

Sept 10 20 07 at 2:55 PM

EAST LYME ZONING COMMISSION
PUBLIC HEARINGS I-IV
Thursday, SEPTEMBER 6th, 2007
MINUTES

Esther B. Williams
EAST LYME TOWN CLERK

The East Lyme Zoning Commission held a Public Hearing on the 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"; 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 in connection with a proposed Affordable Housing Development to be known as "River View Heights VI a Residential Community"; 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 and Application of Landmark for approval of a Coastal Management Site Plan on September 6, 2007 at Camp Rell, Smith Street, Niantic, CT. Chairman Nickerson opened the four continued Public Hearings and called them to order at 7:40 PM.

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

ALSO PRESENT: Attorney Michael Zizka, Representing the Applicant
Glenn Russo, Principal, Landmark
Stephen McDonnell, P.E. WMC Consulting Engineers
Attorney Edward O'Connell, Town Counsel
Attorney Joshua Foley, Town Counsel
Attorney Paul Geraghty, Representing the Interveners
Michael Giannattasio, Director of Public Works
William Mulholland, Zoning Official
Robert Bulmer, Alternate
William Dwyer, Alternate

ABSENT: Joe Barry, Alternate

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

Pledge of Allegiance

The Pledge was observed.

Public Hearings I-IV

1. 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) – and –
2. 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 – and –

3. 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 – and –

4. Application of Landmark for approval of a Coastal Management Site Plan.

Chairman Nickerson noted that all of the regular commission members are seated this evening and that he has familiarized himself with the minutes from the meeting that he has missed and will familiarize himself with the exhibits, etc. before the public hearing ends. He then recapped that Attorney Paul Geraghty who represents the Interveners was in the middle of a presentation when they continued the public hearings.

Attorney Paul Geraghty, representing the Interveners said that in addition to reviewing the minutes, and he was sure that Counsel would tell them this as well, that they would have to listen to the tapes of the meeting as well so as to not compromise this. He then said that he would like to introduce Donald Gerwick to make a presentation.

Donald Gerwick, PE, LS with Gerwick Meeen, 1020 Hartford Turnpike, Waterford, CT said that he sympathizes with the applicant because he thinks that he has spent a lot of time, effort and money trying to get something passed for this piece of property and thinks that it is unfortunate that he thinks that the Town is racially prejudice or trying to steal his land rather than realizing that his piece of land has a number of very real limitations to it. He said that he would like to explain why this piece of land is not suitable for this type of development. He presented for the record the State of CT Surficial Geology Survey of the area (3 Pages). This was entered into the record as **Exhibit 37**. He said that the areas in green show bedrock and in looking at the area only about 13% of the total area would be usable.

He then said that the applicant has said that others have presented inaccurate information, however he asked that they take a look at what the applicant has submitted - the US Quadrangle Map from 1958 which was updated in 1970 however, he has used the 1958 version. He said that if you look at this; (he has superimposed it on the area), you can see that slopes greater than 25% largely dominate the area. Also, the applicant has six (6) wetland crossings and he said that they are in the areas of former traditional woodland crossings. If they look at this, they will see that each of them fall outside of the actual areas that he specified.

Mr. Nickerson said that he would enter this as **Exhibit 38** – Sheet 7A-1 – Overall slope analysis plan (that Mr. Gerwick has colored in the wetlands and steep slopes as delineated by the applicant).

Mr. Gerwick said that he also wanted to talk about a couple other things and that he wanted to enter into the record a letter from himself dated September 6, 2007 to the East Lyme Zoning Commission. This was entered into the record as **Exhibit 39**. (Copy attached at end of Minutes) He said that based on his understanding and his personal professional experience that it is his belief that the Town's position is that if a portion of a property is within the sewer shed, then only that portion is eligible for sewer service. Therefore it would be inconsistent with past policy and decisions to allow the present application to tie into municipal sewers for the entire site and unfair to previous applicants or other parties that may have wanted access to sanitary sewers. Since the applicant's area is predominantly not within the sewer shed area, it would have to be serviced by on-site sewage disposal. He said that he understands that the applicant has not supplied detailed information regarding on-site sewage disposal. He submitted to the Commission that they would need to make a decision on this as the natural capacities of this site leaves about 20% that could be usable for sewage for this area – therefore the area is capable of supporting 39 two-bedroom units and not 1500 units as is being proposed. He said that were there to be a failure of this system that it would compromise not only the people living there but the whole area. He submitted items for the record on soil types (Soil Conservation Service overlay of soil types for this area) and Bureau of Water Management Review Comments.

Mr. Nickerson entered into the record, **Exhibit 40** Soil Conservation Service and **Exhibit 41** – Bureau of Water Management Review Comments dated Sept. 15, 2004.

Mr. Gerwick explained that he used a mid-range in his review of the area and asked that they make no mistake that when they talk about a DEP system that they are talking about a sewage system. He added that it is also not easy to get a DEP permit for such a system. So, on behalf of the Friends of Oswegatchie, he is

asking the Commission to deny this application on the grounds that there is insufficient information for the Commission to make a determination on the effect of the public health and safety.

He said that he also had another issue to discuss – that of how the traffic will exit as the A-2 survey that is on file for this application clearly shows the property ending at the terminus of Calkins Road which is Sheet BS-1. This was submitted and entered into the record as Exhibit 42. He said that the only problem with this is that it is not a Town road. He said that in 1963 there was a motion made regarding Town roads at a Town Meeting. He submitted this for the record and it was entered as Exhibit 43. He said that the Town Aid list dated 12/31/05 of DOT listing of Town roads lists Calkins Road as .007 of a mile. He said that the 12/31/62 DOT list of Town roads also listed Calkins Road as .007 of a mile. He submitted this for the record and it was entered as Exhibit 44. He continued that Calkins Road is not owned by the Town, not owned by the applicant and the applicant has no deeded rights to it. He said that they submit that it is not a Town Road and that it may perhaps still be owned by the heirs of Arthur Clarke. Therefore, if the applicant does not have deeded rights to it and cannot gain access to it they submit that this application should be denied or withdrawn.

Ms. Byrnes asked for clarification on the DEP and the 2004 application and there being no response to something?

Mr. Gerwick said that it goes to show that the DEP applications are not easy to come by and that after review there was no further comment so the applicant may not have been happy with the comments from the DEP and there was no further pursuit.

Mr. Peck asked about 13% of the land and what he was talking about with that.

Mr. Gerwick said that it was very approximate but on the geology survey, it leaves only about 13% of the parcel that is not restricted.

Mr. Peck said that they mentioned a 1958 topographical map and asked why it was not acceptable.

Mr. Gerwick said that it was probably fine in 1958 but that was 50 years ago; but their notes state that was what they used. He said that it was photo revised in 1970 and the applicant said that they had accurate information and they may very well have, but chose not to present it.

Mr. Peck asked about the wetland crossings and said that he was not quite sure of what Mr. Gerwick was saying.

Mr. Gerwick said that they heard the applicant say that their wetland crossings would be in the old trails and if you look closely at them, they do not coincide. This goes to the heart of what they are saying that the plans have insufficient information or accuracy and that the application should be denied.

Mr. Salerno asked about the sewer treatment plant and if he was talking about the septic system or something different.

Mr. Gerwick said that they will have to create a system that will rely heavily on fill and that will have to be able to kill off pathogens and viruses as the soils themselves cannot do it. If a portion of the system fails, he said that he thinks that there will be dire consequences. He said that he does not think that they will be able to get a DEP permit for the system.

Mr. Salerno said that with this type of system that they would need water –

Mr. Gerwick said that they would need a source of water either from the Town of East Lyme or Waterford or have a substantial amount on site. The numbers are large, 450,000 gpd which is a standard amount based on a standard formula.

Mr. Salerno asked if based on those numbers, if Mr. Gerwick could foresee that they could get that type of water from that site.

Mr. Gerwick said that he would guess no and that his professional intuition says no, but without more information, he does not know.

Attorney Geraghty said that he would like to introduce Michael Dunn to speak next.

Attorney Zizka, representing the applicant asked the Chairman if they would have an opportunity to ask questions of Mr. Gerwick either now or after.

Attorney Geraghty said that Mr. Gerwick is his only technical presentation.

Mr. Nickerson asked that they get the Intervener testimony out and then ask questions.

Michael Dunn, place of business 9 King Arthur Drive, Niantic said that he has a letter to submit to Mr. Nickerson dated today 9/8/07. He said that at the August 2, 2007 meeting that Mr. Russo stated that the topography stated on his plan was field verified and more accurate than the Town's and that he has identified the 25% slopes. He said that he submits that is not the case and presented photos A-1, A-2 and A-3 to show this with a cliff in one photo that is approximately 50 feet high – this cliff is not shown on Landmark's plans. He said that the cliff rises sharply and is across from a vernal pool. He submitted Attachment C – where Note 7 states that Landmark used this plan, Attachment D is a sketch showing the cliff area and the elevation. The letter, photos and attachments (including the larger copies of the attachments) were entered into the record as Exhibit 45. He said that he printed out the USGS Topography Map and noted the inconsistency. He said that the Landmark plan is inconsistent with the USGS topo map and he feels that there is no way that they can build the proposed number of units on this site and any building would certainly require extensive blasting. His belief is that this does not represent accurately the area, as evidenced by the cliff which does not appear on the applicant's plan.

Mr. Nickerson asked if Mr. Gerwick knew when the USGS elevations were prepared.

Mr. Gerwick said that it was 1958 on the applicant's plan and they were revised and field edited most recently somewhere around 1996-1997.

Mr. Peck asked about the difference between the 50' elevation and 10' elevation and if he meant to say 50' cliff and 10' cliff.

Mr. Dunn said that he meant 10' above sea level and the 50' above sea level.

Attorney Geraghty said that he wanted to note that he has known Mr. Dunn for many years and that he has a Masters and MBA in business and has been a developer for some 20 years. He then said that he would discuss the legal issues. He said that Attorney Zizka had mentioned a decision for West Hartford and that he was sure that he would agree that he meant Danbury. He noted that State Law in Connecticut is such that if you zone it, they will come. He said that there is no documentation in public records that the necessary improvements are or ever will be there for this area. So, when you have to consider public health and welfare, even with this AH application, when you change the zone, you have made the assumption that this is an appropriate site for this type of development and that there will not be adverse issues. He asked them to think about this as this is an extremely intense development lacking some crucial documents. He said that in the Kaufman case in Danbury, all that they sought was a zone change to an AH district. He noted that the court said that they would be well within their bounds to require the applicant to present information that would be required of any other applicant. This is an important distinction.

He said that one of the other things that the applicant has raised is that this Commission is not fair toward Affordable Housing. There have been two decisions by this Commission to approve Affordable Housing in this Town. He noted that this applicant has appealed everything and that the maximization of the applicant's economic interest is not what he is entitled to. In the current application no consideration was given to environmental factors – for example – there are 58 two-family units located in the wetlands buffer and on Section SD-3 there is a 60' differential in the cul-de-sac from one end to the other. He said that this was laid out without any concern for the area. They also have 70% of the units down slope from where the sewage area is and while they might be able to pump it uphill it will raise all sorts of issues. He said that they have to consider this as in order for the applicant to go to the DEP looking for a permit that this Commission would have to approve this to move it to that step. He also noted that the old wood road crossings are significantly narrower than the proposed roads.

He continued that the applicant contends that water and sewer runs to the bridge and while that is true, he noted that the agreements are working at capacity. There was also talk about 50,000 gallons of water for the Lulu's site and in a letter dated 8/7/07 Attorney Nicholas Keppel stated that the water was for the Lulu's parcel only and for water only, not for sewer service. The agreement was never put into play however it was to go for the existing facilities and not to what the applicant has.

He said that there was also a comment that this area was ideal for a project of this size. In the regional transportation plan there are notes about upgrades needed to Exit 74 and the dramatic increase in traffic due to the casinos such that there no longer needs to be a seasonal change. If they were to approve this application they would be adding some 7,000 vehicles to the Interchange per day. In the 2005-2006 transportation plan they look at the number of households and the number of vehicles per household and it states that 35% had 2 vehicles and in East Lyme 20% had 3 vehicles versus other areas with 11% having 3 vehicles. Hence, East Lyme has more vehicles. Only a small percentage of this project is of lower income and they really are not lower as it is based on income here and East Lyme is of substantial means. If 80% have 2 cars and 20% have 3 cars, that equals over 7,000 more trips per day. Air pollution is a big by product of these extra trips. Also, Exit 75 and Oil Mill Road will be eliminated with the completion of Route 11.

Ms. Carabelas asked about what he meant by deficiencies.

Attorney Geraghty said that the inconveniences increase as the traffic increases. They are also talking about a highway that was constructed in 1958 and that is outmoded and outdated.

Ms. Carabelas asked about the safety issue.

Attorney Geraghty said that the stopping distance would be affected with more traffic. He submitted his numerous documents for the record.

(A brief break was taken here)

Mr. Nickerson entered the following Exhibits submitted by Attorney Geraghty into the record – **Exhibit 46** – two pages of the Affordable Housing decisions; **Exhibit 47** – Wastewater letters and **Exhibit 48** – Traffic Reports.

Marvin Schutt, 29 Edgewood Road North said that he has four submittals to enter. The first is a letter from Bruce Dassinger who is a birdwatcher with an interest in nesting and migrating birds. He submitted a list of 178 species that he observed in the Hills. This was entered into the record as **Exhibit 49**. The next submittal was a letter from Mr. Schutt to Mr. Nickerson and Commission members dated 8/2/07 noting that there are 615 members of the Friends of Oswegatchie who support the preservation of open space in the Hills. This was entered into the record as **Exhibit 50**. The next item was a letter dated 8/2/07 to Mr. Nickerson and the Commission members relative to the latest application for the Oswegatchie Hills with 2,824 signatures on petitions on file by the Friends of Oswegatchie Hills Inc. in support of preservation of the Hills. This was entered into the record as **Exhibit 51**. The last item he said was a copy of something unusual that they did when they took an ad out in the East Lyme Tymes showing the types of destruction of the area that would result from the Landmark proposed development of the area. This was entered into the record as **Exhibit 52**. He said that it goes without saying that he is vehemently opposed to any development in the Hills and that these proposals go back to 2001 or 2002 and that he hopes that the Zoning Commission will act accordingly on this application. His concern is about the preservation of the Golden Spur area and that Mr. Russo used the term 'boulevard' and he assumes that a 'boulevard' will go thru the Golden Spur area. There are 35 residents who live there and have lived there forever. If this 'boulevard' goes thru that area it will be the death of the Golden Spur community. He thinks about the pitch that Mr. Russo gives the Town about how they should have more AH but now he is looking to displace those 35 residents of Golden Spur. This Commission is in the position to have the Golden Spur area survive so please do not permit this potential disaster to happen. He submitted photos of the Golden Spur area and the area where the 'boulevard' would go through. This was entered into the record as **Exhibit 53** (photos are labeled on the back).

Attorney Geraghty said that this concludes the Intervener presentation.

Mr. Nickerson said that he would have to give the public the opportunity to speak and that he would have to limit the time. First he asked if Mr. Giannattasio, Director of Public Works had anything to present for the record.

Michael Giannattasio, Director of Public Works, Town of East Lyme said that he has a submittal based on some comments from the last public Hearing. On this application it was discussed by the applicant that there were two sewer shed lines – one drawn and one by text. He said that he wanted to submit to the Commission part of the regulations of the East Lyme Water & Sewer Commission, specifically 5.1 relating to compliance with State and Town requirements. He read part from this section that ' Plans and specifications for sewer extensions shall be submitted to and approval obtained from the Commission before

construction may proceed. (meaning the Water & Sewer Commission) The design of sewers must anticipate and allow for flows from all possible future extensions or domestic developments within the immediate drainage area, the drainage area meaning that area which can be easily sewerred by gravity.' He said that he believes that this is the regulation that has been misconstrued. It relates to the design of the actual sewer pipes – so if they place a sewer pipe in the ground it must be designed for future expansion – it does not eliminate the bounds of the sewer shed line – so this regulation supports that and it is meant for the design of the sewer pipe. He submitted this for the record. This was entered into the record as **Exhibit 54**.

Mr. Nickerson said that he would now go to some public testimony. He went to the list that people had signed requesting to speak.

Patricia Frank Sher, 4 North Pine Street presented pictures of the wetlands of Oswegatchie Hills that she had taken of the level of run-off in the spring and of the vernal pools. She explained these photos to the Commission. She said that she has taken Boy Scout troops on other open space land up there many times and that this is a great educational resource. It is also one of the last stretches of untouched land and it should remain this way. She submitted the photos which were entered into the record as **Exhibit 55**.

Kristin DeLea, 24 Lincoln Street said that she has lived here for some 20 years and that she would like to ask Mr. Russo to reconsider his application and to withdraw it. She said that she is a teacher here of habitats and conservation and sees this as an unconscionable project and urges them to deny the application.

David LaFleur, 34 Oswegatchie Road said that he grew up here and has lived here all his life and has dedicated his life to science and forestry. Tonight he would like to present a quick observation regarding some comments that they heard the last time about water on the site. He said that the water that comes off the site is usually significant even though now it is not so as it has been dry. However, in the spring time, they had a lot of problems and there was a 13' sink hole in River Road due to the run-off. If they travel on the Niantic River, they can see the area where the land drops off very clearly. He said that he opposes this development.

Cordette Grimsey, 35 Oswegatchie Road, Waterford said to the Commission that the quality of the water in the Niantic River is a personal matter to her as her family has lived there for 45 years. When her children were small, they walked down the steps to the beach and the water was clean and safe. This year she took her grandchildren there for the first time and knows that the water is clean but is not sure of how safe it is. If condos are built up there, they cannot guarantee the safeness for her grandchildren and great grandchildren. She said that she entrusts them to insure that the water remains clean and safe for generations to come. She submitted her letter which was entered into the record as **Exhibit 56**.

Rick Kanter, 27 Wells Street said that he is the Co-Chairman of the Waterford/East Lyme Shellfish and has written letters in opposition to this project and has also written information on the shellfish. Tonight he said that he is speaking as a private citizen on the sewer/septic system that was spoken about. He said that if it did not work then it would be the immediate demise of the Niantic River. But – even if it does work properly, there is nitrogen and phosphorous that will continue to leach through the ground water into the Niantic River and all indications are that those chemicals hasten the demise of the river and the shellfish, etc. So, if it fails, the River will die fast and if it works properly, the River will die slowly so they cannot sacrifice the River for this development.

Cheryl Karg, 20 Hill Road thanked Marvin Schutt for taking the pictures of Hill and River Roads. She said that she wants them to know that all of the traffic that they talk about will be on a single lane road and will be stuck in front of her house on the hill and no one will get out onto Boston Post Road as it takes forever now to get out there. She said that she knows that her family of three makes some 10-12 trips per day and she wants them to think about the traffic that would be created for the people who live there now.

Chris Karg, 20 Hill Road said that when he looked at the plan that it is huge. He said that he would like the Commission to get the Fire Marshal involved in this to know what would be needed for a project of this size in terms of fire hydrants. He said that in 1988 there was a fire at his store and that in order to put the fire out;

they had to rig something to bring water from across the river. Fire protection is a huge issue and he said that he would like it addressed.

Bob Gadbois, 358 Boston Post Road said that he was present for Dr. DeSanto's presentation and display of particles collected in the snow. He is concerned about the traffic with only one way in and one way out and fires. He said that he has walked that area and the roads are narrow and that is a real issue.

Ed Jutilla, State Representative, 37th District said that he could not be present personally last month but sent testimony and thanked the Commission for reading it into the record. He said that letter speaks for itself and states all of the points as to why this application should be denied. He said that he endorses all the comments made in opposition of this project tonight and opposes this project as strongly as Marvin Schutt and Fred Grimsey if that is possible.

Kristin DeLea, 24 Lincoln Street said that she wanted to add that this project could not be supported by this school system as it stands.

Christopher Barrett, 301 Old Black Point Road said that if Calkins Road is a private road then he thinks that the game is over. If it is built there will be a huge issue there. Also, the fire issue and school impact are huge issues and he does not see how they could possibly approve this. He said that he vehemently opposes this.

Mr. Nickerson turned the floor over to Attorney Zizka.

Attorney Zizka said that he had some questions for Mr. Gerwick.

Mr. Nickerson, after consulting with Town Counsel said that he could ask Mr. Gerwick questions.

Attorney Zizka asked Mr. Gerwick how long he has been a professional engineer.

Mr. Gerwick replied: 'since 1985'.

Attorney Zizka asked Mr. Gerwick: 'In the course of your career have you ever made a final sewage disposal design on the basis of a Surficial Geology Quadrangle Map?'

Mr. Gerwick replied: 'No'.

Attorney Zizka asked Mr. Gerwick 'If he has ever made a final design on the basis of a county soil survey map?'

Mr. Gerwick replied: 'No'.

Attorney Zizka asked Mr. Gerwick 'If he disagrees with the comments in the soil survey that they are for guidance purposes only and that detailed soils investigation are needed for final design?'

Mr. Gerwick said: 'No, that is why I indicated it was a preliminary map (hard to hear – on tape)

Attorney Zizka said that Mr. Geraghty mentioned before that if the Commission denied the zone change that DEP would not consider the septic design in ?(can't hear on tape) because the Town had not approved the project – do you agree with that statement?

Mr. Gerwick said no, he would not (could not hear the rest)

Attorney Zizka said that he had nothing further for Mr. Gerwick however Mr. Russo did.

Glenn Russo, representing Landmark Investment Group asked Mr. Gerwick if he conducted any deep hole test on the site.

Mr. Gerwick said: 'No, I reviewed some deep hole tests previously done on the site and I reviewed the information submitted with the application'.

Mr. Russo asked Mr. Gerwick if he had reviewed any on site wetland crossings.

Mr. Gerwick replied: 'Again, I have reviewed the information on your record plan.'

Mr. Russo asked Mr. Gerwick – 'but not the actual wetland crossing?'

Mr. Gerwick said: 'I have not.'

Mr. Russo thanked Mr. Gerwick.

Attorney Zizka said that he had one question for Mr. Dunn. He asked him if he recalled when he took the photos that he submitted tonight.

Mr. Dunn said that he did not recall - that it was a couple of years ago.

Attorney Zizka said that Mr. Dunn had indicated before that the last time that he had been on the property was before Landmark owned the property and Landmark has owned it for about 10 years.

Mr. Dunn said 'Not that property; that property is on the area that Mr. Russo purchased from Sergeant's Head Realty.'

Attorney Zizka said to Mr. Dunn – so those pictures were taken a couple of years ago?

Mr. Dunn said yes.

Mr. Russo asked Mr. Dunn if he was a professional engineer.

Mr. Dunn said that he was not.

Mr. Russo asked Mr. Dunn if he was a civil engineer.

Mr. Dunn said that he was not.

Attorney Zizka said that they did not have any further questions but would have some rebuttal and Mr. McDonnell would explain the membrane bio-reactor septic system that they would be proposing along with a slide presentation.

(A brief break was taken here)

Due to technical difficulties, Mr. McDonnell could not do his presentation at this time, so Mr. Russo went to his rebuttal.

Mr. Russo showed slides of the slope analysis and the wetland areas. He explained that the site has 5.6% wetlands and that average property in the State has 12.3% wetlands. They are also proposing 39% open space and that is three times what is required by the present regulations. 85% of the property has slopes of 25% or less and only 15% has slopes over that level. Regarding the allowable lot coverage that figure is 30% and they have proposed 26.3% including the on-site septic. If they went to municipal sewer it would be 30%. The red dashed line represents the trail system that is proposed for the property and this trail system is approximately seven (7) miles in length.

He then showed a letter from David Leff of the DEP noting that the property received low scores on forestry and wildlife and that the site lacked natural resources and was limited and did not warrant them wanting to purchase it. In another letter from Elizabeth, the program director for acquisitions, she asked for review and comments and they received word back that wildlife has no interest in this area due to the intensive development in the surrounding areas. There was also no interest by forestry. So, based on the limited wetlands, they believe that this is not an environmentally sensitive parcel of land and is suitable for development.

He next showed a copy of a letter from Mr. Schutt of the Shellfish Commission speaking about the low oxygen levels and nitrate levels in the river except in the Oswegatchie Hills area where no nitrogen was detected in the groundwater samples. He said that the area where the density is high is the Golden Spur area and they believe that it is the source of the nitrogen pollution. By extending the sewer extension to their property a number of those houses could hook in and benefit from their development and help eliminate the pollution in the Niantic River. He also noted that the borderline that they are asking for has already been approved. He also said that the water moratorium seems to be out of context and that he would present the entire 250 page document of the consent order for them. The consent order does not apply to the Waterford extension but to the East Lyme water system, so it would not apply to them as they would be getting their water from Waterford and not from East Lyme.

He continued that with respect to the sewer shed that in a March 2002 letter to Ms. Parulis; Mr. Greci prepared a memo noting that a portion of the property is within the sewer area so this goes to show that the information that none of the property falls within the sewer shed was inaccurate. In the Sewer Ordinance, Section 5.1 Mr. Giannattasio noted that the design of the sewers must anticipate sewer flow from all possible areas. He referenced a letter from a meeting where Mr. Thumm stated that the 'green line is the sewer shed boundary'. They then moved to adopt the sewer service area and map dated May 1999 – so he contends that they must design for the area beyond his sewer shed area. Also, in the past, the Town has voted on individual cases to allow people in the sewer shed – so it has not been only by ordinance, but by design, by minutes and by practice.

Mr. Nickerson noted that in the minutes that the person speaking has inconsistencies and may not be accurate in his statements.

Mr. Russo said that the minutes speak for themselves and the person is a citizen on the Board. He continued that there is a letter from Fred Thumm regarding the extension for Lulu's and that extension was approved and runs right in front of the property and it is there and he is told that he cannot hook in. He asked how they can say that it is okay for one person but not for another. He noted the vote to extend the sewer extension. He also presented a copy of the Planning Department referral regarding the Lulu's site and that they approved it. He said that he thinks that it is clear that the Town knew they were getting water from Waterford but they tried to say that the consent order pertained to them when it did not. Regarding the sewer shed expansion Map – Figure 3-7 – he noted that the Town has in fact expanded the sewer shed in eight (8) separate areas with one of them being larger than their whole area. He said that there has been a lot of talk about the level of detail of their plan so he submitted a copy of the Darrow Pond Engineering plan Sheet 1 dated 8/15/05 that was presented for preliminary site plan approval. This was entered into the record as Exhibit 57. He said that site plan was for 600 units all on septic and it was approved. He next noted a letter to Zoning from Mr. Mulholland dated 3/3/05 regarding Darrow Pond applying under the new regulations of the preliminary site plan and that if they approved it then a final site plan would have to be filed. He presented a referral back from Planning on the Vespera project for a zone change from RU-40 to SU-E stating that it is consistent with the POCD goals of maintaining the residential character of the Town and allowing alternative types of multi-family housing. He said that he maintains that this project is also consistent with the POCD. He said that he also thinks that it is unconstitutional that a portion of their property has been designated as acquisition of open space. He said that he is trying to establish that there is a certain set of rules for different people.

Mr. Nickerson said that the one page plan is not all that they saw for Darrow Pond and that is an SU-E application and this is an AH application and there are a host of things that have to be reviewed that are different.

Mr. Russo said that his point is that if this Commission or the Town is going to bend the rules then it should be for AH rather than for another age restricted development in Town. The Town should be more accommodating to this type of application and the record has shown just the opposite. In comparison, he noted the list of items that were not required of Darrow Pond but were required of them/Riverview Heights stating that these become double standard requirements. He said that this list came from what staff has said their application has been deficient in but others have not had to provide. He next showed a letter from the DEP regarding their site acknowledging that the efforts by the Town are toward reducing the value of the property. He said that if the Town was interested in the property they should have contacted him but they did not and instead spent their time devaluing the property. He then presented various handwritten notes regarding the property that did not appear to be objective as they were stating that the Commission needed a basis for denial. He said that this shows what he was saying about how he was upset with the Town for presenting false and misleading information and that information is evidenced in these notes and relates to how the Town managed to read the maps wrong. He also cited the acreage issues of from three acres to five acre zoning that Mr. Fraser had mentioned.

Ms. Carabelas asked if on 2/1/01 if that application was for Affordable Housing.

Mr. Russo said that he believes it was but that he would check his records.

Ms. Carabelas said that she did not think that it was.

Ms. Byrnes noted that they should be clear if it was an AH application or not.

Mr. Russo continued that at that time they had 55% sewer usage and that did not constitute a capacity issue however it was used as a reason to deny the application. So, they have the DEP contacting the DOT on traffic issues at the request of Ms. Davies from the Town Planning Department when they are supposed to be objective. He suggested that if they checked the record that they would find that most of this conversation took place prior to the Public Hearing. He said that he has made the comment that the regulations were written to thwart their development but the Chairman took exception to that saying that they had nothing to do with them.

Ms. Carabelas commented that they now have a new board sitting from that time.

Mr. Salerno said that they are running out of time here and that he should get to more recent information rather than years ago.

Mr. Nickerson said to just let Mr. Russo get through the stuff that he needs to get through and onto the record. They can discuss other things in their discussion. He has a presentation, so let him get to it.

Mr. Russo said that this is being done to show that the Town is pre-disposed and has an organized effort to thwart this. This goes to the credibility of the witness and the weight of the information can discredit the witness if they have had an agenda of denial with respect to this application.

Mr. Nickerson said to Mr. Russo that he would say, and give him credit that he did not say that it was 'this' Commission that did this. He said that they do take this seriously.

Mr. Russo said that the memo said that Wayne had requested that staff not talk to or meet with 'Mr. Russo'. He said that they all know how frustrated he has been that he has not been able to meet with staff to go over the proposals and it appears that they have been directed by East Lyme's Mr. Fraser at the time to do that. There were also notes about 'Ed's assertion that this is a taking' and he would assume that 'Ed' would mean the Town's Attorney but one would have to make their own interpretation. He said that there are other issues that he circled indicating a common thread or theme as to how to 'attack' his proposal. He next moved on to the soil analysis map noting the HRC area and said that he thinks that he heard them say that only 13% of the property has dirt and that the rest is rock. He said that they ran test pits through the HRC which is supposed to be bedrock and the depths to bedrock that they came out with were 98", 91", 74", 78", 52" and 48". This clearly showed results to the contrary. He said that they also tested in other areas which show that the statements that have been made by staff and the interveners are not accurate. He cited the book on soils which states that they are not to use the maps for building purposes because on-site investigation needs to be done. He said that the Town has selectively picked the type of soils that show little depth to bedrock. He noted that the vast majority of site soils have a depth to 60" and that actual testing showed more of the deeper type of soils.

Mr. Salerno asked if they did test pits and how they chose the locations – what was the methodology that they used to do the testing.

Mr. Russo said that they chose the locations of the test pits based on where they want the septic system to go with relation to the development. They picked a line straight down the middle to show what is contained on what is considered the most restrictive areas.

Mr. Russo continued explaining the green space area of Oswegatchie Hills – some approximate 440 acres. He said that unlike a lot of developments who cannot count on what will go near them; this development has open space near it that is never to be developed.

Mr. Nickerson asked about the green area on the map.

Mr. Russo said that it is the portion of his property that was designated for open space acquisition by Figure 11-12.

Mr. Nickerson said that he was not keeping it as open space.

Mr. Russo said no and said that it should not be in green. He continued that when people talk about Oswegatchie Hills that they talk about how they need open space and if you were to take the area, you would find that 78% of it is open space as it stands and they believe that is sufficient and that the Town has more than met the goal of open space.

Mr. Salerno asked why the Golden Spur area was not included as part of the Hills area.

Mr. Russo said that with all of the things that he sees posted in the Town Hall for this area that he never sees the Golden Spur area included. He said that he thinks that the start and end of the Oswegatchie Hills area is very loosely defined and he used what seems to be typical.

He then said that the Town has stated that they have approved many Affordable Housing projects in the past and the current percentage of Affordable Housing in this Town is at 4.21%; 95.76% of the housing in this Town is not affordable. From 1989 to 2006, they can see that the AH gap has not grown any narrower. At the rate that it is going, it will take the Town 66 years to meet the State goal of 10% but that is only if they approve no other housing units to be built. He said that these figures are from the State of Connecticut 2000

census and they do not include the more recent AH approvals. If those AH approvals were included, they have one-half of one percent more.

Ms. Carabelas asked what percentage of applications were denied.

Mr. Russo said that he only took those that were approved and that he is assuming that those units will be built.

He next noted the issue of the bald eagle and that it is likely that the bird was just passing through. Julie Victoria?, a wildlife biologist with the State Department of Environmental Protection stated that she is not aware of any nest along the Niantic River and that she would be surprised as there is no way to tell where a young eagle found in East Lyme came from since it was not banded. He lastly said that there was an allegation made at the last meeting about a discussion that he supposedly made with the DEP regarding the appraisals and he said that he would not dignify them with a response except to say that they are not true.

Mr. Russo said that concluded his presentation and submitted the following exhibits for the record: **Exhibit 58** – Coastal Resources Map from the DEP dated 1958 (Mr. Russo said that this shows no resources are located along the frontage of his property other than the Niantic River, while not definitive he said that they feel that this area lends itself to development); **Exhibit 59** – Shellfish Concentration Area Map dated 1979 (DEP) (Mr. Russo said that this shows no shellfish beds along the entire frontage of this application area – shellfish areas are located out in the bay); and **Exhibit 60** – Hard copy of the PowerPoint slide presentation dated 9/6/07.

Mr. Nickerson said that they are going to wrap this up and they think that they are going to continue this to next week Thursday, September, 13, 2007 at a Special Meeting of the Zoning Commission specifically for this – commencing at 7:30 PM. He said that they would have to tidy up where the meeting will be held.

Mr. Russo asked that if they have a question on an issue that it would be nice to know now so that they can get an answer. He asked Commissioner Byrnes about her interest in a question on the accuracy of the statements made and what they are so they can research it.

Ms. Byrnes said that she is first interested in the issue of Calkins Road that accesses their property as if it does not exist or is not a Town road, she would like to know who does own the road so that they are clear on that. She said that she is also interested in the discrepancy, or apparent discrepancy between the elevation lines on the map that he has of the 50' elevation versus the 10' elevation.

Mr. Russo said that it is shown on the map and they can point it out and will do so next time.

Mr. Gada said that he would like more information on the fire aspect and what the Fire Marshal thinks about this.

Mr. Russo said that a referral was not sent to the Fire Marshal and what the Fire Marshal thinks right now is not for this stage of the application. He said that he knows that his engineer surveyed the center line of the road with certain areas off the sides of the road.

Ms. Byrnes said that she was interested in the map and the contour lines that seemed to be inconsistent with each other.

Mr. Nickerson said that he was concerned with the end of the boulevard to Route 1.

Mr. Russo said that they are not building a boulevard to Route 1 and that the traffic engineer will answer the questions on the houses in the area.

Mr. Nickerson said that he was not on the Commission when Jean Davies was with Planning, so he knows that he was not here then but he was here for the first AH application, so he was trying to put all of this into context. He said that he is not sure that it plays into this Commission's decision making.

Mr. Russo said that those issues were raised by the comment in the paper that said that the Town was predisposed to deny this application.

Ms. Byrnes said that if they searched the archives that they could find the exact words as she thought that it may have said that they don't want affordable housing there but she is not sure.

Attorney Zizka said that if 'there' was said that it would make all of the difference as he said that he has dealt with newspaper situations long enough to know that they are not accurate. He explained that the reporter called him on the phone and asked questions.

Ms. Byrnes said that she recalled that Mr. Russo had made that comment at public hearing.

Mr. Nickerson and Ms. Byrnes agreed that this discussion was not appropriate for this time. There was a misquote or maybe there wasn't so it needs research.

Ms. Carabelas said that she was ready to make a motion to continue these Public Hearings.

****MOTION (1)**

Ms. Carabelas moved that all four (4) Public Hearings be continued to September 13, 2007.

Mr. Salerno seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Nickerson adjourned these four (4) public hearings at 11:54 PM and continued them until September 13, 2007 with the details of this meeting to be worked out.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary



GERWICK MEREEN

CIVIL ENGINEERING & LAND SURVEYING

Sept. 6, 2007

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RE: Riverview Heights VI

Dear Commissioners;

Gerwick Mereen LLC has been retained by The Friends of The Oswegatchie Hills Nature Preserve, Inc. to review and comment on some of the aspects of the pending application of Landmark Investment Group LLC on property located at River and Calkins Road, East Lyme, CT known as Riverview Heights VI. I have reviewed the applicants file at the Town Hall and reviewed schematic plans submitted by their Consulting Engineers, WMC.

Although I have a number of concerns regarding this application, I wish at this time however, with this current correspondence, to limit my comments to the issue of sewage disposal of this current application.

Municipal Sewers

Based on our understanding, the applicants project site is largely outside of the sewer shed area for the Town of East Lyme. Additionally, based on my personal professional experience, it is also my belief that the Town's position is that if a portion of a property is within the sewer shed, then only that portion is eligible for sewer service. To allow the present application to tie into municipal sewers for the entire site would be inconsistent with past policy and decisions and be fundamentally unfair to previous applicants or other parties that that may have wished to have access to sanitary sewers.

Should the Town, through the auspices of the Water & Sewer Commission, who is the final authority, agree that the bulk of this property is outside the sewer shed, then it is our opinion that that this application should not be judged on the assumption that it will have access to municipal sewers; but rather, that it must be judged on the premise that it will require on-site sewage disposal.

Attachment

Zoning RH 1-1V 9/6/07

As the site is predominantly not within the sewer shed area it would almost certainly have to be serviced by on site sewage disposal. It is our understanding that the applicant has chosen to not supply any detailed information with regards to the capability of the site to accommodate on site sewage disposal. Rather he has simply made a generic statement that the site would be serviced by a DEP treatment system

As little to no specific information has been submitted we have conducted a preliminary review of the site and its natural capacity based on the applicants proposed plan and published information from, but not limited to, the Soil Conservation Service Soil Survey of New London County. In addition I have had personal professional experience working in the general area of the proposed site within the same soil complexes.

Soils - A review of SCS sources indicate that the site is largely dominated by Charlton-Hollis Rock Outcrop Complex (HrC and HrD) with slopes ranging from 3% to 45%. There is also a relatively narrow band of Charlton-Hollis soils along the Niantic River itself (also ranging from 3% - 45% slopes). The primary area that has been identified for sewage disposal has slopes that generally range from 10% to 15%.

Rock Outcrops – The HrC and HrD complexes indicate that the rock complexes are intermingled and represent 20% of the area.

Restrictive Layers – On site sanitary design, whether under the jurisdiction of the Public Health Code or the Department of Environmental Protection, require a determination of the conditions that represent a restrictive layer to sewage disposal. In south eastern Connecticut these are usually depth to bedrock or seasonal high water table. Based on personal experience as a professional engineer working with these soils in the Oswegatchie Hill area both of these limiting factors are very likely quite severe. Table 11 within the SCS Soil Survey which address Sanitary Facilities indicates that the noted soil complexes all have moderate to severe limitations. The limitations listed are depth to rock, slope and seepage.

Hollis soils which are noted as comprising 40% of the soil complex are also noted as generally having depth to bedrock at depths of 10-20 inches which would generally make the area unsuitable for sewage disposal. 15% of the soils have other characteristics, and based on my experience I would have to assume them to be of little to no value for sewage disposal. The last 25% are Charlton soils which generally have depths to bedrock greater than 60". These latter soils are those that would likely have the best characteristics.

Hydraulic Ability – Hydraulic Analysis is a standard methodology for estimating the capacity of soils to accommodate or transport water or, in this case, sewage effluent. I have done a preliminary analysis of the cross hatched area on the submitted plan titled "Overall Site Plan – Alt Septic System" dated 1/22/07 of the capacity of the natural soils present within the site as delineated by SCS.

This analysis (attached) indicates that the area noted has a hydraulic capacity of approximately 39 - 2 bedroom units. The applicant may contend that this is overly conservative but I would submit that it is in fact not a "worst case" scenario and is similar to the capacity that we found on a parcel of land with roughly similar acreage and soils located within Oswegatchie Hills. In fact, based on a Department of Environment Protection review of another system area within a previous Riverview Heights application in 2004 (and essentially the same soils per SCS) the Department of Environmental Protection's hydraulic analysis indicated that a 510 foot length had a hydraulic capacity of 2,644 gpd or 8.8 - 2 bedroom units my analysis seems remarkably consistent. Applying the same ratio to the total roughly 1,600 foot length of available hydraulic length would yield 28 units. If we used the same permeability factor and controlling depth that the DEP used then that number of units falls to something on the order of 5 or 6 units.

Any system that might conceivably be permitted by DEP as the applicant suggests would be by necessity based on vast quantities of fill and have a number of complex systems that we believe would in fact make it a sewage treatment plant. A treatment plant where one would be unable to stem the flow of 225,000 to 450,000 thousand gallons a day. A failure of this system would create a health risk not only for the occupants of the project but residents of Waterford and East Lyme as well as the ecosystem of the Niantic River. The applicant has not submitted documentation that would suggest that the natural soils can even remotely accommodate the sewage he proposes, nor has he submitted any documentation that even a DEP permit might reasonably be issued for anything close to that number ever be issued. In fact to this day that 2004 review by DEP on a different part of this property has not been responded to or approved for what ever reason the applicant may offer.

A definitive analysis can only be completed if the applicant presents complete, real world testing. There is however, in my professional opinion, ample published data to conclude that the site has very limited natural capacity for soil renovation and that there is a very real risk of negative impacts on the health and safety of the public should this application be approved.

On behalf of the Friends of The Oswegatchie Hills Nature Preserve, Inc. I ask that the Commission deny this application on the grounds that there is insufficient information for the Commission to make a determination of no negative impact on the Health and Safety of the public.

Thank you for your consideration of this matter.

Sincerely,

Donald W. Gerwick, P.E., L.S.

Preliminary Hydraulic Analysis

- Available Hydraulic Length of Cross Hatched Area

North of Wetland system is approximately 1,000 feet

South of Wetland System is approximately 600 feet

Available length estimated at 25% of the above (Charlton Soils only)

- Hydraulic Gradient approx. 10% north of wetland and 15% south of wetland system.
- Available depth estimated at 60". (from SCS)
- Soil Permeability (k) from SCS (0.6-6.0 in./hr.) for Charlton-Hollis soils, at mid range is 3.3"/hr. = 6.6'/day
- Daily design flow per DEP 150 gallons per day per bedroom

$Q = KIA$; where Q = daily flow in cubic feet, where k = the soil permeability = 6.6'/day,
 I = hydraulic gradient as noted above

A = cross sectional area of available soil flow area

North cross sectional area @ .25 x 1000' x 5' = 1,250 s.f.

South cross sectional area @ .25 x 600 x 5' = 750 s.f.

North Area Capacity

$Q = 6.6'/d. \times .10 \times 1,250 \text{ s.f.} = 825 \text{ cubic ft/d.}$

South Area

$Q = 6.6'/d. \times .15 \times 750 \text{ s.f.} = 742.5 \text{ cubic ft/d}$

Total Estimated Daily capacity = 1,567.5 cubic feet/d. = 11,725 gal per day

At 300 gal. Per day per 2 bedroom unit 11,275 gal/300 gal/unit = 39 units

If the analysis is consistent with other sections of this project area then one could conclude that the K value should be more like 1.6ft. per day which would yield a unit count of something on the order of 8 or 9 units.

Regardless of what the applicant may claim that he is going to do with respect to a DEP system, it is apparent, unless the applicant can produce documented (i.e. witnessed by controlling permitting authority) real world data for the area under discussion, that the site has extremely limited hydraulic capacity.