permission to conduct regulated activities in areas subject to inland wetlands review. The applicants have limited their request to the approval of an application for an "Affordable Housing Development," as defined by General Statutes 8-30(a)(1), stating that the standards to be applied to such an application are those found in General Statutes 8-30g; and**

**WHEREAS, subsequent to the submission of its application, the applicants have requested that regulations that were previously proposed by the applicant in connection with its 2002 application, and rejected by this Commission, should govern the "Affordable Housing Application". The denial of these regulations was appealed to the Superior Court, which affirmed the Commission's denial. Landmark Development Group, LLC et al. v. East Lyme Zoning Commission, CV 02-0520497S, Judicial District of New Britain at New Britain (September 7, 2004). The Commission therefore considers the applicants' request to be for a text amendment to the zoning regulations, requesting the adoption of the same proposed regulations as were previously submitted; and**

**WHEREAS, the Commission has determined that an approval of the applicants' "Affordable Housing Application" would result, in fact, in a change in the zone of the designated area such that the application is the functional equivalent of a request for a change in zone and should be treated accordingly. 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 applicants have 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 six public hearings on the Application and coastal site plan and listened to numerous hours of testimony during those hearings. A total of 98 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 six 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 an "Affordable Housing Application."

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

WHEREAS, the Zoning Commission, having thoroughly reviewed the amendments to the zoning regulations that would result from the approval of this application 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 requirement of 50 acres to be designated as an affordable housing district will be overly restrictive and decrease opportunities for affordable housing;
2. While the applicants did not define the total number of units proposed in all phases of development, it is evident by the proposed regulations and conceptual site plan submitted for "Phase 1" that high-density development is contemplated. The applicants' proposed regulations do not require that the development be served by public water and sewer, which is deemed necessary to protect the public health;
3. The regulations proposed by the applicants do not contain a provision for the required submission of a conceptual site plan. Section 8-30g(c) provides that: *"Any commission, by regulation, may require that an affordable housing application seeking a change of zone shall include the submission of a conceptual site plan describing the proposed development's total number of residential units and their arrangement on the property and the proposed development's roads and traffic circulation, sewage disposal and water supply."* Additionally, the Section 32.8.1 of the Town's current regulations requires the submission of a conceptual site plan. The Commission considers it necessary that such a provision be included in any proposed regulations for affordable housing to properly consider the impact of the development. (The Commission notes that the applicant has, in fact, submitted numerous versions of the conceptual site plan, which were received as the hearings on the application were being held, that have been reviewed by the Commission.)

WHEREAS, the Zoning Commission finds that significant changes must be made to the regulations proposed in order to protect substantial public interests in health and safety, specifically by requiring that public water and sewer service be available, which is deemed necessary in order to support high-density development as proposed, to better promote affordable housing within the Town of East Lyme by reducing the minimum area requirement for designation as an Affordable Housing District, and to require the submission of a conceptual site plan for the Commission to better evaluate the relevant environmental, health and safety considerations. These public interests clearly outweigh the need for

the applicants' proposed regulations, especially in light of the currently enacted regulations which adequately address these concerns.

**BE IT THEREFORE RESOLVED**, that the Zoning Commission hereby **DENIES** the application of Landmark Development Group LLC, and Jarvis of Cheshire, LLC, for a text amendment to the regulations for an Affordable Housing District for the reasons stated above.

**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 the requirement that public water and sewer be available to the site, such as are included in the Town's current Affordable Housing regulations. Such regulations should have a lesser minimum acreage for Affordable Housing Districts to increase the number of potential districts. Moreover, the regulations should include the requirement that a conceptual site plan be submitted with any application to assist the Commission in evaluating environmental, health and safety considerations implicated by the application.

#### **B. THE ZONE CHANGE REQUEST**

**WHEREAS**, the Zoning Commission finds that the application for the zone change is in contravention of substantial public interests, below enumerated, which are supported by sufficient evidence in the record:

**Reason #1:** 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. {See *East Lyme Planning Commission report, Exhibit # 2; Testimony page 37, August 5, 2004 Transcript; letter from Southeastern Connecticut Council of Governments (Regional Planning Agency) dated July 27, 2004, page 33, August 5, 2004 transcript; letter from Marcy L. Balint, Senior Coastal Planner, Office of Long Island Sound Programs, Connecticut Department of Environmental Protection, page 21, August 5, 2004 transcript; East Lyme Harbor Management/Shellfish Commission letter/testimony, page 46, August 5, 2004 transcript; testimony of Meg Parulis, East Lyme Director of Planning, page 17, September 2, 2004 transcript and Exhibit 29 - Future Land Use in the Plan of Development, East Lyme; testimony of Rose Ann Hardy, pages 70-71, September 2, 2004 transcript.*}

**Reason #2:** The site proposed as an Affordable Housing District does not have the recommended characteristics for the placement of high-density multi-family housing deemed necessary for the preservation of public health and safety due to:

- a. Lack of infrastructure and capacity to provide adequate water. There was substantial credible evidence that public water is not available to the site. Evidence did not support the feasibility of a high-yield well in lieu of public water that would be capable of serving the high densities contemplated with this proposal. {See *letter from East Lyme Water & Sewer Commission dated July 29, 2004, page 44, August 5, 2004 transcript; East Lyme Planning Commission Report, Exhibit #21 and supporting documents; letter from Fred Thumm, Director of Public Utilities to William Mulholland dated August 5, 2004, page 22, August 5, 2004 transcript; letter from George Calkins, East Lyme Town Sanitarian, dated August 3, 2004, page 24, August 19, 2004 transcript; Exhibit #50 from Michael Giannattasio, Director of Public Works, to William Mulholland dated November 1, 2004, page 26, November 4, 2004 transcript; testimony of Paul Geraghty, page 55 & 56, September 2, 2004 transcript; letter from Don Landers, Chairman, East Lyme Harbor Management/Shellfish Commission, dated July 28, 2004.*}
- b. Lack of infrastructure and capacity to provide adequate sewer. There was substantial credible evidence that public sewers are not available to the majority, if not all, of the site and that the vast majority of the subject area is outside of the

sewer shed boundary. Evidence did not support the feasibility of a subsurface disposal in lieu of public sewers that would be capable of serving the high densities contemplated with this proposal. See letter from East Lyme Water & Sewer Commission dated July 29, 2004, page 44, August 5, 2004 transcript; testimony of Paul Geraghty, pages 63-70, August 19, 2004 transcript; East Lyme Planning Commission Report, Exhibit #21; Letter From Fred Thumm, East Lyme Director of Public Utilities to William Mulholland dated August 5, 2004, pages 21-24, August 19, 2004 transcript; letter from George Calkins, East Lyme Town Sanitarian, to William Mulholland dated August 3, 2004, Exhibit #77, pages 24-32, August 19, 2004 transcript; letter from Michael Giannattasio, Director of Public Works to William Mulholland dated November 4, 2004, pages 26-29, November 4, 2004 transcript; Exhibit #50; testimony of Wade Thomas of Nathan Jacobson Consulting Engineers, pages 31-36; Exhibit #52 Nathan L. Jacobson Consulting Engineers Report; letter from George Calkins, East Lyme Town Sanitarian, to William Mulholland dated November 4, 2004, pages 37-43, November 4, 2004 transcript; letter from Dennis Greci, P.E. Supervising Sanitary Engineer Municipal Facilities Section, Bureau of Water Management, State of Connecticut Department of Environmental Protection, pages 17-22, November 4, 2004 transcript; letter from Dennis Greci, P.E., dated September 29, 2004, pages 22-23, September 29, 2004 transcript; memo from Dennis Greci, P.E., dated August 3, 2004; letter from Joe Wetteman, DEP Bureau of Water Management dated October 12, 2004 and memo dated August 30, 2004; letters and attachments from Marcy Balint, Senior Coastal Planner, Office of Long Island Sound Programs State of Connecticut Department of Environmental Protection, dated August 4, 2004, September 2, 2004, and October 13, 2004, page 4, November 4, 2004 transcript; testimony of Carl Stamm, page 60, September 2, 2004 transcript.)

- c. Unsuitability of soils for building site development at the density proposed. {See Soil Suitability Analysis based on New London County Soil Survey; letters and attachments from Marcy Balint, Senior Coastal Planner, Office of Long Island Sound Programs State of Connecticut Department of Environmental Protection, dated August 4, 2004, September 2, 2004, and October 13, 2004, page 4, November 4, 2004 transcript; Exhibit #52, Report from Nathan L. Jacobson Consulting Engineering, page 31-36, November 4, 2004 transcript; Exhibit #32, "Soil Analysis for Building Site Development"; testimony of Meg Parulis, East Lyme Director of Planning, pages 27-33, September 2, 2004 transcript; testimony of Paul Geraghty, pages 48-57, September 2, 2004 transcript; Planning Commission Report, Exhibit #21; letter from Francine Schwartz, page 37, August 5, 2004 transcript; letter from Clinton Brown, P.E., pages 45-48, September 2, 2004, transcript; testimony of Carl Stamm, page 60, September 2, 2004 transcript.}
- d. Lack of adequate access to site from public roadways. The Commission finds the representations from the applicant that the applicant has the right to access the King Arthur Drive right-of-way, which is designated as the sole public egress and exit to the site, not to be credible. The Commission concludes that the applicant does not have the right of access through the King Arthur Drive right-of-way. The Commission finds that suitable access to the site is a substantial public interest for the health and safety of the residents of any proposed development. {See testimony of Meg Parulis, East Lyme Director of Planning, page 37-40, August 19, 2004 transcript; Exhibit #20, Memo from Meg Parulis, East Lyme Director of Planning, to William Mulholland & Map; Memo from William Mulholland, East Lyme Zoning Official, to Zoning Commission, page 24-25, November 4, 2004 transcript; Glenn Russo testimony, page 135, August 5, 2004, page 41, September 29, 2004, pages 37-40, November 8, 2004 transcripts; letter from Dennis Greci, P.E. Supervising Sanitary Engineer Municipal Facilities Section, Bureau of Water Management, State of Connecticut Department of Environmental Protection, pages 17-22, November 4, 2004 transcript; letter from Clinton Brown, P.E., pages 45-48, September 2, 2004, transcript.}

**Reason #3** 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 development of the site at the density allowed by the proposed regulations and as shown on the conceptual site plan submitted 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 demonstrated 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 applicants did not demonstrate that the proposed activity and uses were consistent with the goals and policies of preserving coastal resources. 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. *{See testimony of Paul Geraghty, page 73, August 19, 2004, page 48, September 2, 2004 transcripts; letter from Waterford/East Lyme Shellfish Commission, Planning Commission Report and supporting documents; testimony of Meg Parulis, East Lyme Director of Planning, page 33-37, August 19, 2004, page 19, September 2, 2004 transcripts; State of Connecticut Referral Report/Department of Environmental Protection Review/OLISP, correspondence from Marcy Balint, Senior Coastal Planner, Office of Long Island Sound Programs, Department of Environmental Protection, State of Connecticut, dated August 4, 2004, September 2, 2004, September 29, October 13, 2004 and, page 4, November 4, 2004 transcript; letter from Don Landers, Chairman, East Lyme Harbor Management/Shellfish Commission, dated July 28, 2004; East Lyme Planning Commission Report, Exhibit #21 & Supporting Documents.}*

**Reason #4** 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. Having considered all the relevant circumstances, the Commission finds further that any feasible and prudent alternative to the proposed zone change for this site must be confined to the portion of the applicants' site that is within the Town's sewershed and the applicant must demonstrate that public water and sewer are available to the site so that the unreasonable pollution of the Niantic River and wetlands, watercourses and vernal pools on the site are minimized. Additionally, 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. *{See testimony of Meg Parulis, East Lyme Director of Planning, page 33-37, August 19, 2004, page 19, September 2, 2004 transcripts; letter from Prof. James Kremer; testimony of Paul Geraghty, page 48, September 2<sup>nd</sup>, 2004 Transcript; testimony of Carl Stamm, page 60, September 2, 2004 Transcript; Marvin Schutt, page 66, September 2, 2004 transcript; Letter from East Lyme Harbor Management/Shellfish Commission, page 46, August 5, 2004 Transcript; Letter from Town of Waterford/East Lyme Shellfish Commission dated August 16, 2004; letter from Professor Robert Askins, dated August 13, 2004; letter from Milan Kesser, Ph.D.; letter from Professor Nelson Marshall; testimony of Michael Giannattasio, Director of Public Works, page 43, August 19, 2004 transcript; testimony of Jason Sarojak, page 76, September 29, 2004 transcript.}*

**Reason #5** The applicant has not demonstrated that the affordable units are comparable to the market-rate units. The units designated as "affordable" by the applicant in "Phase 1" of the proposed development are rental units that are separately located apart from the market-rate condominiums and at a less desirable location and are of a different design and build as the condominiums and do not appear to be of comparable size and workmanship as the condominiums. *{See testimony of Mike Zizka, page 81, August 5, 2004 transcript; testimony of Glenn Russo and Mike Zizka, pages 17-18, August 19, 2004 transcript; testimony of Paul Geraghty, pages 54-57, September 2, 2004 transcript.}*

**WHEREAS**, the Zoning Commission finds that the proposal fails to protect substantial public interests in health, safety, and other matters which the Zoning Commission may consider including the protection of the ecosystem and habitat of Long Island Sound (General Statutes 8-2(b)) and Coastal Resources (General Statutes Ch. 444) which includes the Niantic River and the coastal boundary; and

**WHEREAS**, the Zoning Commission finds that such public interests clearly outweigh the need for Affordable Housing in the specified location especially because of the availability of other parcels in town which would be suitable for affordable housing; and

**WHEREAS**, the Zoning Commission finds that such public interests cannot be protected by reasonable changes to the "Affordable Housing Application." Because the majority of above cited reasons for denial are site specific, the Commission cannot consider whether any "plan specific" problems might be eliminated or adjusted by reasonable design modifications, except that the affordable units might be constructed comparably and located among the market-rate units. The physical "site specific" constraints in the area of the proposed zoning district including the lack of public water and sewer, the proximity to sensitive environmental resources, and lack of proper access, cannot be changed by a decree of this Commission:

**BE IT THEREFORE RESOLVED**, that the Zoning Commission hereby **DENIES** the application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC for a request to re-zone the applicants' property as above described from the Greenway Conservation District (RU-200) to an Affordable Housing District, which regulations creating said District were also previously denied.

**BE IT FURTHER RESOLVED**, that the Zoning Commission hereby **DENIES** the coastal site plan of Landmark Development Group, LLC and Jarvis of Cheshire, LLC for the reasons stated above (Reason #4), finding that the coastal site plan fails to comply with the regulations and the Coastal Management Act.

**BE IT FURTHER RESOLVED**, that the Zoning Commission cannot approve the application with modifications that would not have a substantial adverse impact on the viability of an affordable housing development. A new application, if submitted, would need to be substantially different to address the above cited constraints and would require the following: that the request for a change in zone and text amendment be restricted to such portions of the applicants' site that may be within the sewershed; that Town water and sewer are available to that portion of the applicants' site; that suitable access by roadway is available to that portion of the applicants' site; that the potential adverse impacts upon coastal resources which would result from their proposed development and that the development would include suitable public access to coastal resources; and a showing that the affordable housing application would generally alleviate the above stated reasons for denial.

### **C. THE REQUEST FOR APPROVAL OF AN "AFFORDABLE HOUSING APPLICATION"**

**WHEREAS**, the Zoning Commission has resolved to deny the applications for a text amendment to the zoning regulations and a zone change, see A and B above, 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". The Commission finds that the applicants' "Affordable Housing Application" 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.

**WHEREAS**, the Zoning Commission concludes that the reasons enumerated above in Section B, Reasons 1-5 also apply equally to the evaluation of the applicants' "Affordable Housing Application" under Section 32 of the Town's current regulations.

Affordable Housing does not fit in East Lyme as it does, but it does not fit in an area as sensitive as this. It belongs in a different place. He quoted from the motion stating that the public outcry regarding this location outweighs the need for Affordable Housing in this location.

Mr. McLaughlin said that given the scope of the project that there was never a clear answer on how they would get into the development. There seemed to be unresolved issues regarding if they had the right of way through King Arthur Drive. Also there seemed to be issues regarding the test pits, depth to bedrock and the density of the project which would require good land to build on. The issue of public water and sewer also never seemed to be resolved.

Mr. Henderson said that as elected and appointed representatives to our Town that they have the responsibility to make decisions that effect the overall growth of the Town. How this effects our neighbors is important. Being set up as a Commission to govern land use - once we make bad or wrong decisions, we can't go back and change them. He feels that they have been asked to apply common sense to a project that may have a need in the community but is in the wrong place as the Chairman has pointed out. Density population is a big part of land use. How open space is applied and the percentage is important and the open space has to be space that the public can use. He feels that the Commission has no choice other than to deny this application.

**Vote: 6 – 0 – 0. Motion passed – Application denied.**

(Note: A short break was taken here. Mr. Dwyer left the meeting.)

**4. Application of David Coonrod for a coastal site plan review to demolish and reconstruct a single family dwelling at property identified in the Application as 104 East Shore Drive, Niantic, Connecticut. East Lyme Assessor's Map 02.7, Lot 15.1**

Mr. Mulholland noted to the Commission that this application is outside of their Zoning Regulations, as this must conform to those of the Black Point Beach Association. The sole jurisdiction of the Commission here is the Coastal Area Management (CAM) Review.

Mr. Nickerson called for the applicant or their representative to present this.

David Coonrod, LS representing the applicant Janet Ghio explained that this property butts up to the Bay and that there is an existing house on the property now. Mr. Ghio intends to tear the house down and to construct a new one in its place. Because this does fall within 100' of Niantic Bay a CAM Review has to be done. However, this has no impact on the Bay. He went over the application in great detail explaining that the site has a pea stone drive and that it would remain and afford drainage. The project will take six months to complete and silt barriers will be installed around the whole site.

Mr. Mulholland asked if the lot is flat.

Mr. Coonrod said that it is and that they will keep the same grade although the house overall will be about a foot higher. No rainwater will be discharged and they also have a concrete seawall. There is essentially a small pocket of beach beyond the seawall and this development will have no impact on the beaches or dunes.

John Bonelli, General Contractor for the project described how a single family house of 4500 sq. ft. in the shingle style would be built in place of the house that is there now. It is one of the larger lots in the Association and it will have a two-car attached garage. There will also be a full deck off the rear of the house facing the water. The house that stands there now was built about 40-50 years ago. The other existing buildings on the property – a garage and guest house will be staying.

**\*\*MOTION (2)**

**Ms. Carabelas moved to approve the Application of David Coonrod for a coastal site plan review to demolish and reconstruct a single family dwelling at property identified in the application as 104 East Shore Drive, Niantic, Connecticut. East Lyme Assessor's Map 02.7, Lot 15.1 finding that there will be no adverse coastal impacts.**

**Mr. Gada seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

## **5. Zoning Commission 2005/2006 Budget**

Ms. Carabelas said that they were talking about having people training for the Commission and she thought that they should consider hiring an outside agency to go over the Zoning Regulations and make recommendations to them as she believes that this has not been done since 1990. She said that she was not sure how much this would cost. She would like it put into their budget if possible.

Mr. Mulholland said that Robinson & Cole did it for the Town, he thought, on an in-kind type of basis. He further stated that since that time, they have done some 50-60 changes in-house as a Board to reflect the times. While this could be done inside as a Commission - or outside, he suggested that first it would be wise to look at what you might want changed.

Ms. Carabelas said that she thought that they could present this cost to the Finance Board as they have talked about a moratorium and they are just going back to the same regulations that they have always had. She said that they could get some prices before they actually do it.

Mr. Mulholland reiterated that over the years that as the dynamics of the community have changed that they have made some 50-60 changes. Also, any consultant will ask what you feel you want them to look at.

Ms. Carabelas said that 1990 was 15 years ago and she thinks that an independent source should look at their regulations and make suggestions on what should be done. She said that she knows that she is not qualified to look at them or to do this.

Mr. Mulholland said that in the life of a community over time that they are always looking at their regulations and changing them as necessary. They also have the Plan of Development that is done by the Planning Commission and updated every ten years.

Ms. Carabelas said that they should make the request and if the money is there she would feel better about this. They should ask anyway because she does not feel that she is competent enough to do this and wants an outside source to go through the regulations one by one and tell her. She said that she could make some phone calls and even get some quotes.

Mr. Nickerson said that he feels that they should look at their own regulations and hone in on areas that they would want to further investigate.

Mr. Mulholland said that there are a lot of issues that have to be collectively looked at and that they now have a budget that they have to look at and this is beyond the scope of that budget. He also added that Ms. Carabelas is qualified to look over the regulations and that she should go home and read them over and see if there is something that they would like to further discuss.

Mr. Henderson said in support of Ms. Carabelas that he felt that perhaps some of their regulations are obsolete since the legislature changes the laws all of the time. They should make sure that their regulations conform to these changes.

Mr. Mulholland said that with all due respect, Town Counsel updates them on these legislative changes and that they then go from there and update their regulations.

Mr. Carabelas said that she still would like them to get quotes.

Mr. Mulholland said that in his experience, someone will always take your money and tell you that something needs to be changed.

Mr. Henderson said that Robinson & Cole would probably charge some \$50,000 today.

Mr. Peck asked Ms. Carabelas what her purpose here was – to check for loopholes or to change the regulations somehow. Or – is this a legal check.

Ms. Carabelas said that what she is looking for is a legal check to see if the regulations fit with all of the development that is coming in - with all of the SU-E's, to bring it up to this current atmosphere.

Mr. Peck said that he agreed that there should be a check for inconsistencies but he suggested that they should pick a topic such as elderly housing – too much or not enough. They could pay someone say \$500 for a report on this or find it for free on the Internet somewhere. There are studies everywhere. But, as far as the regulations are concerned, he said that there is no one better to review them than this Commission here and to pay \$20,000 or \$50,000 is absurd as there is no one who could write our regulations better than we could. If it is a specific topic, then they have to target that topic first.

Mr. Nickerson said that the Commission over time should discuss this and that they could possibly set up some subcommittees rather than to double their budget tonight. This is also taxpayer money and it may very well have to go before the Board of Selectmen.

Mr. Peck said that in speaking about their budget, he questioned if they had received the increase for their Zoning Official that they had requested last year.

Mr. Nickerson said that they had not and that while there was supposed to be a step and COLA increase, only one had been given. He proposed that they make sure that a 5.5% increase be given this time. This would increase that line item from \$52,973.96 to \$55,887.53 and that the title be changed to Zoning Official as was stated last year and approved by this Commission.

Mr. Mulholland then explained the other line items in the budget.

Mr. Peck said that there has been a request by the Economic Development Commission to print up a Zoning Land Use Guide and he had presented a copy of one from another Town (Colchester) and asked what happened to that. He also questioned if \$100 was enough for the printing line item.

Mr. Mulholland said that it is basically a Most Frequently Asked Questions type of guide.

Ms. Hardy said that she could shed light on this. The high school kids were asked to do this and she felt that it was too much for them to be able to do so Mr. Fraser has been in contact with the Coast Guard Academy class to do this and to put it together.

Mr. Peck asked how someone outside of this Town and office could do this.

Ms. Hardy said that they would have to interview Mr. Mulholland and write something and come back and go over it with him until it was correct.

Mr. Mulholland said that they have to address the average person in the street with the information.

Mr. Peck said that if they could do this that it would save the people in that office many, many hours in explanations to people and would help out the Zoning Office image.

Mr. Mulholland said that he does not disagree.

Mr. Nickerson said that he felt that the only person qualified to do this would be Bill. It would also be easier for him to do it, as others would have to come back to see him to make sure that they are on the right track.

**\*\*MOTION (4)**

**Mr. Henderson moved to approve the 2005/2006 Budget of the Zoning Commission as stated.**

**Mr. McLaughlin seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

**OLD BUSINESS**

**1. Stormwater**

This is a work in progress.

**2. Aquifer Protection**

This is a work in progress.

Ms. Carabelas said that she would like to discuss the NEMO Project and having someone present to them. She asked that they make a motion to add this to the agenda.

**\*\*MOTION (5)**

**Mr. Henderson moved to add Item 5.A. to the agenda – NEMO Presentation Discussion.**

**Mr. Gada seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

**5.A. NEMO Presentation Discussion**

Ms. Carabelas said that she called the NEMO people (John Rozun) regarding giving them a presentation on January 24, 2005 and that they cannot do that date. They have offered to do it on February 24, 2005 if that is okay with this Commission.

Mr. Nickerson said that is not a good time, as it is school vacation week and that they would have trouble getting people to attend.

Ms. Carabelas suggested that they consider having him come before one of their regular meetings as the presentation would probably only be about a half hour and then they would have some question and answer time. They could have sandwiches as Ms. Hardy suggested and then go into their regular meeting.

Mr. Mulholland took the information on contacting Mr. Rozun and said that he would see what they could work out regarding having this on one of their regular meeting dates prior to their regular meeting time.

Ms. Carabelas said that they could have a presentation on Land Use of Open Space topics.

Mr. Nickerson said that Land Use would be more appropriate for them to hear about.

**6. Adjournment**

**\*\*MOTION (6)**

**Mr. Gada moved to adjourn this Regular Meeting of the East Lyme Zoning Commission at 10:00 PM.**

**Ms. Carabelas seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary

FILED IN EAST LYME  
Jan 12, 2005 AT 1:00 PM

*L. Abblin etc*  
EAST LYME TOWN CLERK

# Town of East Lyme

## Zoning Commission

PO Box 519  
Niantic, CT 06357

January 12, 2005

Advertising Department  
The Day Publishing Co.  
Eugene O'Neill Drive  
New London, CT 06320

**Please publish the following notice on Thursday, January 13, 2005**

**Town of East Lyme  
ZONING COMMISSION  
NOTICE OF DECISION**

**LANDMARK DEVELOPMENT GROUP, LLC, & JARVIS OF CHESHIRE, LLC,  
AFFORDABLE HOUSING APPLICATION**

**JANUARY 6<sup>TH</sup>, 2005**

**NOTICE is hereby given that** on June 3, 2004, Landmark Development Group, LLC, and Jarvis of Cheshire, LLC, filed an "Affordable Housing Application" entitled "Riverview Heights (A Residential Community)" with the East Lyme Zoning Commission ("Commission") consisting of a cover letter dated May 12, 2004 and a set of plans for 352 total units of which 232 would be market-rate condominium units and 120 units would be affordable housing rental units. The application incorporated by reference a formerly submitted Affordability Plan from the applicants' previous 2002 application for an amendment to the East Lyme zoning regulations ("regulations") and a change of zone. The property consists of Tax Map 27, Lot 14; Map 31, Lot 4; Map 31.2, Lots 3 and 8; Map 32.1, Lots 2 and 36; and Map 32, Lot 1. The proposed development was designated by the applicants as "Phase 1" of a multi-phased affordable housing development. The applicants' parcels are currently zoned as a RU-200 Greenway Conservation District; and

WHEREAS, the Commission determined that the application proposed activity within the coastal boundary as defined in General Statutes 22a-94 and the Town's Plan of Development and the applicants submitted a coastal site plan in accordance with General Statutes 22a-109, the Commission 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 reviewed 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. intervened in the hearing on this application upon the belief that the application involved conduct that was 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, for the purposes of this affordable housing application, the Commission addressed the motion in three separate parts: as an application for a text amendment to the zoning regulations, as an application for a zone change and as an application for approval of an “Affordable Housing Development”.

A) The Commission finds that the text amendments that would result from the approval of this application for an amendment to the zoning regulations to be inadequate to protect substantial public interests in health and safety, and inadequate to promote affordable housing. The application of Landmark Development Group LLC, and Jarvis of Cheshire, LLC, for a text amendment to the regulations for an Affordable Housing District is DENIED.

B) The Commission finds that the application for the zone change is in contravention of substantial public interests in health and safety. 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. Additionally, the Commission finds that the coastal site plan fails to comply with the regulations and the Coastal Management Act. The Commission finds that the proposal fails to protect substantial public interests in health, safety, and other matters that it may consider including the protection of the ecosystem and habitat of Long Island Sound (General Statutes 8-2(b)) and Coastal Resources (General Statutes Ch. 444) which includes the Niantic River and the coastal boundary; and that such public interests clearly outweigh the need for Affordable Housing in the specified location especially because of the availability of other parcels in town which would be suitable for affordable housing. The application of Landmark Development Group LLC, and Jarvis of Cheshire, LLC, to re-zone the applicants’ property as above described from the Greenway Conservation District (RU-200) to an Affordable Housing District is DENIED.

C) The Commission having resolved to deny the applications for a text amendment to the zoning regulations and a zone change, see A and B above, the Commission recognizes that an affordable housing application need not be in strict compliance with existing zoning regulations. 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”. The Commission finds that the “Affordable Housing Application” fails to comply with Section 32. Additionally, the Commission finds that the “Affordable Housing Application” is in contravention of substantial public interests in public health and safety. 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. Additionally, the Commission finds that the coastal site plan fails to comply with the regulations and the Coastal Management Act. The Commission finds that the proposal fails to protect substantial public interests in health, safety, and other matters that it may consider including the protection of the ecosystem and habitat of Long Island Sound (General Statutes 8-2(b)) and Coastal Resources (General Statutes Ch. 444) which includes the Niantic River and the coastal boundary; and that such public interests clearly outweigh the need for Affordable Housing in the specified location especially because of the availability of other parcels in town which would be suitable for affordable housing. The application of Landmark Development Group LLC, and Jarvis of Cheshire, LLC, for the approval of an "Affordable Housing Development" is DENIED.

Copies of the foregoing decision are on file at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, CT 06357.



Mark C. Nickerson  
Chairman