

FILED IN EAST LYME  
MAR 8, 2005 AT 3:55 M

**EAST LYME ZONING COMMISSION  
PUBLIC HEARING I & II  
Thursday, MARCH 3rd, 2005  
MINUTES**

*L. Abblais, ATC*  
EAST LYME TOWN CLERK

The East Lyme Zoning Commission held the Application of Theodore A. Harris, agent for Vespera Investments, Public Hearing for a Zone Change from RU-40 Residential to SU-E and for a Preliminary Special Permit for elderly housing on parcels over 300 acres at properties identified as 191 Upper Pattagansett Road, 16 Mostowy Road and 58 Mostowy Road, East Lyme, CT, on March 3, 2005 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson opened the continued Public Hearings and called them to order at 7:30 PM.

**PRESENT:** Mark Nickerson, Chairman, Ed Gada, Norm Peck,  
William Henderson, Alternate, Marc Salerno, Alternate

**ALSO PRESENT:** Attorney Theodore Harris, representing the Applicant  
Karl Frey, Principal - Vespera Investments  
Michael Dunning, AIA, Principal - Shook Kelley, Inc.  
Robert Pfanner, PE, for the Applicant  
Alan Mess, PE, Barkan & Mess Associates-Traffic Engineers  
William Mulholland, Zoning Official  
Beth Hogan, Ex-Officio, Board of Selectmen

**ABSENT:** Pamela Byrnes, Rosanna Carabelas, Secretary,  
Shawn McLaughlin, William Dwyer, Alternate

**PANEL:** Mark Nickerson, Chairman, Ed Gada, Norm Peck,  
William Henderson, Alternate, Marc Salerno, Alternate

**Public Hearing I & II**

- 1. Application of Theodore A. Harris, agent for Vespera Investments, for a Zone change from RU-40 Residential to SU-E at properties identified in the Application as 191 Upper Pattagansett Road, 16 Mostowy Road, and 58 Mostowy Road, East Lyme, Connecticut. The properties are further identified as East Lyme Assessor's Map 35.0, Lot 31 (portion), Map 40.0, Lot 5, Map 40.0, Lot 5-1; and Map 44.0, Lot 7 - and -**
- 2. Application of Theodore A. Harris, agent for Vespera Investments, for a Preliminary Special Permit for elderly housing on parcels over 300 acres at properties identified in the Application as 191 Upper Pattagansett Road, 16 Mostowy Road, and 58 Mostowy Road, East Lyme, Connecticut. The properties are further identified as East Lyme Assessor's Map 35.0, Lot 31 (portion), Map 40.0, Lot 5, Map 40.0, Lot 5-1; and Map 44.0, Lot 7.**

Mr. Nickerson asked for confirmation from the applicant that these two public hearings could be opened together.

Attorney Theodore Harris representing the applicant said that they could.

Mr. Nickerson noted for the record that he had seated William Henderson, Alternate and Marc Salerno, Alternate at the table this evening.

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

Mr. Henderson read the following correspondence into the record:

- ◆ Letter dated 3/3/05 from Wm. Mulholland, Zoning Official to East Lyme Zoning Commission – Re: Vespera Preliminary Special Permit Application and Zone Change Application – recalling to the Commission that in

October 2004, the applicant sought a text amendment to the Zoning Regulations allowing for senior housing on parcels of 300 acres or more which was adopted, (Section 12A.4.1) and that the applicant is now applying under these regulations for a Preliminary Special Permit. A Final Special Permit application is required. In addition the applicant is requesting a zone change from RU-40 to SU-E.

Mr. Nickerson read the following correspondence into the record:

- ◆ Letter dated 11/18/04 from Theodore A. Harris, Attorney to Wm. Mulholland, ZEO – Re: request letter for a zone change from RU-40 to SU-E and a Preliminary Special Permit for property located off Upper Pattagansett Road and off Mostowy Road contiguous to property in an already existing SU-E zone. The letter identified the specific properties requested to be changed.

Mr. Henderson read the following correspondence into the record:

- ◆ Letter dated 2/7/05 Mark Nickerson, EL Zoning Commission Chairman from Greg Ellis, Secretary, EL Planning Commission – Re: 8-3a Referral – Application of Theodore Harris for a Zone Change – 191 Upper Pattagansett Road and 16 Mostowy Road – finding the application CONSISTENT with the Plan of Conservation and Development goals to maintain the predominantly residential character of the Town and to allow alternative types of multi-family housing such as Planned Unit Developments.

Mr. Nickerson read the following correspondence into the record:

- ◆ Letter dated 2/15/05 to Mark Nickerson, EL Zoning Commission from Michael Giannattasio, PE Public Works Director – Re: Referral/Zone Change RU-40 to SU-E on Properties 16 and 58 Mostowy Road and 191 Upper Pattagansett Road – indicating that the Commission determined that the zone change in question has water available to the 16 Mostowy Road property however, the properties are outside of the Town sewer shed and therefore sewers are unavailable. It was also noted that they would look to the applicant to contribute toward the development of new additional water sources.

Mr. Nickerson noted for the record that the legal ad ran in the New London Day on 3/3/05 and 3/14/05.

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

Attorney Theodore Harris place of business, 351 Main Street, Niantic representing the applicant said that there are two applications before them tonight. The zone change will enlarge the existing SU zone by approximately 115 acres. While they did not need to have this whole area zoned SU-E because the actual construction will be in a relatively small part of that area, they felt it better to have it be consistent with the property boundary. They also had to submit a sign 15 days in advance of the public hearing on the property and he submitted a picture of the posted sign, which was entered into the record as **Exhibit 1**. He also submitted certificates of mailing to the contiguous property owners, (within 500') which was entered into the record as **Exhibit 2**. In addition, he said that he would like to submit a 'full sheets' copy of the record plan. This was entered into the record as **Exhibit 3**. Lastly, he submitted as record copy of a PowerPoint presentation that they would see this evening. This was entered into the record as **Exhibit 4**.

Attorney Harris synopsised that several months ago they requested a text amendment change to allow SU-E on parcels of over 300 acres in size. This would allow for a unique type of village. They are back tonight before them for a preliminary special permit for a village concept. The preliminary permit is not a final permit, this allows them to do engineering and other in-depth site work and come back before them with a formal application. This is more formal and more steps than would be normal. He noted that the road system will be concentrated in a small area of the site and that the traffic engineer will explain that Mostowy Road will be increased to 24' in width in certain areas. This does connect in the rear to the Nottingham Hills subdivision. They will link up so that the both of them will have emergency access to their site(s). This shows that the whole area is being developed as part of a cohesive plan. The utilities that have been touched upon indicate that there are no Town sewers available to the site. They have met with the DEP regarding design of a community septic system on site. This system is more 'user friendly' in that it is designed to deposit nearly clean water back into the site. Water will also be developed on-site and there is the potential that there will be extra water available to augment the capacity of the Town system. Regarding the Zone Change itself, the Planning Commission unanimously voted that it was consistent with the intent of the Plan of Conservation & Development as it allows for large open space areas and cluster style housing. There will be approximately 240 acres of open space and the development will sit on approximately 61 acres. He then introduced Karl Frey, Principal of Vespera Investments.

Karl Frey, Principal of Vespera Investments said that he had two updates to give them since the last time that they appeared before the Commission. He said that they were on parallel paths with a project similar to this in New Milford, CT and he was happy to report that 508 units was unanimously approved by the Zoning Commission there. Also, they have another similar project underway in Rhode Island and they received in January from the National Association of Homebuilders the top award, the platinum award in the 150-300 unit range. They did not submit it, they were submitted for it by a marketing firm. He introduced the many members of the team for this project and said that they have done a lot more work on this project since last October and that they are very confident in the project and would be happy to answer any questions that they might have. He then introduced Michael Dunning, of Shook Kelley to give a PowerPoint presentation of the project.

Michael Dunning, Architect, Shook Kelley of Charlotte and Los Angeles, place of business - 2151 Hawkins Street, Charlotte, NC said that the Shook Kelley philosophy is 'that which is built should be of equal to or greater value than that which it replaced.' To that end, life beside a pond can be quite nice and this project is one of minimal impact on the land. It is comprised of 301.56 acres of land and the vast majority of this will remain as original open space. The intent in planning here is to codify the following principles:

- ◆ Sculpt the Land – to celebrate nature as it exists and as to what it can become – this involves maintaining natural areas and planting others such as orchards, vineyards and perhaps land that is actively farmed by the local community such as in vegetable gardens.
- ◆ Embrace the Natural Beauty and Romance of the land – old stone walls, trees and unique land forms will direct the placement of roads, buildings and formal open spaces so that the 'new' will look at home within the 'old'. The intent is to add to the inventory of stone walls that currently exist on the property.
- ◆ Craft a Community in keeping with time-honored New England patterns of settlement – by preserving views, creating houses and roads that work within the topography of the land such as a covered bridge created to serve as a wetland crossing.
- ◆ Design Buildings that look as if they belong in a New England landscape – duplexes, town homes and others that take on the look of a quaint village. Pattern books help with this in determination of a design that will be followed by the builders.

He noted that if density is dealt with properly that it then benefits everyone.

The product of the Darrow Pond community would have 600 mixed housing units comprised of 185 single family homes, 225 condominium flats and 120 townhouse units. These will range in price points from the mid \$200,000 level to the \$600,000 level. There will also be approximately 70 special and unique locations within the project. Collectively with the vineyards and garden areas there will be 241 acres of open space that is closer to 80% open space, which goes above and beyond the 50% requirement. They have held the development back from the waterfront to preserve the site and the view. They have also surveyed the surviving trees on the site and plan on keeping a vast majority of them. The village green has been designed within a one-quarter mile radius (1300 ft. or a five-minute walk) as through studies they have found that this is the distance that people will walk before they get in their car. They have also identified the views on the property that they want to preserve and work with as well as the stone walls that they will repair and add to. He lastly showed renderings – the anticipated views from key areas of the property. He summed up that the design is for people and pedestrians however the streets will accommodate emergency vehicles. The development is compact and preserves open space with the buildings nestled into the land. He noted that all of the buildings on site are below the heights outlined in the Zoning regulations. It is a development that is sustainable and renewable and that has a life beyond its' singular use. He said that he would be happy to answer any questions that they had.

Mr. Nickerson asked where the parking areas would be.

Mr. Dunning said that most of it is below the buildings and a lot is in the form of garages in the back that add to the streetscape rather than detract from it. They would be alley loaded quaint structures that add to the site line. They also would not have big open parking lots. They will try to make them more organic as they do not favor 'cars' over the feel of a 'community'.

Mr. Frey added that they also do not allow overnight street parking.

Mr. Gada noted that in the very last slide of the Inn on the Water that apartments had been mentioned. He asked if there would be apartments available.

Mr. Frey and Mr. Dunning said no, they would be condominium flats that had individual owners.

Attorney Harris then introduced Alan Mess of Barkan & Mess Associates to touch upon the traffic report.

Alan Mess, PE of Barkan & Mess of Branford, CT said that they have been in the business of doing traffic-engineering studies for various companies for 25 years. Attorney Harris passed out copies of the traffic report to the Commission members. This was entered in to the record as **Exhibit 5**.

Mr. Mess said that this project is typical of the type of studies that they become involved with. It is designed to encourage lesser amounts of off-site traffic. They collected data on existing roadways and intersections in order to estimate the amount of traffic that might be generated with the addition of this project. They look at these figures in comparison to the base volumes. They took traffic counts for this study at the intersection of Rte. 161 and also at Upper Pattagansett. They obtained State of CT data on traffic in the area since 1990 and found that where there was a decline that since 1990 it has increased by a half of a percent per year. They are also aware of some other approved projects in the area and based their study on all of these factors. They came up with about 300-400 vehicle trips during the peak AM hour and proposed that Mostoway Road be widened to 24' and that one side have a snow shelf at the Rte. 161 intersection. North of the dam the other developments are going to widen that road area to 22' with flatter areas on the sides which will help. The other side of the dam does not lend itself to widening due to the ownership of the land on that side. They propose that signs be placed on both sides stating narrowing road ahead even though it may only be two feet. This would provide a caution. Once improved they suggest that the centerline strip should be a double line. They also suggest that some access be provided out towards Upper Pattagansett for emergency vehicle access that is always advisable for any development. The State criteria is 100,000-sq. ft. or more and if it abuts a State highway. This does not abut a State highway and therefore the State will decide if an application is necessary based upon the data they provide.

Mr. Mulholland asked if they had submitted to the State Traffic Commission (STC) yet.  
Mr. Mess said no as they generally do not want to be involved at this stage of the project.

Mr. Henderson asked if the added shoulder would allow for a car to pull off.  
Mr. Mess said that it would not. It is primarily for joggers and a snow shelf of sorts.

Mr. Salerno asked if he anticipated any back ups of cars leaving the site waiting to turn left out of Mostoway Road onto West Society.  
Mr. Mess said no. He added that typically a one lane out that is flared takes care of that type of situation.

Mr. Henderson asked about an accident study and if one was done for Rte. 161 or Mostoway Road.  
Mr. Mess said that the data that they found was for a three-year period. There was one accident between Greentree and Mostoway Road and five on Rte. 161. While no one wants any accidents, these figures over a three-year period are not excessive and would be considered consistent with the norm.

Mr. Nickerson asked what the sizes of the subdivisions in the area are.  
Attorney Harris said for the record that there is Darrow Ridge that has 12 lots plus another 12 approved lots in that area. He added that the previous SU-E would not be built, as this would supercede it.  
Mr. Nickerson asked if a light could be put there.  
Mr. Mess said that the STC would obviously review that although he felt that there is probably not enough volume to warrant them putting a light there.

Mr. Nickerson asked who would be responsible for the 'Road Narrows' signs.  
Mr. Mess said that they would go through the Town Engineering and Public Works Department for those.

Mr. Mulholland asked about any increased traffic on the weekends.  
Mr. Mess said that the Saturday mid-day summer would be somewhat similar to the afternoon peak numbers.  
Mr. Mulholland asked if the road to Upper Pattagansett would reduce traffic.  
Mr. Mess said that it would not short-circuit the traffic.

Mr. Salerno asked if they have written permission to go through that area and subdivision.  
Attorney Harris said yes, they have legal access in place for both to use and that it is not limited to emergency vehicles. He added that they do not anticipate a lot of through traffic as there are several turns and people would be discouraged from cutting through on a routine basis. They currently do not have any intention of putting a gate there.

Mr. Salerno asked if this is approved if both of these roads would have to be done together.

Attorney Harris said that would be in the final approval phase and not at this time. He added that the intent is to have alternative emergency access for both them and the subdivision.  
Mr. Frey noted that the Shook Kelley designs speak to fire truck and other access.

Attorney Harris summed up that they have been dealing with this parcel for quite a few years and have seen it through many concepts over that time. By far, he thinks that this is the best as it goes back to our rural heritage. They have 301 acres of land and of that 214 acres plus the pond will be open space. Most of the area will be left in its natural state and environmentally friendly. For utilities they will utilize a state of the art community system that will go back into the land. With respect to water, they will not be a burden on the Town water supply and anticipate augmenting the Town supply. Under the regulations they are allowed to construct 2.5 units per acre and they are not even constructing 2 per acre. He asked that they approve this special permit as it meets the requirements of the permit and so that they can move forward. This would allow them to adapt this parcel to this village concept. This also requires a zone change which is consistent with many sections of the Plan of Development and which the Planning Commission has also found to be consistent.

Mr. Henderson said that this was formerly known as the JC Penney property. He asked what it was used for. Attorney Harris said that to his knowledge it was not largely used except as a testing facility.

Mr. Henderson asked if testing was done on the soil and pond quality.  
Attorney Harris said yes, that has been done and no environmental issues were found. It is part of the next phase of the permit process and they are testing for septic and water now.

Mr. Henderson asked if any of these units would qualify as affordable.  
Mr. Frey said that in the traditional neighborhood design that they could have a townhouse in the low \$200,000 range across from a \$600,000 one. While this price point might well be affordable, the answer is no with respect to meeting the State affordable housing requirements on the for sale end.

Mr. Henderson asked if the septic by product would be able to go back into the ground.  
Attorney Harris and Mr. Frey said that the treated effluent will be such that the quality of the water coming out of the plant is drinkable. The plant will be 2000-sq. ft. in area and the leaching field will have a 21-day travel time.

Mr. Peck asked that they describe the community and recreation buildings and the spaces that are planned for these buildings.  
Mr. Frey said that there is 20,000-22,000-sq. ft. of community based buildings. These can include a meeting room, potting shed, library/meeting room, fitness center, etc. All would be inside and placed around the village green. They also can occupy the bottoms of housing units.

Mr. Peck asked if in Mr. Frey's past experience he has found that it is economically successful to these businesses to do this.  
Mr. Frey said that typically there is no profit inherent in the rent structure of these buildings.  
Mr. Dunning added that also typically they would find that people who live there, many times volunteer to staff these facilities.

Mr. Nickerson said that they are proposing 600 units to start and asked if they would be looking for 800 units at a later date.  
Mr. Frey replied that he wanted to make it very clear that they would not be constructing in excess of 600 units and that it may even be less than 600 units. He added that they have been to the DEP twice already and have found them to be helpful and receptive to this system. If all goes well, they perceive groundbreaking in the spring of 2006 and the sale of their first unit in the spring of 2007. It is a very tight schedule and it would be about four to five months at most before they come back before them with the next plan phase.

Mr. Nickerson called for anyone from the public who wished to speak in favor of this application –

Howard Tisler, 152 Old Black Point Road, Niantic said that he has a question for the Commission regarding the situation that they have in this Town with respect to the lower income sector of our community and housing. He said that he would like to think that subdivisions of a certain size should have some of their

housing set aside as low income housing so that we can move our percentage up closer to the 10% that the State requires.

Mr. Nickerson noted that they have discussed this previously before the Commission and would continue to do so, as it is a concern of the Commission.

Mr. Nickerson called for anyone else from the public who wished to speak in favor of this application –  
Hearing no one –

Mr. Nickerson called for anyone from the public who wished to speak in opposition to this application –  
Hearing no one –

Mr. Nickerson called for anyone from the public who wished to speak neutrally on this application –  
Hearing no one –

Mr. Nickerson asked if there were any other questions from the Commission –

Mr. Salerno asked if there would be filtering systems for the groundwater.

Mr. Pfanner said that the groundwater would be treated utilizing best management practices and that this would be outlined in a subsequent application as it is not part of this review.

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

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

**Mr. Henderson moved to close this Public Hearing.**

**Mr. Gada seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

Mr. Nickerson closed this Public Hearing at 9:20 PM.

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary