

**EAST LYME ZONING COMMISSION
REGULAR MEETING
Thursday, APRIL 1st, 2004
MINUTES**

FILED IN EAST LYME P
Apr 5, 2004 AT *3:30* M
L. A. Blair, Jr.
EAST LYME TOWN CLERK

PRESENT: Mark Nickerson, Chairman, Ed Gada, Secretary,
Norm Peck, Shawn McLaughlin, Pamela Byrnes,
Rosanna Carabelas

ALSO PRESENT: William Mulholland, Zoning Official
William Dwyer, Alternate
Marc Salerno, Alternate
William Henderson,
Donald Gerwick, LS, PE, Representing the Applicant
Rose Ann Hardy, Ex-Officio - Board of Selectmen

ABSENT: No One

1. Call to Order

Chairman Nickerson called the Regular Meeting of the Zoning Commission to order at 7:47 PM immediately following the previously scheduled Public Hearings.

Public Delegations

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

Joe Kwasniewski, 67 Walnut Hill Road, said that he again asks the Zoning Board to slow things down as he feels that we are expanding too fast. He thinks that it is up to the Zoning Board to do this. He said that his taxes are going up too high and faster than those in other Towns. He is not against advancement he just wants things to be slowed down. Thank you.

2. Accept Minutes of February 5, 2004 and March 18, 2004 – Public Hearings & Regular Meetings

Mr. Nickerson called for any changes or corrections to the Public Hearing I Minutes of February 5, 2004.

****MOTION (1)**

Ms. Carabelas moved to accept the Zoning Commission Public Hearing I Minutes of February 5, 2004 as presented.

Mr. Salerno seconded the motion.

Vote: 4 – 0 – 4. Motion passed.

Abstained: Mr. Nickerson, Mr. Peck, Mr. Gada and Ms. Byrnes

Mr. Nickerson called for any changes or corrections to the Public Hearing II and III and the Regular Meeting Minutes of February 5, 2004.

****MOTION (2)**

Ms. Carabelas moved to accept the Zoning Commission Public Hearing II and III and the Regular Meeting Minutes of February 5, 2004 as presented.

Mr. Salerno seconded the motion.

Vote: 4 – 0 – 4. Motion passed.

Abstained: Mr. Nickerson, Mr. Peck, Mr. Gada and Ms. Byrnes

Mr. Nickerson called for any changes or corrections to the Public Hearing I and Regular Meeting Minutes of March 18, 2004.

****MOTION (3)**

Mr. Peck moved to accept the Zoning Commission Public Hearing I and the Regular Meeting Minutes of March 18, 2004 as presented.

Ms. Carabelas seconded the motion.

Vote: 4 – 0 – 2. Motion passed.

Abstained: Mr. Nickerson and Mr. McLaughlin

3. Application of Theodore A. Harris to amend/modify Section 12 of the Zoning Regulations to allow recreational/residential projects on large tracts of land.

Mr. Nickerson asked if they would like to discuss this prior to making a motion as they have heard three evenings of public hearing testimony on this and have had the opportunity to review the information presented.

Mr. Peck said that he thinks that all of the Commission members should make some comments.

Mr. Nickerson agreed and asked Mr. Peck if he would like to begin.

Mr. Peck said that he has given this a great deal of thought and has listened to the people and studied the Zoning and Subdivision regulations, RU-80 and Elderly Housing Regulations and tried to determine where this sits in comparison to what we now have. He found that it appears that we have a choice to either use this and make changes to it to make it work or say that we are not going to cooperate with developers at all because they need something and they will build something. Or, put a moratorium on development all together. After a lot of thought he said that he is leaning towards trying to make this proposal work as it provides for the least density of any regulation that they have, it offers more buffers and more open space. Plus – there are so many hurdles that a developer would have to jump over to get here that it means that it would be a really nice project in the end if it passes. He said that he made comparisons of the various zones and how the factors would apply to them. He asked to provide this to the Commission members.

Mr. Mulholland and Mr. Nickerson had some reservations about passing out information and asked Mr. Peck to summarize it.

Mr. Peck said that this is theoretical only and summarized the following comparisons of three different existing zones to this proposed regulation.

- ◆ RU-80 standard subdivision, septic, one-house per 2 acres, 30' lot line setbacks, 50' street setbacks. Coverage is 15% of the lot. Standard 1950's checkerboard design with limited buffering. Theoretical maximum number of units – 108 units in a 200-acre parcel.
- ◆ Cluster/Open Space Subdivision. 15' side setback, 20' front setback. Open space of 50% with not more than 50% of that 50% being wetlands. Theoretical maximum number of units – 108 units in a 200-acre parcel.
- ◆ SU-E, you would need 10 acres. 150' setback from the street and 100' setback from the property line. Minimum lot is 10,000 sq. ft. The maximum number of units per acre is five. Open space required is 2000-sq. ft. per unit excluding the 50% wetlands. Theoretical maximum number of units - 870 units in a 200-acre parcel.
- ◆ In the proposal before us you would need 200 acres before even being considered for a special permit. At one dwelling per two acres and counting only 85% of the 200 acres in this calculation (the others count 100% of the area), with a landscape buffer of 100' all around (and the Commission may require that this is expanded); a proposal of 40% open space (however they will accept 55% open space with no more than 50% of it wetlands), and a 60% requirement for elderly housing plus 2000 extra feet from the Coastal Area boundary meaning 3000 feet from any river, coastline or tidal wetlands. Theoretical maximum number of units – 92 with this configuration (200-acre parcel required).

This is not more density. He said that if the Zoning Board likes this then he does have some changes that he would like to put in.

M. Nickerson thanked him for all of the work he did.

Ms. Byrnes said that we have all thought a lot about this and while she is not opposed to development she does not know if we have the right to call a moratorium on development as she was surprised to hear that it comes out of Planning.

Mr. Mulholland and Mr. Nickerson explained that it could not be done without having a bona fide reason for it as you cannot stop people from developing their property, as they are taxpayers.

Ms. Byrnes said that she understands that they can't stop people from selling or developing their property. She thinks that the people who came before them gave them compelling reasons not to do this and they have heard other reasons from the other side. She is leaning towards disagreeing with this concept. She has some issues with open space as to her open space is for the public to use and she has an issue with the liability that goes with it for the condo owner there. She also sees a fence around this open space. She also does not like the floating zone concept and would like something more concrete.

Mr. McLaughlin said that he was absent for the March 4, 2004 meeting however he has familiarized himself with the record of the meeting. He said that this proposal seems like more of a subdivision plan and something that should go to Planning rather than to here with them. He added that he thinks that they would have to consider what type of area borders the 200 acres. In terms of open space and usable space for the people he does not think that slopes and ledges should count towards the calculation.

Mr. Nickerson said that he sees open space differently. This proposal requires 200 acres and only 100 acres would be developed and the other 100 acres would be left to mother nature and not be cookie cutter or paved. That is a nice concept. They saw proposals for boating and a golf course and they also saw a typical subdivision proposal on this amount of property that had nothing but roads throughout it. There is plenty of open land in this Town for the people to use and he does not really think that this open space should be for everyone in the Town. He sat down with someone recently who said that every piece of land will eventually be paved. And, development is not necessarily bad. We heard from someone this evening that said that their taxes are going up – well this has 60% elderly housing which balances the other housing. He said that he thinks that this is a proposal that should happen in this Town and that these are tough times for this Town in that we struggle with development and that there are a lot of misstatements and untruths out there about development and how it should be done. Lastly, he said that he also agrees that this seems to be more a Planning subdivision issue.

Ms. Carabelas said that when she thought about this regulation that she tried not to think of it in terms of the Plan of Development but in how it was going to affect the Town as a whole. She thinks that this is like opening up a can of worms with the cluster development and open space. And she knows that someone would have to come back for a special permit and she is bothered by the idea that someone might come back and ask for a permit to put a house in the open space area and develop that area also. She also sees this tract development of 200 acres as having more people rather than less. If they don't think that something like the cookie cutter is working then they should change it. That can be done through the Planning Commission. Everything that comes before us has to go through the Plan of Development or the Planning Commission before we see it. She summed up that she is too uncomfortable with it to agree with it.

Mr. Gada said he would take a different tact and took the approach of what if this was my mother or brother that I was making this decision about. He said that he also watched the people in the audience and has spoken to people who have grabbed him over the past three to four weeks about this. One speaker he heard here keeps echoing to him and that was a person who said that they would like to try it in one place first and see how it goes before adopting it. He summed that he would have to go that way or be against it.

Mr. Nickerson asked if he was saying to just change one area.

Mr. Gada said that he thinks that there is a tract out there that this could be tried on.

Mr. Peck said that he had a few comments. Regarding the open space not being publicly accessible, this Town is one-third open space now (such as Nohantic State Forest) so there is a massive amount of open space in this Town that is accessible to everyone and some of these parcels are hardly ever used. The comments about having to watch out for where this zone is going to be, well that function is done at the public hearing for the special permit regarding where to place this zone. Another comment regarding later on down the road to fill in the open space – first, very possible when we run out of land, however we will have provided that open space for those people. However, in order for that to happen now, the request would have to come through this Board and it is highly unlikely that it would be approved.

Ms. Byrnes said that she does believe in the Plan of Development. She also looks at the clusters of open space and thinks that those people living in that development, down the road might want to sell that open space and that they could because it is their land.

Mr. Nickerson said no, no, that is not about to happen because they would have to come here first, that is not something that they can just up and sell and get away with. Maybe in some future generations when we are not around and some new Board decides that they will allow that because there is little land left, but not here or now.

Ms. Byrnes said that she did not care for what she saw as scare tactic demonstrations of what could be put on that size property. She also has tremendous issues with the floating zone concept.

Ms. Carabelas said that they aren't making decisions for one piece of property.

Mr. Nickerson asked her if she would feel differently if it were for one piece of property.

Ms. Carabelas said that she would listen to what they had to say.

Mr. Nickerson reminded her that there are duties of the Zoning Commission and that they cannot just refuse a permit because they don't want it.

Ms. Carabelas said she did not want that huge amount of homes in one area.

Mr. Peck said that the large number of 870 homes could be done today with the current regulations just by obtaining a special permit for elderly housing. What is being proposed here is a very tough regulation by comparison as it cannot be more dense and it has a lot of restrictions.

Rose Ann Hardy, Ex-Officio asked, regarding Mr. Peck's comment – if you were to take 200 acres and have 100 acres for open space and buildings on the other 100 acres, how can you call this less density when the houses are all on the 100 acres.

Mr. Nickerson said for clarification that the houses would be closer together in the 100 acres however there are not more of them considering the 200 acres.

Mr. Peck explained that where the houses are with only 85% of the acreage in the calculation, there is less housing. They may be denser in terms of closeness however with 100 acres of open space and 100' buffers, the homes would be well hidden.

Mr. Nickerson suggested that if this is not the type of house that you would want to live in due to its' proximity to another home, then you just would not buy there.

Mr. Peck said that if there is a concern of the Board on the uses of open space, then he could offer the changes that he has considered.

Ms. Byrnes said that she would agree that the limitations have to be made but that she does not like the idea of a floating zone and she wants to see the property.

Mr. Peck said that she would at the public hearing.

Ms. Byrnes said that she sees it as what it is that the people of this Town want and if that's the case then it can just float someplace else. This may or may not be a direction for us.

Mr. Nickerson explained for the new people that we do have floating zones and that they do come before us and we do turn some away and we do entertain others.

****MOTION (4)**

Mr. McLaughlin moved to deny the Application of Theodore A. Harris to amend/modify Section 12 of the Zoning Regulations to allow recreational/residential projects on large tracts of land.

The following reasons were noted: the open space is left too 'open', the concept of a floating zone for such a large tract of land is vague, the density and the proposal seemed to have subdivision issues more so than zoning criteria.

Ms. Carabelas seconded the motion.

Mr. Nickerson said that he thinks that this belongs in the Town and that we should not shut the door on this type of thing for this Town.

Ms. Byrnes said that she did not agree.

Vote: 4 – 2 - 0. Motion passed.

Against: Mr. Nickerson and Mr. Peck

4. **Application of The Herb Chambers Companies, LLC for a Special Permit to construct and operate an Auto Sales agency at 51 Boston Post Road, East Lyme, CT. Property further identified as Lot 61, East Lyme Tax Assessor Map 36.0 – and –**
5. **Application of The Herb Chambers Companies, LLC for a Special Permit to erect a second freestanding sign, in accordance with Section 18.1.8.5 of the Zoning Regulations at 51 Boston Post Road, East Lyme, CT. Property further identified as Lot 61, East Lyme Tax Assessor Map 36.0**

Mr. Mulholland said that the drainage plan had been submitted today and that Staff has not had the opportunity to review it yet. He suggested that they table this until their next meeting on May 6, 2004.

Mr. Nickerson agreed and asked if the Commission members would like to table all of the Herb Chambers applications and act on them as a whole as they got them as a package and they should act on them as a package.

The consensus of the Commission was to discuss all of this on May 6, 2004.

6. **Application of Herb Chambers Companies, LLC for a Coastal Area Management site plan review to construct an automobile dealership at 51 Boston Post Road, East Lyme, CT. Property further identified as Lot 61, East Lyme Tax Assessor Map 36.0.**

Mr. Nickerson said that they had just tabled discussion on this until May 6, 2004 to go with the rest of the applications.

7. **East Lyme Zoning Commission proposal to amend Section 18 (Sign Regulations) of the East Lyme Zoning Regulations, to permit suspended signs.**

Mr. Nickerson said that they had the testimony tonight and asked for a motion.

****MOTION (5)**

Mr. Nickerson moved to approve the East Lyme Zoning Commission proposal to amend Section 18 (Sign Regulations) of the East Lyme Zoning Regulations to permit suspended signs because this would help to promote business in this Town.

Ms. Byrnes seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

8. **East Lyme Zoning Commission proposal to amend Section 8.2.2 and 9.2.3 of the Zoning Regulations to increase the floor ratios for mixed use development in CA and CB Commercial Zones.**

****MOTION (6)**

Ms. Carabelas moved to approve the East Lyme Zoning Commission proposal to amend Section 8.2.2 and 9.2.3 of the Zoning Regulations to increase the floor ratios for mixed use development in CA and CB Commercial Zones because this would help the businesses in the Town.

Ms. Byrnes seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

9. **Request of “Orchards at East Lyme” (Subdivision) for a determination of parking requirements for a Subdivision Association Clubhouse and accessory Tennis courts.**

Mr. Mulholland explained that the Orchards has requested to build a clubhouse and tennis court within the open space of the association. It is the responsibility of the Zoning Commission to decide the number of parking spaces that would have to be available for this. Mr. Gerwick is here to present this.

Donald Gerwick, LS, PE, place of business 163 Boston Post Road, Waterford, CT said that the proposed use is a clubhouse with two tennis courts adjacent to it. Various data suggests that 3 spaces for the tennis courts seems realistic as this is only going to be for the association and not the general public. He looked at the BOCA regulations for a use for the clubhouse that suggested that 15 sq. ft. should be allowed per occupant so they based it on 1500 sq. ft. which would allow for 100 occupants. They recommend one parking space for every five seats so this would equate to a total of 23 spaces for the clubhouse and tennis courts.

Mr. Nickerson asked how many homes in this association.

Mr. Gerwick replied 160.

Mr. Mulholland asked if there was any over flow parking area.
Mr. Gerwick said that the roads are 28' wide and parking could be on the side and in the additional open space.
Mr. Nickerson asked if they were concerned with fire issues.
Mr. Mulholland said that this is strictly a parking issue for them. He has asked planning to specify the use.
Ms. Carabelas asked if this was a change of use.
Mr. Mulholland said that this is strictly for this use.
Mr. Gerwick commented that this was only for the people who live in the neighborhood.
Mr. Mulholland said that it is not for outside rental.

****MOTION (7)**

Mr. Gada moved to approve the request of 'Orchards at East Lyme' for 23 parking spaces for use by the subdivision association clubhouse and accessory tennis courts.

Ms. Carabelas seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

OLD BUSINESS

1. Stormwater

Mr. Mulholland reported that they are working on this as the State has sent down its' regulations.

NEW BUSINESS

1. Application of Theodore A. Harris for a Special Permit to modernize pre-existing non-conforming Gasoline Service Station located at 252 Flanders Road, Niantic, CT. Property is further identified as Tax Assessor's Map No. 26.1, Lot No. 7.

Mr. Mulholland said that this should be scheduled for a public hearing however he is waiting to see if it is going to be withdrawn.

2. Application of Theodore A. Harris for a change of zone from SU, Special Use to SU-E, Special Use-Elderly for property located at 16 Mostowy Road, East Lyme, CT. Property is further identified as East Lyme Tax Assessor's Map No. 40.0, Lot No. 5.

Mr. Mulholland said that he would schedule this for a Public Hearing.

3. Application of Theodore A. Harris for a Special Permit for Elderly Housing at 16 Mostowy Road, East Lyme, CT. Property is further identified as East Lyme Tax Assessor's Map No. 40.0, Lot No. 5.

Mr. Mulholland said that he would schedule this for a Public Hearing.

4. Application of Theodore Harris to amend the East Lyme Zoning Regulations by adding Section 21.1.9 'Reconstruction of Existing Structures.'

Mr. Mulholland said that this is something that they have been struggling with for years, as it has been a problem within the regulations. He said that he would schedule this for a Public Hearing but anticipated that they would be helping eachother on this.

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

There was none.

6. Zoning Official

Mr. Nickerson asked Mr. Mulholland about the Walgreen's.

Mr. Mulholland reported that there is an issue over access with Chapman Woods on the side. He further reported that the Financial Center at 314 Flanders Road is under construction as well as the Senior Housing project on Flanders Road and he is in discussion on some very nice buildings for Flanders Four Corners.

Ms. Carabelas asked about the widening of the road near the Stop & Shop.

Mr. Mulholland said that the Stop & Shop was paying for it.

7. Comments from Ex-Officio.

Ms. Hardy reported that the Board of Selectmen has decided to sell the 40 Industrial Road property and would get an RFP out on it soon. They are hoping to attract neighboring business and to do quite well with the sale. They also hope to use the proceeds from the sale to meet other needs of the Town. They are also looking at the proposed joint public safety building and if they are going to continue with it as a joint facility.

8. Comments from Zoning Board Liaison to Planning Commission

No one was scheduled to go.

9. Comments from Chairman

Mr. Nickerson asked Ms. Hardy about a letter sent from this Commission regarding the Town DPW area.

Mr. Mulholland said that he understands that they have been cleaning up at the Town yard.

Ms. Hardy said that she would ask the status at the next Board of Selectmen meeting.

10. Adjournment

****MOTION (8)**

Mr. Peck moved to adjourn this Regular Meeting of the East Lyme Zoning Commission at 9:15 PM.

Ms. Carabelas seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary