

**EAST LYME ZONING COMMISSION
REGULAR MEETING
Thursday, NOVEMBER 1st, 2007
MINUTES**

The East Lyme Zoning Commission held a Regular Meeting on November 1, 2007 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT.

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

ALSO PRESENT: Josh Foley, Town Counsel,
Robert Bulmer, Alternate
William Dwyer, Alternate
William Mulholland, Zoning Official
Rose Ann Hardy, Ex-Officio, Board of Selectmen

ABSENT: Joe Barry, Alternate

FILED IN EAST LYME TOWN
CLERK'S OFFICE

Nov 5 20 07 at 3:35 AM
PM

Esther B. Williams

EAST LYME TOWN CLERK

The Pledge was previously observed.

1. Call to Order

Chairman Nickerson called this Regular Meeting of the Zoning Commission to order at 9:30 PM after the previously scheduled Public Hearing.

Public Delegations

Mr. Nickerson called for anyone from the public who wished to address the Commission on subject matters not on the Agenda.

There were none.

Regular Meeting

- 1. Application of GPF Flanders Plaza LLC for a Special Permit for a fast food restaurant at property identified in the Application as 15 and 19 Chesterfield Road, Niantic, CT. Property is further identified as Lots 55 and 54 on the East Lyme Assessor's Map 31.1.**

Mr. Nickerson said that they had just closed this Public Hearing and that they could not act upon it until the Conservation Commission acts at their meeting this coming Monday evening.

- 2. Application of Landmark Investment Group, LLC ("Landmark") for approval of a text amendment to Section 32 of the East Lyme Zoning Regulations adding a Section entitled "Affordable Housing District" (AHD);**
- 3. Application of Landmark to rezone land of Jarvis of Cheshire, LLC and Landmark Development Group LLC from its existing zoning designation to an Affordable Housing District. The application is in connection with a proposed Affordable Housing Development to be known as "River View Heights VI (A Residential Community)". The property to be rezoned is located immediately southeast of River Road, Hill Road and Calkins Road, west of the Niantic River and Quarry Dock Road, and east of King Arthur Drive and is further identified in the application.**
- 4. Application of Landmark for approval of a Preliminary Site Plan for the construction of between 1548 and 1720 units under the newly proposed Section 32 of the zoning regulations.**
- 5. Application of Landmark for approval of a coastal management Site Plan.**

Mr. Nickerson asked if Attorney Foley, Town Counsel had any comments prior to their further discussion on these applications.

Attorney Josh Foley, Town Counsel said that he had prepared draft motions for and against as directed. He said that there are four parts to this and that they are treated as an Affordable Housing application. Because this is an Affordable Housing Application, the burden is on the Commission to be able to support their decision. Some of the things that they will need to address are if there is sufficient reason in the record to support a denial and if the stated public interests clearly outweigh the need for public housing. He then explained the standards for approval of the CAM review noting that it is separate and may be denied if it fails to apply to the CAM standards. A CAM review is done for applications that propose activity within 1000' of a coastal boundary – in this case that is the Niantic River. He also explained that the Commission can act on this application by means of approval, denial, approval with restrictions or modifications or denial with suggestions. He said that the draft motions to approve or deny have left room for them to make modifications if they feel that is appropriate.

Mr. Mulholland noted that the Commission is not required to make modifications and that they can approve, deny or modify.
Attorney Foley said that was correct.

Mr. Nickerson asked about the CAM report with the Preliminary Site Plan.
Attorney Foley said that it is an Affordable Housing application and that the CAM application is their decision.

Ms. Carabelas said that she is not sure if they have enough information to make a decision.
Mr. Nickerson said that they are to make a decision based upon the information that they have been given.
Attorney Foley said that they have to apply the CAM standards to what they have
Mr. Mulholland noted that they have the CAM application in the file and that there are also some letters from Marcy Balint.

Ms. Byrnes asked Attorney Foley if they deny one aspect of the application if that would collapse the entire application.
Attorney Foley said that the way that the draft of the decisions was done was with putting the CAM last as they applied for Affordable Housing and the text change, rezoning and the preliminary site plan with the CAM last. He suggested that this would be the easiest way to approach this.

Mr. Nickerson said that as he recalled, they had approved a zone change for a part of the area the last time.
Attorney Foley said that there was a partial approval of the zone change but denial of the text amendment. The partial approval was in the sewer shed area and that decision was mostly reversed by the Niantic River Gateway Commission. There is a small part left that is included in this.

Ms. Byrnes said that the text amendment changes take out the sewer shed requirements.
Attorney Foley said that the text amendment does not require letters from the Water & Sewer Commission.

Mr. Peck suggested to the Commission that they talk about this first and perhaps someone would like to make a motion and then they can make changes to the motion if they should wish to.

Mr. Nickerson said that he reviewed the testimony from one of the former decisions where the judge upheld their position and that they have currently received testimony with respect to traffic. He said that he is concerned as he is not sure that they even have a road to travel to get to their property. They have also heard from the interveners about the fragile eco-system and the test holes that were done and some of that information was submitted and some was not. The bottom line on the test holes is that all of it was not presented.

Attorney Foley pointed out that just because a judge determined things before that what they need to look at here is the body of evidence that was presented with this application and that which is now before them.

Mr. Nickerson said that this application is almost triple in size of one of the other proposed developments and that it is his view that this land is very fragile and needs to be protected.

Ms. Carabelas said that she was concerned with the test holes that Mr. Salerno had noted and said that there were some 28 that were dug but that not all of them were presented.

Mr. Salerno said that Mr. Russo's argument was that they could not trust the New London County Soil Survey as they found a different depth to bedrock from what the survey said. But – 28 test holes were dug and only eight (8) were presented. Mr. Gerwick on behalf of the Interveners presented the other 20 which did support the New London County Soil Survey.

Ms. Carabelas said that she does not think that they can deny this application because they want the area to be Open Space and – Attorney Zizka said under the 'flag' that they cannot deny someone the right to develop their land. However – they aren't doing that as he can put houses there as they have three-acre zoning. They can develop their land.

Mr. Nickerson asked Attorney Foley to speak to the change to Open Space and that issue as presented by the Interveners.

Attorney Foley said that 'substantial public interest' has been defined by the courts and that Judge Quinn determined that the open space argument could be used.

Ms. Byrnes said that she was looking at the public health and safety with respect to the text amendment and that she thinks that the lessening of the buffers would present some issues. There are also some egress and access issues and she said that she could not see how they would get in and out of there even though the Fire Marshal did not testify to the contrary. She said that she is also not comfortable with 1700 units of association or rental people and that the sewer and septic were conflicting and the amount of effluent that would have to be removed enormous. She said that she does not agree with the membrane system that was presented and that it would be able to take care of the waste and with the on-site septic and the wells and water issue, any problem with the system would be a real catastrophe for that area. The shipping of the sludge off-site could also be a problem. She said that she found the demonstration given by Dr. DeSanto to be one of very compelling information. Also the traffic figures given for vehicles during the AM and PM peak hours is something that would seem to be quite dangerous for the roads in the area and all of the people who live there so close to the road. While they do need affordable housing and they need to allow landowners the reasonable use of their land, she said that she does not see anything here to be able to support this application.

Mr. Salerno noted that none of the test holes were dug where the applicant is proposing to put the septic system and based on the Intervener testimony, the area could hold probably 32 two-bedroom units at most and not the rest that are being proposed. There were also approximately 25 test holes dug that were not presented that had depth to bedrock of 48" or less. And – the membrane septic system informational video was downloaded from the internet and not appropriate testimony.

Mr. Peck said that after hearing both sides that his conclusions have to do with the land, the septic, open space and the traffic and that these issues have in the past, been strong enough to deny the application. He said that the 10,000 cars per day is the traffic count for Route 1 and that with some 3400 trips in the peak hour for this development with one means of egress from it, is not only unsafe but unheard of – especially with one (1) car coming out of this development every three (3) seconds during the peak hour and adding some 2800 cars per day to this neighborhood. All of this would create back-up and stacking and unsafe conditions. Regarding the environmental aspect – this is a high risk area and all of the systems would have to be maintained forever and there is not enough good ground to filter the run-off. The land, or at least 40% of it has been designated as open space and he said that he feels that they have not been given enough information to conclude everything and that this is a cause for serious concern. He said that he can think of no modifications that would make this proposed development appropriate for this area or approvable.

Mr. Gada said that he found that some of the facts seem to be questionable as presented and that he agrees wholly with what Mr. Peck has said and with what his fellow Commission members have said. He said that he has a great concern over the fact that there is no emergency exit in case of a fire or other problem and that he cannot support this application.

Mr. Nickerson noted the entrances and also asked what they would do in case of a fire as there is no way out and no plan for that. While this is a preliminary site plan, this is not an appropriate application for the site. He said that they have approved Affordable Housing applications, AHEPA applications and many SU-E senior housing applications and they do have a diverse community. This application does not belong on this piece of property.

Mr. Salerno noted that the applicant on his fourth time back, the last time, gave reasons and said that he takes their concerns seriously and looks to provide them with answers. But – he does not come back with answers. He said that he was ready to make a motion.

****MOTION (1)**

Mr. Salerno moved that:

WHEREAS on March 20, 2007, Landmark Investment Group, LLC, (“Applicant”) filed an “Affordable Housing Application” entitled “Riverview Heights VI (A Residential Community)” with the East Lyme Zoning Commission (“Commission”) consisting of a set of plans for between 1548 and 1720 total units for sale or rent of which 30% would be affordable housing units on approximately 234 acres, an affordability plan and proposed amendments to Section 32 of the East Lyme Zoning Regulations (“regulations”); and

WHEREAS, the Applicant has requested (1) approval of a text amendment to Section 32 of the regulations; (2) the rezoning of the property of Jarvis of Cheshire LLC and Landmark Development Group LLC (“property”), from its existing designation to an Affordable Housing District, in accordance with Applicant’s proposed amendments to Section 32; (3) approval of a Preliminary Site Plan for the construction of between 1548 and 1720 housing units, 30% of which would be affordable housing units, in accordance with its proposed Section 32; and (4) approval of a coastal site plan; and

WHEREAS, the Commission, having determined that the application includes a request for a text amendment to the zoning regulations and a change in zone, has made the requisite referrals to the Planning Commission pursuant to General Statutes 8-3a and the Southeastern Connecticut Council of Governments pursuant to General Statutes 8-3b; and

WHEREAS, the Commission has determined that the application proposes activity within the coastal boundary as defined in General Statutes 22a-94 and the Town’s Plan of Development and the Applicant has submitted a coastal site plan in accordance with General Statutes 22a-109, the Commission has referred the application to the Department of Environmental Protection (DEP), Office of Long Island Sound Programs (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 whose intervention has been accepted by the Commission; and

WHEREAS, the Commission held four (4) public hearings on the application and coastal site plan and listened to numerous hours of testimony during those hearings. Approximately eighty-seven (87) exhibits were submitted by the Applicant and various agencies and individuals for consideration during the hearing process. In making its decision, the Commission is considering and taking into account the testimony and exhibits submitted at the hearings on the application.

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

- A. The proposed amendment to the text of the zoning regulations;**
- B. The request for a zone change;**

- C. The request for approval of a "Preliminary Site Plan";
- D. The request for approval of a coastal site plan.

A. THE PROPOSED TEXT AMENDMENT TO THE ZONING REGULATIONS

WHEREAS, the Commission, having thoroughly reviewed the proposed amendments to the zoning regulations and having considered all the evidence submitted throughout the public hearings, finds the text amendments to be inadequate to protect substantial public interests in health and safety, and inadequate to promote affordable housing because they fail to provide information deemed necessary by this Commission to satisfactorily evaluate the application and to protect the health and safety of the public for the following reasons:

1. The amendments do not require that the development be served by public water and sewer, which is deemed necessary to protect the public health and which are required of all multi-family units by the regulations. The applicant's regulations eliminate the requirement that the applicant to provide letters from the Water and Sewer Commission indicating adequate facilities for water and sewer.
2. The amendments eliminate the requirements currently provided for Conceptual Site Plan approval, including the requirement of a traffic impact statement and general traffic access and circulation information, dimensions and elevations of buildings, locations of utilities, and a soil type survey, all of which the Commission considers necessary to satisfactorily evaluate the application to protect the health and safety of the public.
3. The amendments eliminate the requirement that the applicant submit an affordability plan with its Conceptual Site Plan, which is an essential component of an affordable housing application and required by General Statutes 8-30g. Further, the amendments eliminate the requirement for the submission of a Special Permit application for affordable housing applications that do not include a Conceptual Site Plan.
4. The amendments significantly reduce the buffer, side yard, front yard and rear yard requirements, without due consideration for adjoining property owners rights.
5. The amendments significantly increase the total permissible lot coverage and eliminate the non-disturbed buffer surrounding tidal wetlands and watercourses and require all buffer areas to be included in the Commission's calculation of required open space, all of which serves to increase the negative environmental impact of the development while decreasing the net required open space.
6. The amendments create an extra level of review (Preliminary Site Plan) that does not provide for crucial information currently required in the regulations, as described in # 2 and # 3, above. The Preliminary Site Plan does not require adequate demonstration of public water and sewer facilities as described in # 1, above. The Preliminary Site Plan does not require the applicant to provide the information necessary to satisfactorily evaluate the application to protect the health and safety of the public while needlessly making the affordable housing application process more complicated for applicants and the Commission.
7. The amendments increase the number of bedrooms per acre allowable and significantly increase the maximum number of units per building.

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

WHEREAS, for the above reasons, the Commission finds that the proposed amendments to the regulations do not protect substantial public interests in health and safety, and do not sufficiently apprise the Commission of the proposed development so that the Commission can better evaluate the relevant environmental, developmental, health and safety considerations. These public interests clearly outweigh the need for the applicant's amended regulations, especially in light of the currently enacted regulations which adequately address these concerns.

BE IT THEREFORE RESOLVED, that the Commission hereby **DENIES** the application of Landmark Investment Group LLC for a text amendment to the regulations for the reasons stated above.

BE IT FURTHER RESOLVED, the Commission finds that no reasonable changes can be made to the proposed text amendment that would adequately protect the public interest in health and safety, and better promote affordable housing in the Town of East Lyme.

B. THE PROPOSED ZONE CHANGE TO THE APPLICANT'S PROPERTY

WHEREAS, the Applicant is applying for a zone change for the entirety of its property that is the subject of this application, and it is evident by the proposed regulations and development plan submitted that high-density development is contemplated throughout the property and such approval of a zone change for the property would allow for the dense development of the entire property far in excess of what is currently allowed; and

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

WHEREAS, the Commission has determined that all or nearly all of the property has been the subject of many decades of persistent and explicit efforts by and on behalf of the Town to preserve the area as open space and that the proposed zone change would be antithetical to that purpose, demonstrated by the evidence showing a long history of conservation efforts and by the fact that Chapter 478a of the Connecticut General Statutes designates the majority of the subject property as a "Conservation Zone" and that the proposal is incompatible with local and state Plan of Development and the stated goals to preserve and protect Oswegatchie Hills. The Commission finds that there is sufficient evidence in the record to conclude that there is a substantial public interest in preserving the land as open space. (See e.g. exhibits 2-5, 13-14, 16-21, 24, 25, 27-36, 45, 49-51, 55-56, 58-62, 69, 70, 80, 82, 83, 86 and related testimony)

WHEREAS, the Commission has determined that the property has been the subject of extensive efforts by and on behalf of the Town, the intervenors, members of the public, conservation groups and others to preserve the land for its unique environmental qualities, and that such qualities are widely known and are documented sufficiently in the record, and that the proposed zone change would be antithetical to that purpose. The Commission finds there is sufficient evidence in the record to conclude that the proposed activity allowable within the proposed zone is reasonably likely to have the effect of unreasonably polluting, impairing and destroying the surrounding natural resources, including, but not limited to, the Niantic River's eelgrass, fish and shellfish populations, the woodland habitats of nesting and migratory forest birds and the wildlife dependant on the site's vernal pools. (See e.g. exhibits 2-8, 14, 16-21, 23-43, 45, 49-53, 55-62, 69, 70, 78, 80, 82-86 and related testimony)

WHEREAS, the Commission has determined that a vast majority of the property is outside of the Town's designated sewer service district as determined by the Water and Sewer Commission and that the lack of public sewer service makes the property inappropriate for the density of development allowable by the zone change and such change would adversely affect the health and safety of the community. (See e.g. exhibits 2, 5-8, 23-25, 41, 47, 54, 61, 64, 78, 80, 82-86 and related testimony)

WHEREAS, the Commission has determined that no portion of the Applicant's property is currently served by public water and that it is not likely that service will be provided to said property in the foreseeable future and the lack of water service makes the property inappropriate for the density of development allowable by the zone change and such change would adversely affect the health and safety of the community. (See e.g. exhibits 2, 5-8, 23-25, 41, 47, 54, 61, 64, 78, 80, 82-86 and related testimony)

WHEREAS, the Commission finds that the proposed zone change is incompatible with the purposes of General Statutes 22a-105, et seq., the Coastal Management Act, in that a zone change would allow for activity that would have an adverse impact on coastal resources and water dependent uses. The Commission has determined that large portions of the land within the proposed zone change are within the Coastal Boundary as described in General Statutes 22a-94. The development of the site at the density allowed by the proposed regulations would result in adverse impacts to the ecosystem

and habitat of Long Island Sound, which includes the Niantic River. Pursuant to General Statutes 22a-106, the Commission finds that the characteristics of the site, including the proximity of its steep slopes to the Niantic River and the river's dependent environmental resources and the site's freshwater wetlands and watercourses that feed into the Niantic River, the precarious condition of the Niantic River's dependent resources such as the struggling eelgrass, fish and shellfish populations and the diminishing habitats for nesting and migratory birds along coastal waterways, all contribute to the potential for unacceptable adverse impacts on coastal resources, as defined by General Statutes 22a-93. The substantial evidence clearly demonstrates the potential for adverse effects on coastal resources by rezoning the site to allow for high density multifamily structures and uses within the coastal boundary. The Commission deems such high density development contrary to the health and safety of the community and that it would have an adverse impact on coastal resources and future water dependent development activities. (See e.g. exhibits 2-8, 14, 16-21, 23-43, 45, 49-53, 55-62, 69, 70, 78, 80, 82-86 and related testimony)

WHEREAS, the Commission has determined that re-zoning the property for the density proposed would result in dangerous traffic conditions by routing traffic through the narrow, winding streets of the existing Golden Spur neighborhood as the sole ingress and egress to the property and would have adverse consequences to the public health and safety of the residents of Golden Spur, the future residents of the affordable housing development and the users of the town and state roads. (See e.g. exhibits 2, 10, 17-21, 27-28, 44, 48, 53, 61, 62, 72-77 and related testimony)

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

BE IT THEREFORE RESOLVED, the Commission hereby **DENIES** the application of Landmark Investment Group, LLC to re-zone the Applicant's property to an Affordable Housing District.

BE IT FURTHER RESOLVED, the Commission finds that no reasonable changes can be made to the proposed zone change that would adequately protect the above enumerated public interests.

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

WHEREAS, the Commission has resolved to deny the application for a text amendment to the zoning regulations and has denied the Applicant's request for a zone change, see Sections A and B above; and

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

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

WHEREAS, the Commission finds that the Applicant's proposed Affordable Housing Development does not comply with Section 32 for one or more of the following reasons:

1. The application did not include a letter from the Water and Sewer Commission indicating adequate sewer capacity to serve proposed development, pursuant to 32.8.2 of the regulations;

2. The application did not include a letter from the Water and Sewer Commission indicating adequate source of potable water to serve proposed development, pursuant to 32.8.3 of the regulations;
3. The application was not accompanied by a Special Permit Application and evidence required thereunder;
4. To the extent that the Applicant's coastal site plan sought Preliminary Site Plan review, it was deemed inadequate by the Department of Environmental Protection, Office of Long Island Sound Programs, and was recommended for denial from that office, and was found to be inadequate to demonstrate that the proposal would not have an adverse impact on coastal resources and future water dependent development activities; and

WHEREAS, the Commission concludes that all of the reasons enumerated in *Section B*, above, that were found that weighed against the approval of the zone change application apply equally to the evaluation of the applicant's Preliminary Site Plan including but not limited to the need for open space preservation, public sewer and water services, and safe vehicular access; and

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

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

BE IT THEREFORE RESOLVED, that the Commission hereby **DENIES** the application of Landmark Investment Group, LLC for an affordable housing development Preliminary Site Plan, and

BE IT FURTHER RESOLVED, the Commission finds that no reasonable changes can be made to the application that would adequately protect the above enumerated public interests.

D. THE REQUEST FOR APPROVAL OF A COASTAL SITE PLAN

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

BE IT THEREFORE RESOLVED, for the reasons stated above, that the Commission hereby **DENIES** the coastal site plan application of Landmark Investment Group, LLC and finds that no reasonable changes can be made.

Ms. Bymes seconded the motion.

Mr. Peck said that he would like to have 'fish' added in three places where it states eelgrass and shellfish populations as being affected as there was a tremendous amount of testimony that they heard regarding all three of these populations.

Ms. Byrnes asked that the word 'the' be corrected in the two instances where it was incorrect.
Mr. Nickerson asked that Mr. Peck make a motion to amend the original motion to reflect that 'fish' be added.

****MOTION (2)**

Mr. Peck moved that the following amendments be made to ****MOTION (1): That in the three (3) places where 'eelgrass and shellfish populations' appear – two (2) under *Item B.* in paragraphs four (4) and seven (7) and once under *Item C.* in paragraph six (6) that the word 'fish' be added and that the phrase be changed to read: 'eelgrass, fish and shellfish populations'.**

Ms. Byrnes seconded Motion (2), the amendment to Motion (1).

Mr. Nickerson called for a vote on Motion (2) – the amendment to Motion (1)

Vote: 6 – 0 – 0. Motion passed.

Mr. Nickerson called for a vote on Motion (1) to deny, as amended.

Vote: 6 – 0 – 0. Motion passed.

(Note: A very brief break was taken here)

6. Approval of Minutes – Public Hearing I Minutes and Regular Meeting Minutes of October 18, 2007.

Mr. Nickerson called for discussion on, or corrections to the Public Hearing I Minutes of October 18, 2007.

****MOTION (3)**

Ms. Carabelas moved to approve the Public Hearing I Minutes of October 18, 2007 of the Commission as presented.

Mr. Gada seconded the motion.

Mr. Salerno commented that the Minutes have been great.

Vote: 4 – 0 – 2. Motion passed.

Abstained: Ms. Byrnes, Mr. Peck

Mr. Nickerson called for discussion on, or corrections to the Regular Meeting Minutes of October 18, 2007.

****MOTION (4)**

Mr. Peck moved to approve the Regular Meeting Minutes of October 18, 2007 of the Commission as presented.

Mr. Salerno seconded the motion.

Vote: 5 – 0 – 1. Motion passed.

Abstained: Ms. Byrnes

Old Business

1. Stormwater

There was nothing new to report.

2. Subcommittee – Niantic Village – CB Zones (Mark Nickerson, Marc Salerno & Norm Peck)

Mr. Nickerson said that they would get back to working on this.

3. By-Laws Subcommittee (Mark Nickerson & Pamela Byrnes)

Mr. Mulholland passed out the update on the By-Laws and suggested that the Commissioners review them so that they can make a decision at their next meeting. He noted that who made what changes is identified in the side margin and that 'WSP' and the language that follows it are the comments from the Town Attorney regarding the changes that they wanted to make.

Mr. Nickerson asked that they review this and that they be prepared to act on it at their next meeting.

4. Subcommittee – Adult Uses (Rosanna Carabelas)

Ms. Carabelas said that she has information that she will copy and present to them.

Mr. Mulholland said that Attorney Foley said that he did his thesis on adult uses and that he would be willing to give them a presentation on it.

5. Subcommittee – Government Buildings (Mark Salerno, Rosanna Carabelas)

Mr. Mulholland noted that they had received a draft report in their packets and that they had discussed it at their last meeting and asked that he get a legal opinion on if it could be done. He passed out the legal opinion from Attorney O'Connell to the Commissioners.

Mr. Nickerson read it into the record (Copy attached at end of Minutes). He said that based upon the opinion that he felt that they could move forward to Public Hearing with the proposed amendment.

Mr. Mulholland said that he would agree.

Mr. Salerno agreed that based upon the legal opinion that he felt that they could move this forward to a public hearing. He asked if it is approved if there are certain things that the Board of Selectman could still trump them on.

Mr. Mulholland said that the State recognizes that they can do certain things – they can effect land use and make decisions on land use just as others such as Water & Sewer can affect issues under their jurisdiction. He said that the attorney's opinion speaks for itself in that they have the power over land use issues.

Mr. Nickerson said that he has always thought that this has been a good idea.

Mr. Salerno asked if the Town goes forward and wants to do something if they would have to transfer money to pay for the fees.

Mr. Mulholland said that the Town would probably be exempt from the fees as it would be paying itself.

Mr. Peck asked what happens right now if a fire house were to be built in Town.

Mr. Mulholland said that he would get a site plan and would have the authority to look at the setbacks only.

Mr. Peck said that he is worried about changing the format of having the site plan presented for staff review and how much it would cost the Town to have staff do that and then come to the meetings to speak on it.

Mr. Mulholland said that most of the staff is salaried and that they now have to go before the Conservation Commission and at times the Board of Selectmen to present things already so this would not be any different.

Ms. Hardy, Ex-Officio said that she thinks that they should have to come before this Commission just as everyone else does.

Mr. Mulholland said that in many communities you would not see a Town garage in a visible location or a salt shed, as they would not allow it and do have the authority to review such items.

The Commissioners requested that Mr. Mulholland schedule this amendment for Public Hearing.

Mr. Mulholland said that he would do so and that with notice, it would take approximately 45 days to get it to Public Hearing.

New Business

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

Mr. Peck said that he would like to comment regarding the use of paper to provide them with agendas and minutes. He said that he gets two emails with minutes and the agenda plus a mailing with the same information and copies and then they get it again when they get to the meeting. He asked that they find a way to cut down on this so that they can save some paper and not get as many copies of the same items.

Mr. Nickerson said that they could take this up at the next meeting as some of the Commissioners like the emails and others want the copies mailed to them and perhaps they could have the admin staff do it both ways depending upon which person wanted the information which way.

2. Zoning Official

Mr. Mulholland reported that Starbucks should be open around mid February.

3. Comments from Ex-Officio

Ms. Hardy said that she did not have anything to report.

4. Comments from Zoning Commission liaison to Planning Commission

No one was present to comment.

5. Comments from Chairman

Mr. Nickerson said that he did not have anything further to report.

6. Adjournment

****MOTION (5)**

Mr. Salerno moved to adjourn this Regular Meeting of the East Lyme Zoning Commission at 11:15 PM.

Ms. Byrnes seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

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OF COUNSEL:
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October 24, 2007

East Lyme Zoning Commission
East Lyme Town Hall
108 Pennsylvania Avenue
P.O. Box 519
Niantic, CT 06357

Re: Zoning Regulation of Municipal Buildings and Uses

Dear Commission Members:

You have requested our opinion regarding the authority of the Zoning Commission to regulate municipal uses and, more particularly, whether such regulation would conflict with the Town's "current system of approving governmental uses".¹

The zoning enabling statutes, Section 8-2 of the General Statutes, allows municipalities to exempt themselves from their own zoning regulations. Any town "may, by vote of its legislative body, exempt municipal property from regulations prescribed by the zoning commission of such...town..., but unless it is so voted municipal property shall be subject to such regulations". Pursuant to this statute, East Lyme has adopted an ordinance providing that "property of the Town of East Lyme now or hereafter used for the town water system or the town sewer system is exempt from regulation by the East Lyme Zoning Regulations. This exemption shall not be applicable to any building to be constructed for the purpose of administrative offices, garages or a maintenance facility for either system". This limited exemption is the only instance when the town's property would not be subject to the zoning regulations. In all other cases, the town's property would be subject to the zoning regulations.

¹ The cases hold that state government is immune from local zoning. Likewise, the federal government is generally exempt from local zoning regulations, unless there is a clear and unambiguous waiver. This opinion is confined to the Zoning Commission's authority to regulate municipal buildings and uses.

Attachment Zoning Reg. mtg. 11/1/07

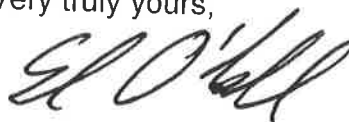
* The zoning regulations themselves, however, provide that "the following uses are permitted in any zoning district: streets, public schools, parks and playgrounds and other town buildings and uses". Section 20.1.1. Thus, although the enabling statute allows the Zoning Commission to regulate municipal uses, to date the Commission has opted to allow municipal uses as of right in any zoning district. Should the Commission desire to amend its regulations and provide that some or all municipal property would be subject to zoning requirements such as a special permit, it may do so upon proper notice and a public hearing in accordance with the statutes.²

The town's "current system of approving government uses" relates more to the financing of the construction of proposed municipal projects than matters considered by the Zoning Commission. Proposals for the construction of municipal projects are usually the subject of special appropriations or bond resolutions, or both, which are considered at town meetings, and are sometimes adjourned to a referendum. Often, those projects are the subject of a report to the appropriating body by the Planning Commission under Section 8-24 of the General Statutes.³ The proceedings of the appropriating body would be premised on the presumption that the proposed project would be in compliance with the town's zoning regulations.

* To summarize, should the Zoning Commission decide to regulate municipal uses and buildings by way of special permits, it may do so upon amending its zoning regulations. Should the Board of Selectmen decide to exempt certain municipal property from the zoning regulations, it may do so by way of an ordinance. Proposals to finance the construction of municipal projects would be premised on compliance with the zoning regulations or exemption from the zoning regulations, as the case may be.

If you have any questions or need additional information, we would be pleased to respond.

Very truly yours,



Edward B. O'Connell, of
Waller, Smith & Palmer, P.C.

EBO:cmc

cc: First Selectman

² If the regulations are amended, and the Board of Selectmen considers that certain municipal buildings and uses should be exempt from the regulations, it could consider and act upon an ordinance to that effect.

³ Likewise, the Planning Commission is authorized by statute to submit a report to the Zoning Commission regarding proposed amendments to the zoning regulations, including proposals to make municipal buildings and uses subject to the special permit requirements.