

**EAST LYME ZONING COMMISSION
PUBLIC HEARING II
Thursday, OCTOBER 6th, 2005
MINUTES**

The East Lyme Zoning Commission held the Application of Landmark Development Group, LLC for (a) Amendment of Section 32 of the East Lyme Zoning Regulations ("Affordable Housing District") and (b) Rezoning the property identified in the application as land of Jarvis of Cheshire, LLC and Sargent's Head Realty Corporation from its existing zoning designation to an Affordable Housing District designation Public Hearing on October 6, 2005 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson opened the continued Public Hearing and called it to order at 7:25 PM after the previously scheduled Public Hearing.

PRESENT: Mark Nickerson, Chairman, Pamela Byrnes, Acting Secretary, Norm Peck, Ed Gada, Marc Salerno, Alternate, William Dwyer, Alternate

ALSO PRESENT: Attorney Michael Zizka, Representing the Applicant
Glenn Russo, Applicant & Manager Landmark Development
Jason Sarojak, ASW Consulting, Engineering & Surveyors
Attorney Josh Foley, Town Counsel
Michael Giannattasio, Director of Public Works
Attorney Paul Geraghty
Court Stenographer, retained by the EL Zoning Commission
Rosanna Carabelas
William Henderson, Alternate
William Mulholland, Zoning Official
Rose Ann Hardy, Ex-Officio - Board of Selectmen

FILED IN EAST LYME TOWN
CLERK'S OFFICE

OCT 14 20 05 at 2:15 AM (PM)

ABSENT: Shawn McLaughlin

PANEL: Mark Nickerson, Chairman, Pamela Byrnes, Acting Secretary, Norm Peck, Ed Gada, Marc Salerno, Alternate, William Dwyer, Alternate

ESTER B. WILHAMS
EAST LYME TOWN CLERK

Public Hearing II

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

Mr. Nickerson said that this was a continuation of this Public Hearing and that they had some further correspondence to read into the record which would be entered as **Exhibits** as has been done previously.

Mr. Nickerson asked Ms. Byrnes, Acting Secretary to read the correspondence into the record.
Ms. Byrnes, Acting Secretary read the following correspondence into the record:

- ◆ **Exhibit 22** – Memo dated 10/5/05 to Bill Mulholland, Zoning Official from Michael Giannattasio, Director of Public Works - Re: Document Transmittal (Riverview Heights 2005 Application) – stating that as requested by the Zoning Commission at their last Public Hearing they are providing a copy of the Water

Pollution Control Facilities Plan, Town of East Lyme, Connecticut dated June, 1985. This plan is included as part of **Exhibit 22**.

- ◆ **Exhibit 23** – Memo dated October 6, 2005 to Mark Nickerson, Chairman ELZC from Bill Mulholland, ZO – Re: Plan of Golden Spur Area – East Lyme – noting that during previous testimony in the current Landmark case, reference was made to the Calkins Road neighborhood, through which traffic would flow to the Riverview Heights Affordable Housing Development. Thinking that it would be helpful to the Commission if they had a map specifically delineating this area he obtained and attached a map from the Town's Engineering Department entitled "Golden Spur Planometrics East Lyme Connecticut". This map is included as part of **Exhibit 23**.
- ◆ **Exhibit 24** - Memo dated 10/4/05 to the Planning Commission and to the Zoning Commission from Wayne L. Fraser, Chairman, Water & Sewer Commission – Re: At its' meeting on 9/27/05 the Water & Sewer Commission recommended that all new developments be put on notice that connecting to the East Lyme water system will depend on the ability of the Commission to increase its current safe yield capacity and will request that developers contribute to the development and permitting of new water supply sources. And – that the Water & Sewer Commission will not automatically approve a connection to the water system until they have been able to improve their opportunity to provide new water sources.

Mr. Nickerson then called for the applicant or their representative for a presentation.

Attorney Michael Zizka of Murtha Cullina, representing the applicant said that among other things that he would be making comments tonight on what has been presented previously by other Town Officials and State employees with respect to this application. He said that he would also be presenting a plan as an alternative to this application. At the last meeting Mr. Giannattasio presented a plan showing the sewer-shed line with respect to the applicants' property. He said that, while we do not agree with this, we can, under CGS 8-30g present proposed alternatives or modifications to the plan, which the Commission is required to consider under the Affordable Housing Statute. This plan places all of the proposed units within the sewer-shed boundary as shown by Mr. Giannattasio. It does show a reduction in units from 850 to 780. Also at the last hearing the Town had a consulting engineer present information on behalf of the Town of East Lyme. In conjunction with this, he presented the resume of Ted DeSantos, a Professional Traffic Operations Engineer from Fuss & O'Neill who has done a traffic impact study for them for this application. Ted DeSantos resume was entered into the record as **Exhibit 25**.

Ted DeSantos, PE, PTOE (Professional Traffic Operations Engineer) passed out copies of the Traffic Impact Study for Riverview Heights, East Lyme, CT dated October 2005 and submitted one for the record. This was entered as **Exhibit 26**. He said that he has spent over 11 years working in the industry and has worked all over Connecticut on various projects including some for Pfizer in New London. He said that the purpose of a traffic impact study is to determine the impact of this development on the roads in the vicinity of this site. The traffic study has been written for 840 apartment units and he understands that there is a proposal for less units. That will mean that there will be less of an impact. He explained where this property is located – it is within 700' of Rte. 1, adjacent to the Town line and has excellent access to the State highway system. This site also meets the threshold for the State process and will be required to go through the State DOT review for a certificate. The State will do their own study. This should provide a level of comfort that there will be another independent review done. For this study, they gathered traffic and accident data from the State DOT for the past three years. This area has a low accident rate. They are recommending that a boulevard style of entry system be built there with an island and separate in and out lanes from the site to the intersection of Calkins Road with Hill Road. They are also proposing a traffic signal be installed at River Road and Rte. 1.

Mr. Mulholland asked how long the boulevard would be.

Mr. DeSantos said that he did not know exactly.

Mr. Mulholland asked if it would end at Hill Road.

Mr. DeSantos said yes and asked that he be allowed to continue presenting what they are proposing, as that should answer these questions. They are deterring site related traffic from Calkins Road and are recommending sliver widening of Hill Rd. and River Rd. so there will be 12' lanes and the installation of stop signs. In skipping to the end, he said that based on intersection capacity, roadway safety and other traffic considerations as defined by their Zoning Regulations and per industry standards in the State of CT, he does not feel that the residents of Calkins Road or Hill Road will be significantly impacted by the traffic generated from this development.

Mr. Nickerson asked if he was saying that 800 more families driving on River Road would not have an impact on those living on River Road.

Mr. DeSantos said that as defined in a traffic engineering sense, there would be no impact. This is based upon the improvements that they have also proposed such as the boulevard and stop signs and light. Based upon all of that, there is no impact in the traffic engineering sense.

He then continued with his presentation and cited the peak hour traffic volumes – for the Weekday AM peak hour there would be 415 more trips entering and exiting the site and for the Weekday PM peak hour there would be 485 more trips entering and exiting. Under the background conditions studied, all of the areas are operating at service level C except for the North bound off ramp to Rte. 1 which is at a level service F but they are not adding any traffic to that. CT DOT has defined level service D to be acceptable during peak periods for State roads and there was no significant impact to these areas. They also measured the site distance at the Rte. 1 intersection (based on speed) and found that it does not meet the criteria. They found River Road to be more acceptable however as they are proposing a traffic signal be installed and a No Turn on Red sign due to the limited site distance looking to the left. This would make it better for traffic there today and would change the level of service from the D of today to a level B. They are also recommending that Rte. 1 be widened and that Hill and River Roads be widened to 12'. This is minor sliver widening and they feel that it can be accomplished within the ROW. They are also recommending placement of Do Not Enter signs to Calkins Road and with the stop sign control and boulevard style entrance these improvements will mean that this development will not have an impact on this site. He noted again that this is an ideal site due to its proximity to the State road and highway system.

Mr. Salerno asked how far the stop light is from the existing one on Oil Hill Road.

Mr. DeSantos said that it is around 800'.

Mr. Salerno asked how close the houses are to the road on Hill Road.

Mr. DeSantos said that on the Town plan, they might be 7'-8'.

Mr. Salerno said that he had said that there would be 415 more cars going by a house that is 7'-8' away from the road – and he does not think that there is going to be an impact?

Mr. DeSantos said not as it is measured in a traffic impact study system – industry standards dictate the metrics that have to be used to do a study such as this. How close the houses are to the road is not the impact that they are studying.

Mr. Salerno said that he wanted it noted that the house is close to the road and that he thinks that there will be an impact no matter what standards are used.

Mr. Salerno said that they are proposing widening the road and asked how wide the ROW is.

Mr. DeSantos said that the ROW is 50' there and that they are recommending that the road be 24' wide. The roads are 18'-20' wide now so they do not need much space.

Mr. Salerno asked if they take into account the types of families that will be living in the development and the number of bedrooms.

Mr. DeSantos said absolutely – the information for apartment complexes comes from a national database.

Mr. Nickerson asked if the 415 trips meant that only half of the people living there drive.

Mr. DeSantos said that the 415 trips is based on the PEAK HOUR traffic only and if they can accommodate that traffic then other times will not be as busy.

Mr. Salerno asked if the plans for widening Rte. 1 would affect the Niantic River as it is a steep slope.

Mr. DeSantos said that most of Rte. 1 is okay as it is now and pointed out the small area that he was talking about for widening.

Ms. Byrnes asked if they were talking about turning Calkins Road into a one-way road.

Mr. DeSantos said not precisely, no – they are proposing that at the intersection of Hill Road as they approach from the proposed site that they will see a Do Not Enter sign and they will have to go the other way.

Ms. Byrnes asked what stops people from avoiding the whole River Road thing by going to Calkins Road from Rte. 1.

Mr. DeSantos said nothing, and added that there would also be no safety concerns with that or traffic impact.

Ms. Byrnes said that she was thinking in terms of how they just built a new Middle School and how they have a driveway area through there that people cut through.

Mr. DeSantos said that Ms. Byrnes definition of an impact is different from that of an actual traffic definition of an impact. There could be additional traffic but it would not present traffic delays or be considered as having an impact.

Mr. Nickerson said that he loves the boulevard idea and that it would solve the issue there. However, he does think that while there will not be a significant traffic delay impact, that there will be an impact in the neighborhood. He asked who decides if Calkins Road has the Do Not Enter sign – as it's a Town road. Mr. DeSantos said that the State will be involved with the recommendations and will be concerned that traffic will be able to move in and out. From there they will work with the Town, as the sign approval is a Town issue.

Mr. Nickerson asked what the date of the study was.

Mr. DeSantos said August 2005.

Mr. Gada asked what the hours studied were for the AM and PM.

Mr. DeSantos said that the Peak AM hour was found to be between 7:30-8:30 AM and the Peak PM hour is between 4:45-5:45 PM.

Mr. Gada asked that as the study took place in August – if any consideration was given for school buses.

Mr. DeSantos said yes and noted that the traffic signal would allow safer egress to Rte. 1 and that the traffic in the summer months is significantly higher than traffic during the school year. In fact, per DOT reports, in the month of August, the traffic is 13% higher than the traffic during other times of the year. The safety site lines are good and with respect to delay, it would not show an increase and would remain the same.

Mr. Dwyer asked if the study is based on presumptions.

Mr. DeSantos replied absolutely.

Mr. Dwyer said that it all seems to be a fantasy and asked what if the State does not have the money to do the improvements and none of it comes about.

Mr. DeSantos said that the improvements that he is recommending are done at the expense of the developer.

Mr. Dwyer asked if the State is going to approve all of those improvements.

Mr. DeSantos said yes, his experience is that with the improvements any impact would be mitigated and the State has approved these types of recommended improvements. This is the process, and it goes to the STC and the DOT for the permit process and approvals.

Mr. Mulholland asked if they looked at any other access to this site.

Mr. DeSantos said that they used this one for this proposal.

Mr. Peck asked if the standard by which these conclusions were based on gave any consideration to the neighborhood or the configuration of the streets.

Mr. DeSantos said that it is black and white engineering methodology that has to be utilized in these studies.

Mr. Peck said that with 415 cars in the peak hour in the afternoon it would equate to a car every 7 seconds.

Mr. DeSantos said yes, if it computed that way however, that is not how traffic flows and it also goes in different directions and not all in the same way.

Mr. Nickerson asked Mr. Mulholland if they had to notify the neighbors about this.

Mr. Mulholland said no – not to his knowledge and that there was nothing in their regulations that requires them to notify the neighbors.

Mr. DeSantos said that he knows that their regulations do not require notice for a traffic study.

Joshua Foley, Town Counsel said that he would have to look at the Zoning Regulations to answer that. He also noted that since the nature of this application involves a preliminary site plan – they might have to look into that also.

Mr. Nickerson asked Attorney Zizka if he knew if any notices were sent.

Attorney Zizka said that to his knowledge, no notices were sent to abutting property owners.

Attorney Zizka said that he would like to discuss some of the concerns that were raised at the last meetings' hearing. He said that a comparison of the proposed amendment to the existing affordable housing document, was submitted and he would address that document. He noted that their AHD regulations specifically require public water and sewer however, if it is an elderly housing (SU-E) development of greater than 300 acres,

they can have a community septic system and are not required to have accessibility to the Town systems. He said that he finds it difficult that if you are of moderate means that you need public water & sewer but if you are elderly you can have whatever you want. The SU-E allows 4 units per acre with no water or sewer and the only way that you are going to get that is with a community septic system. He pointed out that when they denied their first application that they said that the property could not be used for a community septic and that was a flat out false statement as they are widely used in this State, all over the State. So, they created standards in their AHD regulations that were based upon if public amenities were available or not so they would be consistent with the SU-E regulations. He noted that the SU-E setbacks can be waived and they then become meaningless. There is no buffer requirement in the SU-E district. With regard to Open Space, they took out a provision that the Planning Commission may choose to include a portion of the buffer strip as open space as there are no standards given for that. He noted that under CGS 8-30g – the statutory standards supercede any local Zoning Regulations. The Court is not going to look at their special permit standards – they will only look at the statutory standards and that is why they have made reference to them with their AHD changes.

To Mr. Nickerson, he said that he recalled him saying the last time that he is not used to having so brief of a presentation and that they are used to a typically more involved presentation. However, an AHD application by its very nature is different. He recalled from a past case that the courts are not interested in the septic system and water supply, as that will have to be reviewed later on by the DEP and others. He cited from a Supreme Court Case - Kaufmann v. the Zoning Commission of Danbury – noting that the court recognizes that if the applicant has to spend an excessive amount of money on infrastructure only to be denied then it would defeat the purpose of Affordable Housing. He said that they could not afford to spend hundreds of thousands of dollars to get to NO – as they have been told with the past two applications that they have brought before them. They would like to get to YES and so they have brought a different method of access to them that does not present a great traffic impact. He also noted that every change that they make gets turned back against them by this Commission. The reality of the situation is that under the current zoning that 60 very large homes with potentially more children can go in that area.

Attorney Zizka next noted the Darrow Pond 600-unit project that they have approved a preliminary site plan for on Mostoway Road. He submitted the Minutes of June 17, 2004 from the Zoning Commission noting that there were virtually no questions asked of these people regarding this project – indicating that the double standard is very clear. The minutes were entered into the record as Exhibit 27. He noted that there was little mention of water except for existing wells on the site and that outside watering would have to be done from a well. The septic system would be submitted to the DEP for approval. Also, Mostoway Road is a very narrow road and there was virtually no question about traffic impacts, and that traffic study was also done in August.

Mr. Mulholland asked if it was for the 80 units or the zone change as there were other minutes.

Mr. Nickerson said that just for the record, that was not a full report, there was a second application on the same property.

Attorney Zizka said that was for the zone change for the 600 units.

(A five-minute break was taken here)

Attorney Zizka said that Mr. Mulholland was correct regarding the minutes – there is another set and submitted the Zoning Commission March 3, 2005 Minutes regarding the Darrow Pond Preliminary Site Plan approval. This was entered into the record as Exhibit 28. He noted again that the septic was stated as being submitted to the DEP and with regard to a question that was asked regarding the traffic study, they were told that it was not submitted. However that application for 600 units was heard and decided all in the same night.

Attorney Zizka submitted copies of documents that he had submitted for previous applications (2002). These were entered into the record as Exhibit 29. He said that this includes a copy of the figure 11-2 of the Open Space plan of 1999. There are two conflicting maps – one shows a portion of the applicants' property as Open Space and then a successive plan shows all of it as Open Space acquisition. This is in Chapter 11 and it refers to that piece of land that is closest to the Niantic River. He said that in response to Mr. Giannattasio's letter that they are proposing moving the units as far as possible away from the Niantic River and as close as possible to the existing condominium development (Deerfield Village).

He then referred to the COG letter and regional map that also shows the area around Darrow Pond as not suitable for development however that did not become an obstacle for them. He submitted a copy of this Regional Conservation Development Policy Guide for the record. This was entered as Exhibit 30. The

SECCOG also did a Housing Needs Study for Southeastern CT – 2002-2005 – dated April 2002. He said that he had copied about half of that document and submitted it to be entered into the record. This was listed as **Exhibit 31**. As a synopsis he noted that the executive summary states that the suburban and rural towns are not doing their share with respect to providing affordable housing. Also, developers are reluctant to pursue development of affordable housing. Unfortunately they have always heard that the developers are only doing what they do to make a buck – and that is true. Developers do create housing because that is how they make a living. So, it is easy to demonize the developer when it is really just a clash of self-interests. One person may be interested in preserving their view and another may be interested in housing and there is nothing wrong with that. The AH Statute exists to be an incentive to developers to build them. Based on this study, it was suggested that affordable housing should account for 15% of new housing.

Mr. Nickerson asked if there was a referral to SECCOG on Darrow Pond that he was referencing. Attorney Zizka said that he was just stating that the situation should be no different and that one application should be no more or less compelling than the other or treated differently.

Attorney Zizka next said that in his 'former life' he was a geologist and holds two degrees in it. He has trained in soils and soils review. One of the reasons for a NO on the previous application was because it was cited that the soils have serious restraints. He submitted Table 11 a portion from the Soil Survey of New London County for the record. This was entered as **Exhibit 32**. This lists 83 categories of soils and 67 of those 83 are listed as having serious constraints. Only 6 of the 83 are listed as having slight constraints. He said that he created a map of this breakdown (Soil Map of Oswegatchie Hills) for them and submitted it for the record. This was entered as **Exhibit 33**. He explained that Hollis soil types are shallow to bedrock, having four feet or less of soil above bedrock. The striped lines HRC and CRC means that they are a mixture of the Charlton and Hollis soils. What Exhibit 32 says about this HRC/CRC rock outcrop is that there will be pockets of bedrock but also other areas that will be suitable for septic systems and that you just need to go out and find them. Mr. Sarojak did this and mapped it all out for them the last time however it was denied.

Mr. Nickerson noted that this application is for sewer and said that he did not want to confuse the Commission. He also said that he wished that they could have had all of this information before instead of now on the final night.

Attorney Zizka said that he wished that he could have had a tape of that so that he could play it back, as it has been their issue all along with things being dropped on them at the last minute. The reason why the sewer is being addressed is because they received a letter from the DEP saying that their comments were the same as those for the other applications. He then presented a map showing the types of soils that can be found on Mostowy Road where the Darrow Pond project is proposed. He noted that they would see that they are basically the same types of soils as those that are found in Oswegatchie Hills. This was entered into the record as **Exhibit 34**.

Attorney Zizka said that with regard to Mr. Fraser's letter of September 1, 2005 on behalf of the Sewer Commission, he pointed out that the Waster & Sewer Commission previously approved the Orchards subdivision sewer extension. That is a high-end development. Earlier records make it clear that Mr. Fraser does not want residential development to be made available to this site. He said that they are prepared to do all of the same things that the Orchards developer is doing and that the Lulu's developer was prepared to do as that extension goes right by their property. He submitted a map of the Lulu's sewer extension for the record. This was entered as **Exhibit 35**. He noted that there was a minor note made to the Darrow Pond people about water to the site and that was the only mention of it. Whereas, they were told in a letter from Michael Giannattasio dated 2/15/05 that for this project that there is not enough capacity left and that is just not true. He asked that they be treated just as the Orchards and Lulu's were treated. He submitted this letter for the record and it was entered as **Exhibit 36**. He next submitted a Collection of letters regarding the potential acquisition of the Oswegatchie Hills property beginning with the date of 1/25/89. This collection was entered into the record as **Exhibit 37**. He noted that in the first letter Charles Reed stated that land acquisition was restricted to only high priority areas and that this area was not one of them. This reasoning continued and in 1997 David Leff noted that this was not a priority site, and was close to high-density areas. The Forestry Director said that they have no interest in the property as well as the Wildlife Division due to the intense development in the surrounding area. Meanwhile they have repeatedly heard Mr. Stamm talk about how valuable this area is and here the DEP and Wildlife Division does not find it to be so.

Mr. Salerno asked what the term high priority areas meant.

Attorney Zizka explained that the State DEP does not find the property to be of value to them in terms of acquisition and hence it is not of high priority to them to acquire them.

Attorney Zizka continued that they also have a letter from a person stating that they walked this property (without permission) and found species on it that are threatened. People from the Town and State have walked the property without notice to the owner and note has been made of this. The issue is that we do not know where these people hiked, and therefore can find no proof of any species that they may have seen. Also, there has been no consideration for what can be done to this property under current zoning. This could be developed as three-acre lots and if so, the trees near the river would be cut down more so than what is being proposed here. Three-acre development would mean that most of the property would be clear cut, as people would want to have views of the Niantic River. What they are proposing is intense in a small area with very minimal disturbance.

Mr. Nickerson asked if they are proposing open space area.

Glenn Russo noted on a map that the area in blue is dedicated open space never to be built on. So, this development has about 80% open space and only 20% built out. Also, the open space is strategically positioned as a buffer to Latimer Brook and the Niantic River.

Attorney Zizka also noted that the CAM boundary is 1000' shown by the green line on the map and that the only thing that is proposed within that area is the access drive. It is their legal position that is the only thing that the DEP has the right to review. There is just no basis for the issue of the shellfish and the river as nothing is going to be within 1000' of it. The Shellfish Commission also wrote a letter about this. He submitted a Shellfish Map for the record and noted that there just are no shellfish in that area according to the map. This was entered into the record as Exhibit 38. He summed that this has been a response to the statements that have been made. There was also a statement made in a letter from Fred Thumm dated February 9, 2001 saying that the subject site was not in the sewer shed. He submitted this for the record. This was entered as Exhibit 39. He then submitted Water & Sewer Commission Minutes dated 2/26/02, which was entered into the record as Exhibit 40. In these, Mr. Thumm stated that Oswegatchie Hills was excluded from the sewer shed as per the facilities plan. A telling piece of transcript of 9/26/02 – two pages out of 59 were submitted and entered into the record as Exhibit 41. In these, Mr. Fraser (page 47) said that if it was in the sewer shed that there would be no distinction. He also submitted a letter dated 7/29/04 to Mr. Gada from Wayne Fraser regarding the subject referral saying that the area is not in the sewer shed and not served by it. This was entered as Exhibit 42. Dennis Grecl in a letter dated 7/29/04 to the Water & Sewer Commission stated that with the proper information that he could see that a portion of the Riverview Heights project is within the sewer shed even though he previously did not think so. He submitted this for the record and it was entered as Exhibit 43. He presented eight copies of a letter from Jason Sarojak, PE, LEP of ASW Consulting Group dated 10/5/05 to Mr. Glenn Russo stating that Mr. Fraser was incorrect in his assessment that water and sewer were not available to the subject site and provided his professional opinion on this. This was entered into the record as Exhibit 44. He summed that the court was relying on this mis-information that they were given when it made its previous decision. With the information that he has now presented, he suggests that Affordable Housing can be accommodated in this Town and that they have proposed something that will bring a lot of needed housing to this area. He then thanked the Commission for their time and said that Mr. Russo may also have something to say.

Mr. Russo said that he thought that they might want to let the public speak first and then he would close.
(A five-minute break was taken here)

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

He called for anyone from the public who wished to speak in opposition to this application –

Attorney Paul Geraghty said that he represents Save the Hills, Save the River and the Friends of Oswegatchie. He said that he would like to address a few things. The traffic study and the site line deficiencies that he felt were dealt with in a coy way. He thinks that if the light is set based on the 35-MPH speed limit when the traffic speeds 85% of the time that the results are going to be different. With regard to what the courts have said regarding affordable housing applications, he feels that it is a valid way to look at it with respect to environmental concerns because of the number of times that it has been before them. He

does not think that they can just toss out the basics. Also, Mike (Zizka) spent a lot of time going over letters from the DEP and he thinks that these are really just a shot in time and without policies there is little to base the denials on so he thinks that they really do not show the bigger picture. The soil issue is again of paramount concern. In prior applications the septic was in the area that is open space. He does not feel that the applicant has shown that septic is feasible or that sewer is available. The sewer capacity is not allocated to this area but rather to other areas in the Town and the line off the Golden Spur won't have adequate capacity to that site. He thinks that there has been a lot of documentation introduced to try to minimize environmental damage by showing that the DEP did not have an interest in this site at various times. He asked that they carefully look at the documents in the context of everything rather than just a few statements as every one who has reviewed this has stated that this development is not suitable for this site. If they weigh this application against the other Affordable Applications in Town, they will find that this one is not suitable for this site.

Bob Gadbois, 358 Boston Post Road said that he would like to talk about his favorite subject – traffic. In discussing Rte. 156 you hear about only one car or two cars or one and a half car – look at this today and the traffic is a mess. He noted Mr. Salerno's comment about the houses so close to the road and asked if they could imagine the fumes to those houses that are next to the road with all of those cars going by. He said that there was another application that they were discussing regarding putting a light at Bride Brook Park and someone made a comment that with another light only 500' away that the DOT would not let them do it as they are too close. He said that he also does not know where the turning lanes are going to be but when you come out of River Road on the river side, there is nothing there. There is also a sign there saying Do Not Spray because someone has a well there – so there is no room there.

Marvin Schutt, 39 Edgewood Road North said that he has only one comment to make with regard to Attorney Zizka's documentation that the DEP was not ever interested in Oswegatchie Hills. To the best of his knowledge and he thinks that it can be confirmed that the DEP did make an offer to purchase the property from Glenn Russo.

Mr. Nickerson asked if anyone else would like to comment –
Hearing no one he called upon the applicant for any further comments.

Glenn Russo, Principal at Landmark Investment Group said that he would like to go over a few points. It is important to look at this as the third application. Typically an application is modified at the staff level prior to it coming before the Commission. He said that he believes that they have satisfied the concerns of the first two applications in this one. The Figure 11-2 is a significant issue as where they are proposing to put the buildings does not fall in that open space designation area. It is important for them to see that they are not proposing to develop in the area of Figure 11-2 as indicated by the Plan of Conservation & Development. He submitted to them Figure 11-2 – the Map of the POD Open Space. This was entered into the record as Exhibit 45. He said that they have proposed either no activity or dedicated open space so they do comply with the POD. He also read from a transcript of the first application where Meg Parulis stated that their property was classified as Open Space. It wrongly stated that all of their property was classified as open space and that was not true – it was a false and misleading statement and a clear misreading of the maps. He submitted this for the record. This transcript of Meg Parulis speaking from the first application was entered as Exhibit 46. Next, in the Regional Planning Map only a sliver of the waterfront was designated as the conservation easement. He noted that the proposed development does not fall in the open space area. He noted that this could clearly be seen from the map and asked if they all could see this as if not, he would explain it to each of them. He submitted this map and it was entered into the record as Exhibit 47.

Mr. Peck asked for explanation of it on the map and Mr. Russo pointed this out to him.

Mr. Russo said that they were also denied for lack of water and sewer however there is no restriction from getting water from Waterford and the water main extension has been approved to Lulu's and that runs in front of their property. If not, then they would drill wells on site – exactly the same as Darrow Pond. He noted that it is actually easier to approve this application as there are two solutions available here.

Mr. Nickerson asked if there was water capacity there and if there was extra water if they would give it back to the Town.

Mr. Russo said that they would be happy to drill and then sit down and discuss with the Town regarding what to do with any excess water. He continued that regarding sewer that they have constantly been saying that a portion of their property falls within the sewer shed and they have been constantly criticized for making false statements before this Commission. A portion of their property does fall within the sewer shed and with Mr. Giannattasio's testimony to that, he said that he doubts that anyone would now disagree with that. He asked if they had any question about that. He cited from the East Lyme Sewer Flow History dated August 2005 that the Town has 1.5M gallons of capacity and is presently using about 1M gallons. He submitted this for the record and it was entered as Exhibit 48. He said that they also heard that there is no sewer infrastructure but the extension has already been approved by the Water & Sewer Commission and he has already submitted the plans that show that stubs were dropped at Calkins and River Roads and they are in the sewer shed. There is enough capacity and the infrastructure extension would be paid for and put in by them.

Mr. Salerno said that they are not the Water & Sewer Commission and that they are getting conflicting information on this. He also asked if he was including plans that have already been approved such as Pine Grove.

Mr. Russo said that there is still capacity left. He then submitted two pages of Minutes of the Water & Sewer Commission dated 9/28/99 noting approval of the sewer extension from Waterford to the sewer shed that he is in. This was entered into the record as Exhibit 49. Also submitted and entered as Exhibit 50 was a letter to Walter Cullen, Chairman from Fred Thumm of the Water & Sewer Commission dated September 10, 1999 further discussing this issue. Exhibit 51 – a map of the existing sewer pipes in Waterford was also submitted and entered. Exhibit 52 – the Town Ordinance approving the extension of the water main was also submitted. He noted that they would need about 170,000 gallons and that this is available in the sewer system.

Mr. Russo said that with respect to soil types, that they become less of a concern when utilizing sewers. He noted as a comparison that Darrow Pond has no sewers or water and has asked for preliminary approval and received it with no questions asked however, the soil types there are basically the same as we have and they have not been quizzed about it. He said that they are also asking for preliminary approval and feels that this should also be approved.

Mr. Nickerson noted that the Darrow Pond approval was preliminary and that they would be scrutinized when they come back.

Mr. Russo continued that the Commission did not like having anything in the CAM area with the previous applications so this time there is no development proposed in that area except for the drive. In Section 14.2.1 – Items C. and D. state that driveways and underground utilities are exempt from the CAM, so they have nothing in that area. They also do not impact Latimer Brook. They have dedicated forever Open Space that is wrapped around any activity. Attorney Zizka also touched on several letters regarding wildlife and how due to the intense development in the area and the fact that this property is completely surrounded by high density development, this property is of no interest for wildlife preservation. Also, in previous applications they did not like them going to Rte. 1 or River Road (this is not much different from Darrow Pond with Mostow Road) so they have changed it for them and the location of this property is much closer to the State roads and highway system and provides access without having to travel over the Town roads. In the second application they were refused for wanting to go through Deerfield and they had an agreement in order however they would not complete that easement agreement until they had approval for the application which they did not get.

Mr. Nickerson commented about the Deerfield access and asked if that is still on the table as a possibility. Mr. Russo said no, they cannot go back to that at this time and it is not shown on the plan. Further, he said that he thinks that the entry way out Calkins/Hill Road that is being proposed by the Traffic Engineer with the groundwork and recommendations that were laid out provides for a safe and acceptable means to get out. They are a lot closer to a major highway than Darrow Pond is and they use much less of the Town roadway to get to the State system. He also noted to the Commission that there was a previous issue that the Market Rate units and the Affordable Housing units were different and with this application the Market Rate and Affordable Housing units are identical in every way.

Mr. Russo then submitted the following Exhibits for the record:
Exhibit 53 – Letter dated 3/15/99 from Fred Thumm to the EL Planning Commission regarding the proposed sanitary system of the Orchards in East Lyme.

Exhibit 54 – Excerpt from The Day dated 10/1/04 regarding Oswegatchie Hills Development falling partly in the East Lyme Sewer Shed.

Exhibit 55 – Sewer Shed/Sewer District Feasibility Plan prepared for Landmark Development Group dated 5/23/04.

Exhibit 56 – East Lyme Sewer Use & Sewer Disposal Ordinance.

Exhibit 57 – Zoning Commission Code Section 14 – CAM – 2 pages

Exhibit 58 – Coastal Area Management Map – CAM Line Map dated 1970

Exhibit 59 – Sewer Service Contract Areas of East Lyme, CT dated May 1999

Mr. Nickerson noted that while it is not a part of this application that Mr. Russo made headlines with the last application by offering to negotiate a portion of the property to the Town. He asked if that option was still open and if he wanted to put it back on the table for this application.

Mr. Russo said that with the last application that he wrote to all of the Selectmen and that he did not hear back from any of them and that it is not a part of this application.

Mr. Russo said that he would also like to address some of the comments made by Attorney Geraghty. Attorney Geraghty said that the site lines were deficient. The installation of the light will address and correct that issue. The timing of the lights would be up to the DOT. He also said that the DEP did not want to buy the property but that no reasons why were given. He said that Attorney Zizka gave a number of policy reasons for the DEP not wanting to purchase the property, such as high density developments in the area. Further, he thinks that he referred to the land near the water being developed some time in the future. He said that if the Commission wanted to exclude that portion of the land down by the water from this zone change, they would be amenable to that however, it would not preclude them from coming back before them at some future time looking for a zone change on it. They could leave it as it is now and they could come back in the future. For Attorney Geraghty to conjure up what could go wrong in the future is just not practical here. Further, this is a preliminary site plan and if it is approved, then they would do the detail work and come back with that. The information that they have supplied is more than what Darrow Pond supplied and is sufficient for the Preliminary Site Plan Review process.

Mr. Nickerson asked if the Commission had any questions.

Mr. Salerno said that he was concerned about the buffering and that he thinks that it is necessary.

Mr. Russo said that a buffer is used for distinction between various uses such as multi-family/commercial.

Mr. Salerno said that he does not agree and that buffers are there to distinguish one property from the other.

Attorney Zizka asked where he was looking at this.

Mr. Mulholland said that it could be found in Section 12A.2.3 – Buffers for the SU-E.

Mr. Salerno said that he is concerned about the means of access between them.

Mr. Russo said that the high-density development near him is CHFA multi-family and they are nearly exact use. They do have 25' from the property line.

Mr. Salerno said that someone could put something 6" from the property line and this is why they have setbacks and buffers. He said that he also does not think that this is the same as the Deerfield project that is up there now.

Mr. Mulholland said that he thinks that Deerfield is attached in clusters and is of the Cape Cod style. He is not sure of how many are affordable although he believes that it is 100% from when it was picked up by CHFA. He noted that it was first built as condos.

Mr. Russo said that what he is saying is from the land use stand point that they are identical.

Ms. Byrnes said that she agrees with Mr. Salerno and would not like to give up the buffer.

Mr. Russo said that he understands their points and while he does not agree with the necessity for a buffer in this situation that he would be amenable to a 25' buffer between like uses.

Mr. Nickerson asked Mr. Mulholland if Deerfield was required to have a buffer when it was built and what that buffer was.

Mr. Mulholland said that he does not know what the buffer was although he believes that it was done sometime in the 1980's probably around 1988.

Mr. Nickerson said that he would like to have that information before they make their decision.

Mr. Russo said that they have a map that shows little to no buffer between Deerfield and their property.

Mr. Nickerson said that if that is so, then it would certainly make their case for no buffer stronger.

Michael Giannattasio, Director of Public Works, Town of EL said that he just read Mr. Sarojak's letter (Exhibit 44) and that it talks about getting water from the City of New London however, it is the Town who would have to purchase the water and not the developer. Some agreement would have to be made and they do not have that agreement from New London. He said that they are also under the consent order and that it does not apply just to Wells 3A & 5, it applies to the whole system as they are all connected. The fact that 80%-90% of this site can gravity flow into the GS-1 area is not the issue as the facilities plan is very clear that you are allowed to use the sewer shed for some areas. The gravity feed does not apply, as the rest is a sewer avoidance area.

Attorney Zizka said that first of all to him, again, this is further evidence of the double standard. Mr. Giannattasio was not present for Darrow Pond regarding no sewer or water but for us – he is here. Regarding paying for the water – they would pay for it. They are saying that if the Town has no trouble getting 35,000 gallons of water for Lulu's then they should be willing to get it for this project - for an Affordable Housing project for the Town which is an important State policy and, at least in theory, is considered important in the Plan of Development. Finally with regard to wells, they have said it before and he will say it again that from a hydrological standpoint, there is no reason why sufficient water cannot be obtained from bedrock drilled wells on this site and if there is no availability for public water by any means, then wells would be drilled. But, because this is a preliminary application this is not the issue now.

Mr. Giannattasio said that he wanted to comment on Darrow Pond – if it is an on-site sewer system, his office does not comment on it and would not comment on it for this application if that were the same case. Secondly, he is referring to the public water that the Water Company supplied and if wells were on this site, they would still be part of that just as they are with Darrow Pond. He said that this is the first that he has heard about wells on this site.

Mr. Nickerson called for any other comments –
Hearing none – he called for a motion to close this public hearing.

****MOTION (1)**

Ms. Bymes moved that this Public Hearing be closed.

Mr. Salerno seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Nickerson closed this Public Hearing at 11:45 PM.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary (Pro-Tem)