

**EAST LYME ZONING COMMISSION  
PUBLIC HEARING I and II  
Thursday, AUGUST 5th, 2004  
MINUTES**

Aug 12 20 04 at 11:30 AM PM  
Katherine B. Williams  
EAST LYME TOWN CLERK

The East Lyme Zoning Commission held the Application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC Public Hearing on August 5, 2004 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson opened the Public Hearing and called it to order at 7:40 PM.

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

**ALSO PRESENT:** Attorney Michael Zizka, Representing the Applicant  
Glenn Russo, Applicant & Principal Landmark Development  
Jason Sarojak, ASW Consulting, Engineering & Surveyors  
Ted DeSantos, Sr. Traffic Engineer, Fuss & O'Neill Inc.  
Dr. Priscilla Bailey, Marine & Freshwater Biologist  
Attorney Edward O'Connell, Town Counsel  
Court Stenographer, retained by the EL Zoning Commission  
William Mulholland, Zoning Official  
Rose Ann Hardy, Ex-Officio, Board of Selectmen  
Marc Salerno, Alternate,  
William Dwyer, Alternate  
William Henderson, Alternate

**ABSENT:** No One

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

**Pledge of Allegiance**

The Pledge was observed.

**Public Hearing I & II**

1. Application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC to amend the East Lyme Zoning Regulations by adding a new Section entitled "Affordable Housing Conservation District." – and -
2. Application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC for a change of zone for properties identified in the application as "Tax Map 27, Lot 14; Map 31, Lot 4; Map 31.2, Lots 3 and 8; Map 32.1, Lots 2 and 36; Map 32, Lot 1, from their existing zoning designation to an affordable housing development zoning district designation.

Mr. Nickerson asked if the applicant has any objections to opening both of the public hearings at the same time. He noted that in this instance that they are not clear on the applicant's intentions. We are proceeding tonight as if this is a zone change and a regulation amendment and therefore requiring a public hearing. He then asked Attorney Zizka if it is appropriate to open both hearings at the same time.

Attorney Zizka, Murtha Cullina LLP, representing the Applicant Landmark Development Group and Jarvis of Cheshire said that they do disagree that this is an application for either a zone change or amendment. It is an application under Section 8-30g of the CT General Statutes and not an application that they can classify under their existing regulations. It is a statutory application. He explained the Affordable Housing Act that came about in the late 1980's – early 1990's. He further explained the Wisniewski case in the Town of Berlin in 1995 where



the Town would not allow an application for affordable housing because the lots were smaller than the Town would allow. The Appellate Court held that they did not have to comply with the Zoning Regulations and that it did comply with CT General Statute 8-30g itself. This is not for a zone change or a zoning amendment because it is for a specific development that you see on the boards and that will be presented tonight. This application is unusual in that it is statutory. While he does not think that there is harm in opening them together they do not agree that these are the types of applications being presented.

Mr. Nickerson asked Attorney O'Connell for his comments.

Attorney O'Connell said that because Mr. Zizka said that he considers this an appropriate subject for a public hearing and this Commission also considers this a topic for a public hearing, he feels that it would be appropriate to continue this as a public hearing and keep record, take exhibits and consider evidence.

Mr. Nickerson explained to the public that while this is clearly meant for the public to speak and they want to hear from the public, that he felt that he should warn them that they might not get through all of the testimony this evening and therefore might not get to the public comments. He noted that they are under a time constraint as they also have other items on their regular agenda that have to be decided this evening. They anticipate having to call the public hearing no later than 10 PM.

Mr. Mulholland suggested that they proceed and assess that situation later in the evening and see how they move forward.

Mr. Nickerson asked Dr. Gada to read the following correspondence into the record:

- ◆ Letter dated 5/12/04 to Wm. Mulholland, Zoning Officer from Michael Zizka, Murtha Cullina LLP – Re: Application for Approval of Affordable Housing – noting that as of that date (5/12/04) Glenn Russo would be filing five copies of a set of plans entitled “Riverview Heights (A Residential Community) Boston Post Road, East Lyme, CT” for development of an “affordable housing development” as defined in CT Gen. Statute Section 8-30g(a)(1).

Mr. Nickerson asked Ms. Carabelas to read the following correspondence into the record:

- ◆ Letter dated 7/6/04 to Michael Zizka, Esq. from Wm. Mulholland, EL Zoning Official – Re: Application for Approval of Affordable Housing Plans filed by Landmark Development Group LLC and Jarvis of Cheshire LLC – replying to their letter of 5/12/04 asking for clarification whether the plans submitted constitute an application for a site plan, a special permit, a zone change or some other type of approval for a “development”.

Mr. Nickerson asked Mr. McLaughlin to read the following correspondence into the record:

- ◆ Letter dated 7/9/04 to Wm. Mulholland, EL Zoning Official – Re: Application for Approval of Affordable Housing Plans – noting this is in response to his letter of 7/6/04, and stating that this is an “affordable housing application” under Conn. Gen. Stat. Section 8-30g.

Mr. Nickerson noted for the record that they have the proposed amendments to the East Lyme Zoning Regulations entitled “Affordable Housing Conservation District” (noted 7/17/02 at top) as part of this package.

Mr. Nickerson also noted for the record that they have a zone change map of the area and location under discussion.

Mr. Mulholland stated that the Legal Ad ran in the New London Day on 7/23/04 and 8/2/04.

Mr. Nickerson read the following correspondence into the record:

- ◆ Letter dated 8/4/04 to Ed Gada, EL Zoning Commission from Marcy L. Balint, Sr., Coastal Planner, Office of Long Island Sound Programs – Re: Possible Zone Change Application and Amendment Proposal for a Affordable Housing Conservation District Regulation (AHCD) by Landmark Development Group LLC – noting that their finding was inconsistent, with comments.

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

- ◆ Letter dated 7/27/04 to Mr. Ed Gada, EL Zoning Commission, from Robert Baron, SECCOG Regional Planning Commission - Re: Proposed Zone Change and amendments to East Lyme’s Zoning Regulations submitted by Landmark Development Group LLC and Jarvis of Cheshire LLC for a development of a



residential community as "affordable housing" – finding the proposed text amendments inconsistent with the Regional Plan of Conservation & Development as adopted by SECCOG on 10/15/97.

Mr. Nickerson asked Mr. Peck to read the following correspondence into the record:

- ◆ Letter dated 8/5/04 to Mr. Mark Nickerson, EL Zoning Commission, from Francine Schwartz, Chairman, EL Planning Commission – Re: 8-3a Referral – Application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC for a possible Zone Change Application & Amendment to the Zoning Regulations to allow an Affordable Housing Development (Assessor's Map 27, Lot 14; Map 31, Lot 4; Map 31.2, Lots 3 & 8; Map 32.1, Lots 2 & 36 and Map 32, Lot 1) – finding the referenced application Inconsistent with the POD and noting that it is substantially the same as the application submitted in September 2002. The Commission submitted their previous report dated September 17, 2002 and noted seven items.

Mr. Mulholland submitted (as noted in the above letter) the Planning Commission Report to the Zoning Commission on the Application of Landmark Development Group LLC for an Affordable Housing Development dated August 5, 2004.

Mr. Nickerson asked Mr. Gada to read the following correspondence into the record:

- ◆ Letter dated 7/22/04 To Be Hand Delivered to EL Zoning Commission, from Michael Zizka, Murtha Cullina LLP – Re: Application for Approval of Affordable Housing Plans – stating that the letter is to be hand delivered by the Applicants and accompanied by copies of plans for the affordable housing development showing several different, but equally feasible methods of providing sewer and water service to the proposed residences.

Mr. Nickerson asked Ms. Carabelas to read the following correspondence into the record:

- ◆ Letter dated 7/29/04 to Ed Gada, Secretary from Wayne Fraser, Chairman EL Water & Sewer Commission – Re: Referral – Possible Zone Change Application & Amendment Proposal Landmark Development LLC – stating that the property described is not served by Town Water and is not within the Sewer shed. The motion by the Commission was attached.

Mr. Nickerson read the following correspondence into the record:

- ◆ Letter dated 8/2/04 to Wm. Mulholland, Zoning Officer from Mark Powers – Re: Possible Zone Change application and Amendment Proposal, Landmark Development Group LLC – noting that while the Niantic River Gateway Commission per CT State Statutes Section 25-109g(b) is required to review and act upon any proposed zone change affecting land that falls within the Niantic River Gateway Conservation Zone, it is premature to comment at this time upon any proposal currently before the Town's Commissions.

Don Landers, Chairman of the East Lyme Harbor Management/Shellfish Commission submitted a referral letter to be read into the record.

Mr. Nickerson said he would be happy to accept it and read the following correspondence into the record:

- ◆ Letter dated 7/28/04 to Mr. Ed Gada, EL Zoning Commission from Don Landers, EL Harbor Management/Shellfish Commission – Re: Referral – Possible Zone Change Application & Amendment Proposal Landmark Development Group, LLC and Jarvis of Cheshire, LLC – noting that the proposed development was fundamentally inconsistent with the Town's Harbor Management Plan and stating that the findings of inconsistency are the same as those cited in 2002.

Mr. Nickerson called upon the applicant to give their presentation.

Attorney Michael Zizka said that Glenn Russo, Principal of Landmark Development Group, LLC, Jason Sarojak, Engineer, Dr. Priscilla Bailey, Biologist and Dr. Harvey Luce, Soil Scientist were present and would also be speaking this evening.

Attorney Zizka also noted that Mr. Mulholland had said over the phone today that he would be providing copies of the Staff letters for him however, he did not get them and cannot comment on them.

Mr. Mulholland said that he received them very late today and that they were to be faxed to him by staff.

Attorney Zizka said that they did not get them and cannot comment on them.

Attorney Zizka then explained the State Affordable Housing Act noting that it applies to the Towns and that if the Towns have 10% of the dwellings in their community as affordable as defined by State Law then they are exempt from the Act. East Lyme currently has 4% of its' housing that meets the criteria versus the 10% that the State requires. He noted that he had downloaded this information from the State EDC and Community



Development website and submitted it for the record. **Exhibit 1 – Affordable Housing Listing Percents for the Towns within the State (2000 census).** He then explained that affordable is defined as 60% or 80% of the median income of the State or community, whichever is lower. He then submitted the information for the State Median income and the information for the Area Median Income. **Exhibit 2 – Estimated Median Income for FY2004** indicating the Median income for CT for FY2004 as \$76,100. **Exhibit 3 – Area Median Income Figures from HUD.** New London, Norwich, Rhode Island Area is where East Lyme falls and the median income for this area is \$66,700. If we compare the \$76,100 to the \$66,700, the median area income is much lower as the statewide income has gone up significantly. The \$66,700 is the median income that the rental would be based on today. The standard for affordable housing developments is that at least 15% of the units have to be affordable to those who earn 80% or less than the median income for the area (currently \$66,700) and - that 15% of the units also have to be affordable to those who earn 60% or less than the median income for the area (again, currently \$66,700). He explained that previously these applications were presented just like any others. The Wisniewski case changed things. They felt that they would use the old process and are talking tonight about the development of this area that is consistent with those zoning regulations. He submitted **Exhibit 4** the proposed zoning regulations that were submitted with the 2002 application. He noted that they are still a part of that separate Judicial Proceeding.

Mr. McLaughlin asked - if the applicant has two applications pending with the State why they are submitting this tonight and if it would be better just to wait for the outcome of that case.

Attorney Zizka said that the Wisniewski case showed that they could submit an application in absence of regulations under CGS 8-30(g). The original proposal was a request for a zone change and zoning text and the Court will decide that in due time. As they do not want to wait and because they are entitled to submit this under Wisniewski, they are hopeful that the outcome will be favorable under the affordable housing guidelines.

Mr. Nickerson said that he was confused and asked how this is not amending their zoning regulations.

Attorney Zizka said that this plan has only three possible outcomes – approve, approve with modification or deny. If approved under the affordable housing act it stands alone as non-conforming. They have already provided them in an earlier proceeding with the regulations that they would like them to adopt. State Law does not say that it has to be done at the same time.

Mr. Mulholland asked if he was saying that the Wisniewski versus Berlin case made it so that regardless of what the courts do, they can come in and present this application?

Attorney Zizka said yes. He then submitted **Exhibit 5 – A copy of the exhibit submissions from 2002.**

Mr. Mulholland asked if he could briefly outline what was contained in this as they have some new Commission members who were not present in 2002.

Attorney Zizka said that he did not know that he could be brief due to the contents but he would try. It contains documents on the Open Space Plan from the POCD. This indicates that only a portion of the property is proposed for open space preservation. Most of the units being discussed tonight lie outside of this area. Some of the documents indicate the specific need for open space acquisition by purchase. There seemed to be recognition in the 1960's and 1970's that they could not take the property without paying for it. The goal was to acquire the area by purchase and the Town has just never done it or found Oswegatchie Hills important enough to buy.

Mr. Nickerson asked if there have been any negotiations at all.

Attorney Zizka said that there has been talk but there has never been money or any outright effort to buy the property. Also, the Town has the power of Eminent Domain where they can take the property but they are bound to pay fair market value for it. They have never done this. There is a 1997 letter from David Leff of the DEP who is now Deputy Commissioner, stating that the DEP is not interested in purchasing this property. It further noted that it does not have the properties of the kind of parcel that they are interested in purchasing. There is also a letter from the Governor stating that the property is rocky and does not provide ready access to the shoreline for the public. It also noted that the DEP might be interested in it if properties of high interest and priority were purchased as that might move this property up on the list in the future. He also noted the policies of the State Conservation and Development Commission stating that they consider housing needs and goals and a lot of these relate to having affordable housing. He added that it has been well known that areas near the coast have been for the rich as they are the only ones who can afford to live there. It is time for the not so rich to be able to live near the water too. The exhibits also contain information from the Niantic Gateway Commission which was included because the legislation was passed around 10 years ago however this Commission was not developed (comprised of East Lyme and Waterford residents) until this development



came forward. The minutes of these meetings clearly indicate that the formation was meant for this property. There is a letter about Deerfield Condominiums that lie to the North indicating that they are sewered. They are in the same hillside with similar types of soil. Water & Sewer was not interested in providing sewers to the Golden Spur area even though it was determined that the pollution found in the Niantic River was believed to be due to failing septic systems in the Golden Spur area. Also, the Water & Sewer Commission approved sewer for the former Lulu's site. There is a document from the Natural Resources Center of the DEP noting that there are no endangered species in the area. There is also information that the DOT would be involved if connecting to Route 1 so it was included so that they would know that the DOT would have input on this.

Attorney Zizka also said that he had a 2004 revised affordability plan that is specific for this application, this was entered as **Exhibit 6**. The difference from 2002 is that they are proposing three bedroom units in a portion of the Affordable Housing section whereas they previously proposed only one and two bedroom units. The State says that at least 30% of the dwellings have to be affordable. In Phase I they are proposing the apartments units as affordable.

Mr. Nickerson said that he thought that in 2002 that they had said that it had to be a mixed development. However, here they have the poor people up on the hill in the corner and the condos below.

Attorney Zizka said that there is no State legal requirement to do that. And, in all fairness he does not recall that being an issue for the Commission in 2002.

(Note: A short break was taken here)

Mr. Nickerson said that they shall continue with the public hearing and that Attorney Zizka was about to introduce Mr. Russo to present to them prior to the break.

Attorney Zizka said that Mr. Russo, the applicant has indicated that he would like the Engineer to present first. He then introduced Jason Sarojak.

Jason Sarojak, of ASW Consulting Group said that they are the Engineers & Surveyors for this application. He is a Professional Engineer in the State of CT and will discuss the developability of the site. He utilized Site Boards **Exhibit 7 – Master Plan Phase 1** and **Exhibit 8 – Landmark Development Group Plan**. He said that the site overall is very developable. All of the roadways were designed to meet all national design standards and none have a grade steeper than 10%. Primary access to the site is designed from the King Arthur Drive area with emergency access from Calkins Road. Bedrock on this site will have a minimal impact on this design as it was not found down to 8' to 10'. No construction is proposed within 200' of the Niantic River or Latimer Brook or within 100' of any onsite wetlands. Appropriate sedimentation and erosion control measures are proposed. For stormwater management they are proposing a detention pond, catch basins with sumps, and oil/water separators so as to have no impact to the water quality or coastal resources. They have designed the public water supply from Boston Post Road via Calkins Road. If this is not chosen a series of private wells have been chosen for the Northern and Southern portions of the site. Public sewer, as a gravity sewer would run down Calkins Road to Boston Post Road. The second design is a pressure sewer that would gravity flow to a pump station that would go to King Arthur Drive. If not chosen, this site could also support a community septic system. Previous tests by the DEP have found this site very suitable for a community septic system.

Mr. Mulholland asked if he knew how many community septic systems have been approved by the DEP.

Mr. Sarojak said that there have been many and that their company itself has had three approved and in operation.

Mr. Nickerson asked how many units the area could support.

Mr. Sarojak said that it could support the Phase I, 352 units proposed here and substantially more.

Mr. Mulholland asked if this was a preliminary design.

Mr. Sarojak said that this has not been finalized and presented to the DEP for final approval.

Mr. Nickerson asked if they have soil tests.

Mr. Sarojak said that they are shown on the detail sheets of the site plan.

Mr. Peck asked if he could show the boundary line between the Jarvis piece (80 acres) and the rest of the property.

Mr. Sarojak pointed it out on the plan and said that it cuts through the western part of the site and northerly to Latimer Brook. It roughly is the upper northwest portion of the site.

Mr. Mulholland asked when the on-site testing was conducted with the DEP.

Mr. Sarojak said that testing with the DEP was done in the Spring of 2004.

Mr. Gada asked what was on the river (seen on the site plan).

Mr. Sarojak said that it is other lots that are not a part of this application.



Attorney Zizka said that the four units shown close to the river are four separate lots of record that are not a part of this application.

Mr. Nickerson asked if they were wooded areas now.

Attorney Zizka said correct and reiterated that they are not a part of this application. He also noted that he has worked with the DEP on a number of community septic systems (more than 5000 gallons per day of discharge). He then introduced Ted DeSantos, a Traffic Engineer with Fuss & O'Neill to present the traffic considerations of this project.

Ted DeSantos, Senior Traffic Engineer, Fuss & O'Neill passed out copies of the Traffic Impact Study to all Commission members and set up his Site Boards for discussion.

Mr. Nickerson designated them as **Exhibit 9** – Traffic Impact Study by Fuss & O'Neill – Riverview Heights, East Lyme, CT; **Exhibit 10** – Site Location Map – Zoom Out and **Exhibit 11** – Site Location Map – Close Up.

Mr. DeSantos said that he was before them in 2002 and that he is one of two Certified Traffic Operations Engineers in the State of CT. This evening he will talk about the Traffic Impact Study that he just submitted. Their regulations and the State Traffic Commission dictate the need for the study. They look for two basic things in a study like this – Safety and Capacity. He said that this proposal has 120 apartments and 232 condominium units. It is well serviced by State routes and they will bring people down to the State Highway system. It will meet the criteria of the State Traffic Commission and they will make an application to the STC who will thoroughly review this and make a determination to approve or deny as well as to make their own recommendations. The proposed access to the drive is through King Arthur Drive and it will be controlled by a traffic signal. They will also have gated emergency access for emergency vehicles to access the site that will go to Calkins Road.

Mr. Mulholland asked if they would have one point of egress and access.

Mr. DeSantos said there would be one full access and egress.

Mr. Mulholland asked about the other phases.

Mr. DeSantos said that the only application before them is for this phase.

Ms. Carabelas asked how they would be able to get into the emergency access area if it were gated.

Mr. DeSantos said that they have several ways to handle this such as crash gates/breakaway gates or a situation where emergency services personnel has special keys. He continued that they accessed data on traffic in the area and found that Rte. 161 is a commercial corridor and that they have turning traffic accidents in this type of corridor. Due to the nature of these accidents, it was found that this would not be exacerbated by additional traffic on this road. They quantified the amount of traffic they anticipated in terms of trip generations. They anticipate 164 vehicle trips in the morning peak hour comprised of 30 entering and 134 exiting vehicles and 240 in the afternoon peak hour comprised of 130 entering and 74 exiting vehicles.

Ms. Bymes asked if they anticipated school buses coming and going here for the children when they did these trip generations.

Mr. DeSantos said that they use the industry standard to obtain the best data available and that it combines over 300 sites nationally and certainly children and school buses would be included in that source.

Mr. Peck said that they have 120 apartments and 63 morning drives and he was trying to make sense of this – are only half of the people working?

Mr. DeSantos said that they have to remember that this is only during the peak hour and that some people will leave or come home during the other hours surrounding these peak hours. Some will leave from 6:30-7:30 AM or 8:30-9:30 AM which are not considered the peak hour.

Mr. Nickerson asked what the peak hours used were.

Mr. DeSantos said that it was 7:45-8:45 in the AM and 4:30-5:30 in the PM. They take these hours and overlay trip generations.

Mr. Nickerson asked when this study was conducted.

Mr. DeSantos said that it was conducted in July of 2004. He continued that they next project when this development might open which is 2007 and they obtain information from the DOT on the traffic growth factor and also consider other subdivisions going in, in the area. The traffic growth factor from the DOT is 2%. They then give level services rating from A to F with A being the best and F indicating failure. The southbound off ramp of I-95 operates at an F during the afternoon peak hour, as it is tough to make a left turn. The left turning vehicles cause this delay. This area is striped as a single lane but they actually form two lanes there. He suggested that they extend the light to allow for more left turning vehicles and this will raise the level services rating to a C.

Ms. Bymes asked if they do not make these tweaks, if it means that people will sit longer waiting to make a turn.

Antony also said that the four other sites which are being investigated in the north west are...

Mr. Jackson asked if they were working on them. Mr. Jackson said that he was not sure but that he would check with the DOT on a number of things. He also said that he would check with the DOT on a number of things.

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Mr. DeSantos said yes. He continued that they are also proposing signal tweaking for the Rte. 1 and Rte. 161 intersection for a longer green to alleviate the back up.

Mr. Nickerson asked if this light wasn't already significantly delayed.

Mr. DeSantos said yes and added that if the left turn is advanced by 4-5 seconds that it will move it to a level service C.

Mr. Mulholland asked if, in his analysis did he take into consideration the pending development.

Mr. DeSantos said yes, they took into consideration all of the planned or pending developments that were identified when they contacted the Town and the STC.

Mr. Mulholland asked whom they spoke with in the Town as he did not recall anyone contacting him.

Mr. DeSantos said that he did not know but he would get that information for them.

Mr. Mulholland said that they currently have pending applications for the Flanders Four Corners area such as the Brooks, Ford Dealership and the Financial Center.

Mr. DeSantos said that he knew about the active adult housing and the Liberty Bank and said that he would not be surprised if their traffic studies were similar and would love to have them to incorporate into this study. He summed up that King Arthur Drive is operating at a level service B in the morning and afternoon, the northbound On ramp at level service A, the southbound off ramp at level service F in the afternoon but level service C in the morning and the Rte. 1 intersection at level service C in the morning and afternoon. There is available capacity here and the STC will have the final say in this.

Mr. Mulholland asked if this is based on the plan before us.

Mr. DeSantos said that this is for the Phase I plan before them and that any subsequent phases would require a study and STC approval. He noted that the site lines required are for 280' to the left and right and they have 290' to the right and over 500' to the left.

Mr. Mulholland asked if they anticipate or study egress coming down King Arthur as they have the Woodland Village condos on Church Lane as well as Deerfield Villages' 100 units.

Mr. DeSantos said that the site line is fine as both streets come into a cul-de-sac and there are stop signs on both approaches. They are also recommending that the driveway radius is increased for large SUV's and buses and that some trimming be done. He concluded that the traffic will not have an impact on the existing system and that they will submit this for the STC for review. The STC will do an independent review and respond back to them.

Ms. Carabelas asked how they know that there wasn't going to be an increase in accidents even though there was going to be an increase in the traffic on Flanders Road.

Mr. DeSantos said that there is not a direct correlation in the number of cars and the number of accidents as the types of accidents that were found were people turning in or out when they did not have enough room to do so. These are the types of accidents that they found based on the last three years of data.

Mr. Gada asked if they have any data on the intersection of 395 one mile in either direction.

Mr. DeSantos said no, they did not carry their study to the interstate system as that has around 150,000 vehicles per day. They will not be impacting that much.

Mr. McLaughlin asked if there was a ROW in place to connect from Deerfield Village.

Mr. DeSantos said yes.

Mr. Peck asked if the grades of A through F simply indicate waiting time.

Mr. DeSantos said that they take into consideration a huge host of things and after computation it does indicate the waiting time in seconds per vehicle.

Glenn Russo, Principal, Landmark Development Group LLC said that the F intersection was analyzed and if a light was required by the State that it would become a C in the afternoon. He also noted that the ROW does exist.

Mr. Mulholland asked if they have the right to pave and improve it.

Mr. Russo said that was correct.

Ms. Carabelas asked who is responsible for the traffic light.

Mr. Russo said that the State STC gets the report and then conducts their own study and determines the course of action.

Attorney Zizka next introduced Dr. Priscilla Bailey

Dr. Priscilla Bailey said that her company is Marine and Freshwater Research Services located in Guilford, CT. She received her Ph.D. in 1983 and is a private consultant. She tries to concentrate on ecosystems as a whole. She submitted her resume for the record, which was entered as Exhibit 12. Her role in this project was



to look at the site for unusual natural resources and impacts on the site itself. She said that she did not review the Soil & Erosion control plans or the septic as she is a biologist. She and the applicant, Mr. Russo walked this Phase I property on July 30, 2004. It consists of the uplands that are wooded, some wetlands and the coastal area. The upland forest is typical of dry hillsides and there are strands of dense mountain laurels with little diversity of vegetation. There is a slight change at the base of the hill near the river as it is moister there. Her report contains the vegetation list. The shoreline is very rocky and probably has a rocky bottom as it progresses into the river. There are no marshes or sand or mud flats or unusual habitats found in the marine system. There are a few patches of sand along the river edge. She has provided a DEP map that notes with gray circles the areas of concern for species. She also contacted the DEP and they wrote and said that the whippoorwill was noted to be near the site however they could not say for sure if they are there or not. There are no endangered species or vegetation on the site. The inland wetlands are on the dry side. There are no deep swamps and it is hard to tell that they are there. She observed plants that can grow in or out of wetlands. Also, they were there after a substantial rain. There was a stream there that was a trickle although she noted that it probably carries water in the spring. The design of this phase is very cleverly done so as to avoid the wetlands completely. It even avoids the 100' upland review area, something unusual for a site of this size.

Mr. Nickerson asked if the July 30, 2004 visit was her only visit to the site.

Dr. Bailey said yes.

Mr. Nickerson asked the time of day that they were on the site.

Dr. Bailey said that it was the morning and indicated the path that they followed from the top and that they covered the whole area well. They were there for a good four hours.

Ms. Carabelas asked about non-point sources and the run-off and the salt running into the river from the paved areas.

Dr. Bailey said that they have set the buildings far back – they are about 400' from the river itself. She has not reviewed those plans however she would not anticipate much overland run-off during construction as they would implement sedimentation and erosion control measures. She added that she would not anticipate great run-off of contaminants, as she understands that they would create a park-like area to open up the river view.

Ms. Carabelas asked if cutting of the woods would have an impact.

Dr. Bailey said no as there are too many feet for it to travel.

Mr. Gada asked what hours they were there.

Dr. Bailey said that it was from approximately 9 AM to 1 PM or so.

Mr. Gada asked if they had covered the whole area.

Dr. Bailey outlined where they traveled on the map and said that she was impressed with how uniform the area is. She noted that her report contains an aerial view of the area. She submitted this for the record.

**Exhibit 13 – Natural Resources Survey (Riverview Heights) by Dr. Bailey.** She noted that in the back of the report there is a Coastal Resources Map by the DEP, this was entered as **Exhibit 14**. This map shows that there are no coastal resources on that side of the river.

Mr. Nickerson asked Dr. Bailey what her biggest concern about this development was.

Dr. Bailey said that it would be the erosion control and stormwater and that she has made some recommendations on that in her report.

Mr. Nickerson asked about the septic.

Dr. Bailey said that the DEP makes the decisions on that and that those decisions are for the engineers and not her.

Mr. McLaughlin said that she had said that she did not see many species, he asked what she did see there.

Dr. Bailey said that she saw chickadees, robins, blue jays and some deep forest birds. It would probably be good during the spring for migrations.

Ms. Carabelas asked about non-flying species that she might have seen.

Dr. Bailey said that there are deer, raccoons and the normal ground species. She said that she did not see anything extraordinary during her visit.

Mr. Mulholland noted that obviously the testimony is not over and that there will be the opportunity for testimony from other people.

Mr. Russo said that what they have in front of them is the DEP Coastal Resource Map (**Exhibit 14**). He explained that along the entire one-mile water frontage of their property that there are no resources as recognized by the Coastal Resources Map. This is important as it is not only from their expert but has also been recognized by the DEP. There are also no listed endangered species or threatened species located on our site according to the DEP database.



(Note: a short break was taken here) -

Mr. Nickerson asked that this be the last testimony of the evening.

Glenn Russo, Principal of Landmark Development LLC and Landmark Investment Group pointed out the site on a map on **Exhibit 15** – Open Space Map of East Lyme from the current Plan of Development. He said it is worth noting that only a portion of their site is designated for preservation of open space. This is relevant as previously this was represented as being for open space preservation and that is not correct. As a landowner he is frustrated with this type of designation regarding this property. He cited that in 1967 that the Town decided that Oswegatchie Hills should be preserved. In 1974 The EL Conservation Commission designated the area for acquisition. Acquisition is the key word here. For 30 years they have been looking to acquire this property and get the money from the State. They also recommended that this be purchased for the children of the future. Those children are now 40 years old. The point of 1974 is that the Town has said that they want to preserve it and the Town draws an arbitrary line and takes your land and keeps you from developing it because someday they are going to 'buy it'.

Mr. McLaughlin asked if he was saying that the land was designated as open space but never zoned.

Mr. Russo said that they couldn't zone open space. It is zoned. It is designated open space through acquisition, not through confiscation.

Mr. McLaughlin asked if the land is zoned now.

Mr. Russo said that it is zoned R-120.

Mr. McLaughlin then said that it is buildable today.

Mr. Russo said that the reason for the denial of this is that the Town wants to preserve this land and that means not to develop it. This plan here before them has 10% open space and the condos and apartments are cluster development, which the POD encourages. He pointed this out on **Exhibit 16** – Current Zoning Board Layout. He continued explaining the history of this property and said that in 1986 there was a suggestion from Barbara Brown that they should sell property on Marion Road and use the money to purchase 100 acres along the Niantic River. This is nearly 20 years later and it still has not been done. In 1988 First Selectman Murphy requested a \$1M matching grant from the DEP to purchase this property. The DEP put up the \$1M and asked the Town to match it but the Town did not do it and lost the \$1M. Within a year Mr. Matthews, the owner of the property came here to the Town and said that they could purchase the 100 acres he owns near Golden Spur. However, Mr. Murphy said that the Town has priorities and that this is on the low end of the list and there is only so much money to be spent.

Ms. Carabelas asked how much he was asking for it.

Mr. Russo said that it was not he, it was Mr. Matthews and he did not know what he was asking for the property, but probably the fair market value as he went to the Town first. He continued that when Mr. Matthews finally put this property on the market, he first sent a letter to Mr. Fraser and Ms. Davies asking if they were interested in it first before it went on the open market. They never got back to him so in 1998 the realtor put it on the market and he bought it. The Town for 30 years would not buy it. In 1999 after he purchased the property because the Town had not purchased it for 30 years, Mr. Fraser writes in an article that he is looking for State money to buy it. In 2001 through a vote, they took 90% of his land and called it open space. They took all of the waterfront and 50 acres along the waterfront within 500' of the waterfront so that they could not build anything. Zoning changed things each time he wanted to build.

Mr. Nickerson asked if he had appealed.

Mr. Russo said yes he did and that it was overturned in the courts and that the courts restored his rights to the waterfront. He said that in the Day in 2001, Mr. Fraser said that the Town is not in a position to pay for the land and that the DEP is the best option as the Town does not have the money.

Mr. Nickerson asked, based on the current Zoning on the land and taking away the conservation area, have there been proposals to Zoning for this land.

Mr. Russo said yes and then recapped the zoning history of this property. In 1954 it was ½ acre zoning, in 1969 when there was an application it was changed to 1 acre zoning, in 1980 it was changed to three-acre zoning and in 1999 it was changed to five-acre zoning with 90% open space. Every time a developer comes along, the Town ups the Zoning to make it harder for the developer so that he won't survive. He explained on a map what happened with the last Zoning change where they left the landowner a small strip of land and he could not get from one piece to the other as he was cut off. The following exhibits were entered: **Exhibit 17** – Survey of the Howard Parcel, **Exhibit 18** – Survey of the Sergeants Head Parcel, **Exhibit 19** – Conventional Subdivision.

Mr. Russo explained the 87 acres outlined in yellow and said that the 1987 zoning left him with this strip of land. This is so they can see what the Town has been doing. They have said that they don't have the money to buy the land so they just change the zoning every time someone wants to develop it. What he and the other landowner have been going through are missed opportunity after missed opportunity. After the Town zoned it



90% open space, they called in the DEP to assess fair market value on the 10% that was left and to try to get the property for next to nothing. That is environmental greed. They have spent thousands and thousands of dollars to defend themselves from all of these zone changes and to have justice served. Since the Town cannot acquire the property, the POD recommends as the next best thing, developing it as a cluster subdivision. That is the plan that they have before them now.

Mr. McLaughlin commented that he thinks that they should look at the current zoning regulations open-mindedly.

Mr. Nickerson asked for a motion to adjourn and continue this public hearing.

Mr. Mulholland suggested that they schedule this Public Hearing to reconvene on Thursday, August 19, 2004 at 7:30 PM.

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

**Mr. Gada moved that this Public Hearing be adjourned and continued to Thursday, August 19, 2004 at 7:30 PM.**

**Ms. Byrnes seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

Mr. Nickerson adjourned this Public Hearing at 11:35 PM and continued it until Thursday, August 19, 2004 at 7:30 PM.

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary



# MURTHA CULLINA LLP

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MZIZKA@MURTHALAW.COM

May 12, 2004

**VIA FACSIMILE  
AND U.S. MAIL**

William Mulholland, Zoning Officer  
East Lyme Town Hall  
108 Pennsylvania Avenue  
Niantic, Connecticut 06357

Re: Application for Approval of Affordable Housing Plans

Dear Bill:

On behalf of Landmark Development Group LLC and Jarvis of Cheshire LLC, Glenn Russo will today be filing five copies of a set of plans (hereafter referred to as the "Plans") entitled "Riverview Heights (A Residential Community) Boston Post Road East Lyme, Connecticut," prepared by ASW Consulting Group, LLC. Each set consists of 28 pages (including the title sheet), with the Overall Site Plan (Drawing No. O-1) signed by Jason J. Sarojak, P.E. on 4-26-04. Please note that the last page is a sheet that is separate from the main, 27-page set and is not listed on the first page, but the page has been stapled to the main set for convenience.

This cover letter and the Plans comprise the application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC, to the East Lyme Zoning Commission for the development of the residential community shown in the Plans as an "affordable housing development," as defined in Conn. Gen. Stat. Section 8-30g(a)(1). A portion of the property on which the development is proposed (hereafter referred to as the "Property") is owned by Jarvis of Cheshire, LLC, and the remainder is owned by The Sargent's Head Realty Corporation, with whom Landmark has an agreement to purchase. The Property consists of Tax Map 27, Lot 14; Map 31, Lot 4; Map 31.2, Lots 3 and 8; Map 32.1, Lots 2 and 36; and Map 32, Lot 1. This development will be phase 1 of a multi-phased affordable housing application. Phase 1 will consist of 352 total units, of which 232 (66%) will be market-rate condominiums and 120 (34%) will be affordable housing rental units.

As you know, Landmark previously applied for an amendment to the East Lyme Zoning Regulations and a zone change for the Property in order to develop affordable housing

RH 1-2      8/5/04 - Read first - Zoning Commission  
B O S T O N      H A R T F O R D      N E W   H A V E N      2pgs.

William Mulholland, Zoning Officer

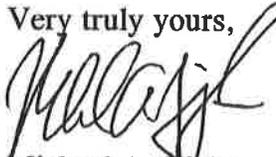
May 12, 2004

Page 2

that would be consistent with East Lyme's regulations. Since those applications were denied, the existing zoning regulations and zoning map contain no applicable provisions for this type of a development of the Property. Consequently, I understand that you have advised Mr. Russo that there is no specific application form that should be used, and that Mr. Russo should simply file five sets of plans and this cover letter. **We ask that you notify us immediately if there is anything else that you decide you need in connection with this application, and we also ask that we be notified in writing in advance of any meetings or hearings at which this application will be considered by the Zoning Commission.**

State law requires the filing of an affordability plan in connection with an affordable housing application. However, Landmark previously filed an affordability plan in connection with its prior (zoning amendment and zone change) applications for the Property, and Landmark will be using the same plan for this application. We can provide you with additional copies of that plan if you wish.

Please contact me immediately with any questions, comments or concerns you may have so that we may provide a prompt response. Given the Town's and the Zoning Commission's transparent desire to prevent the development of the Property for affordable housing, we have no illusions that this application will be given favorable, or even objective, consideration but we wish to make it clear that we are prepared to provide you with such materials as you or the Commission may reasonably decide you need.

Very truly yours,  
  
Michael A. Zizka

cc: Glenn Russo, Landmark Development Group, LLC

# Town of East Lyme

Zoning Official

PO Box 519

Niantic, CT 06357

860-739-6931

July 6, 2004

Michael A. Zizka, Esq.  
Murtha Cullina LLP  
City Place 1  
185 Asylum Street  
Hartford, CT 06103-3469

RE: Application for Approval of Affordable Housing Plans filed by Landmark Development Group LLC and Jarvis of Cheshire LLC

Dear Attorney Zizka:

This is in reply to your letter of May 12, 2004 and Glenn Russo's letter of June 23, 2004, which refer to certain plans pertaining to the proposed Riverview Heights Residential Community, which you describe in your letter as an "affordable housing development", as defined in Connecticut General Statute Section 8-30g(a)(1). The letter and plans are described as comprising an application "for the development of the residential community." The designation of the proposal as an "affordable housing development" does not clarify whether the plans submitted constitute an application for a site plan, a special permit, a zone change or some other type of approval for a "development".

Your letter also states that "the existing zoning regulations and zoning map contain no applicable provisions for this type of development of the Property". To the contrary, Section 32 of the East Lyme Zoning Regulations, entitled, "Affordable Housing District," would seem to apply to the proposal your clients have filed particularly in view of the absence of any proposed new regulations or change of zone submitted as part of your clients' proposal.

If this is indeed the case, then we can treat this proposal as an application to have the Property (or the Phase 1 portion thereof) designated as an Affordable Housing District and the plans you have submitted would be treated as the conceptual site plan required by Section 32 of the Regulations. You should submit additional copies of the Affordability Plan as required by state statutes as well as Section 32 because we would

RH 1+11 8/5/04 Zoning Commission  
2pg.

Read  
2nd

want to keep this application separate from the prior application filed by your clients, the denial of which is currently on appeal.

Should the Property (or the Phase 1 area) be designated as an Affordable Housing District, your clients would then need to know what specific approvals (change of zone, new zoning regulations, special permit, e.g.) your clients are seeking as part of their application.

This letter is not intended to constitute a technical review of the plans for compliance under Section 32, but rather a threshold inquiry to determine what your clients are applying for and what standards to apply to their proposal. If you have any further questions, you are welcome to contact my office.

Very truly yours,



William Mulholland, Zoning Official

WM:drn  
File

# MURTHA CULLINA LLP

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July 9, 2004

VIA FACSIMILE  
AND U.S. MAIL

William Mulholland, Zoning Officer  
East Lyme Town Hall  
108 Pennsylvania Avenue  
Niantic, Connecticut 06357

Re: Application for Approval of Affordable Housing Plans

Dear Bill:

This is in response to your letter dated July 6, 2004.

Your letter asks a very basic question about the nature of the application; specifically, what type of application is it? You even note on page two of your letter that it is "a threshold inquiry." It is, therefore, hard to understand why you waited *eight weeks* to ask.

At any rate, the proposed development, as you know, does not fall under any regulations that currently apply to the site. Consequently, we cannot characterize it as a site plan application, special permit application, or any other type of application. Those characterizations refer to uses that are expressly allowed as of right on a parcel or expressly allowable as special permit uses on a parcel under that parcel's existing zoning structure. Since the uses the applicants propose in this case are not allowed either as of right or by special permit on their parcel at this time, we can only describe the application as an "affordable housing application" under Conn. Gen. Stat. § 8-30g. As a practical matter, since the standards that control the decision on an affordable housing application are the state standards set forth in the statute, and not any local standards, there is really little point in trying to characterize the application in any other manner.

You claim in your letter that Section 32 of the Zoning Regulations "would seem to apply" to the application. To the contrary, and as you well know, Section 32 was deliberately written in such a way as to preclude its use for this type of application, or for any application that potentially involves the use of septic systems. The applicants are not applying pursuant to Section 32; consequently, they need not seek any special permit pursuant to that section.

PH I + II    8/5/04    Zoning Commission    Read 3rd  
BOSTON    HARTFORD    NEW HAVEN    2 pg.

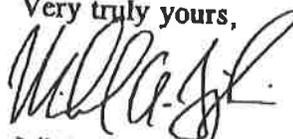
MURTHA CULLINA LLP

William Mulholland, Zoning Officer  
July 9, 2004  
Page 2

You also claim that no regulations were submitted as part of the application. If the courts should rule in favor of the applicants in their pending appeal, then the regulations previously proposed will become applicable to the property. Those are the regulations that we have proposed to govern the units.

You have asked that for "copies" of the affordability plan to be submitted as part of this current application. We are preparing the affordability plan and expect to deliver it to you within the next two weeks. It will not differ materially from the plan proposed in connection with the zone change application that is now before the Superior Court, but it will be updated to the specifics of the current application. State law requires us to file one copy of the plan, but we will be pleased to provide you with additional copies. Please let me know how many more you would like to have us supply.

Very truly yours,



Michael A. Zizka

Enclosure

cc: Glenn Russo, Landmark Development Group, LLC (w/out encl.)

07/17/02 CIA

**PROPOSED AMENDMENTS TO  
EAST LYME ZONING REGULATIONS  
(MODIFIED PURSUANT TO CONN. GEN. STAT. § 8-30g(h))**

The Applicants propose to amend the Zoning Regulations of the Town of East Lyme by adding the following new section, entitled "Affordable Housing Conservation District."

**SECTION \_\_\_: - AFFORDABLE HOUSING CONSERVATION DISTRICT**

General Description and Purpose: A district designed to provide for, encourage and accommodate affordable housing, as defined by the Connecticut General Statutes §§ 8-39a and 8-30g, *et seq.*, within a development that also provides substantial open space, conserves important natural resources, and helps fulfill coastal area management objectives.

1. DESIGNATION OF AFFORDABLE HOUSING CONSERVATION DISTRICT - An Affordable Housing Conservation District (AHCD) may be proposed for and located on parcels of land, or combinations of adjacent parcels of land, containing at least fifty (50) acres, which may include areas of significant natural value, such as inland wetland areas or shoreline areas along rivers or estuaries.
2. PERMITTED USES - The following uses of buildings and/or land and no others are permitted:
  - 2.1 Single-family detached dwellings.
  - 2.2 Multi-family dwellings.
  - 2.3 Public open space and recreational facilities.
  - 2.4 Any accessory use customarily incidental to any of the above permitted uses.
3. DIMENSIONAL AND BULK REGULATIONS
  - 3.1 LOT SIZE - Lots for single-family dwellings shall be no less than 40,000 square feet. Lots for multi-family dwellings shall be no less than 400,000 square feet.
  - 3.2 HEIGHT - The maximum height of single-family detached dwellings shall be thirty-five (35) feet. The maximum height of multi-family structures shall be forty-five (45) feet.

Zoning Commission 8/5/04 4pg. PH I + II

**3.3. MULTI-FAMILY UNIT DENSITY - The maximum number of multi-family dwelling units permitted on any lot shall be as follows:**

- 1 bedroom: : 5445 Sq. Ft./Unit (8 units/acre)
- 2 bedrooms : 7260 Sq. Ft./Unit (6 units/acre)
- 3 or more bedrooms : 8712 Sq. Ft./Unit (5 units/acre)

The foregoing densities are maximum densities that may be permitted within an AHCD. Where public sewer or water connections are not available, it is understood that the maximum number of dwelling units may be further limited by the natural capacity of the land to accommodate subsurface sewage disposal systems and /or water supply wells. At the time of submission of a proposed site plan for the development of an approved AHCD, the applicant must provide information demonstrating the feasibility of accommodating all proposed dwelling units with public or private sewage disposal and water supply facilities.

**3.4 YARDS**

- Front Yard : 25 feet.
- Side Yards : 25 feet.
- Rear Yard : 50 feet.

**3.5 WETLAND SETBACKS - No residential building shall be constructed within one hundred (100) feet of any inland wetland, as defined by Conn. Gen. Stat. § 22a-38. No residential building shall be constructed within one hundred (100) feet of the Niantic River or Latimer's Brook.**

**3.6 LOT COVERAGE - The total lot coverage of all buildings and structures on any lot shall not be greater than 30 percent of the lot area.**

**3.7 TRAFFIC ACCESS - Any proposed intersection of an interior access road with an existing state or local highway shall meet applicable state traffic regulations.**

**3.8 OFF-STREET PARKING - Off-street parking spaces shall be provided in accordance with the following minimum requirements:**

- a. Two spaces for each detached single-family dwelling.
- b. In multi-family dwellings, one and one-half spaces for a one-bedroom unit, two spaces for units containing two or more bedrooms, and one additional guest parking space for every three multi-family units on a lot.

- c. Spaces within garages shall count towards the required minimum number of spaces.
4. OPEN SPACE AND COASTAL ACCESS PLAN - No development shall be permitted in any Affordable Housing Conservation District unless, prior to the approval of such development, a plan is submitted pursuant to which no less than twenty percent (20%) of the area to be developed has been set aside as open space, to be dedicated to the Town of East Lyme or such other governmental entity, land trust, or nonprofit eleemosynary or conservation organization as the East Lyme Zoning Commission may designate. If any portion of the AHCD adjoins the Niantic River, the Open Space Plan must provide for public access along at least twenty percent (20%) of the shoreline, with such access areas being at least one hundred (100) feet in depth, as measured landward from the shoreline.
5. ENVIRONMENTAL REVIEW - Any development plan for property located within two hundred (200) feet of the Niantic River shall be accompanied by an environmental assessment of the coastal resources within such area and the potential for any adverse impacts that may occur as a result of such development.
6. PHASED APPROVAL - The applicant may request an approval of the development plan to be completed in stages. The minimum amount of land to be included within any single stage of development shall be five acres. Each stage shall be capable of independent existence without the completion of succeeding stages. Buffer requirements shall not apply to the common line between stages of development.
7. AFFORDABLE HOUSING RESTRICTIONS
- 7.1 Prior to the issuance of any building permit for a development approved pursuant to this Article, there shall be recorded in the East Lyme land records a document entitled "Affordable Housing Development Restrictions," executed by the owner of the AHCD; dated, witnessed, and acknowledged in the manner required for deeds; containing a real estate description of the AHCD and containing substantially the following language in accordance with § 8-30g *et seq.*:
- "Not less than thirty per cent of the dwelling units of a development in the AHCD will be conveyed by deeds containing covenants or restrictions ("deed restrictions") which shall require that such dwelling units shall be sold or rented, at or below prices which will preserve the units as housing for which persons pay thirty per cent or less of their annual income, where such income is less than or equal to eighty percent

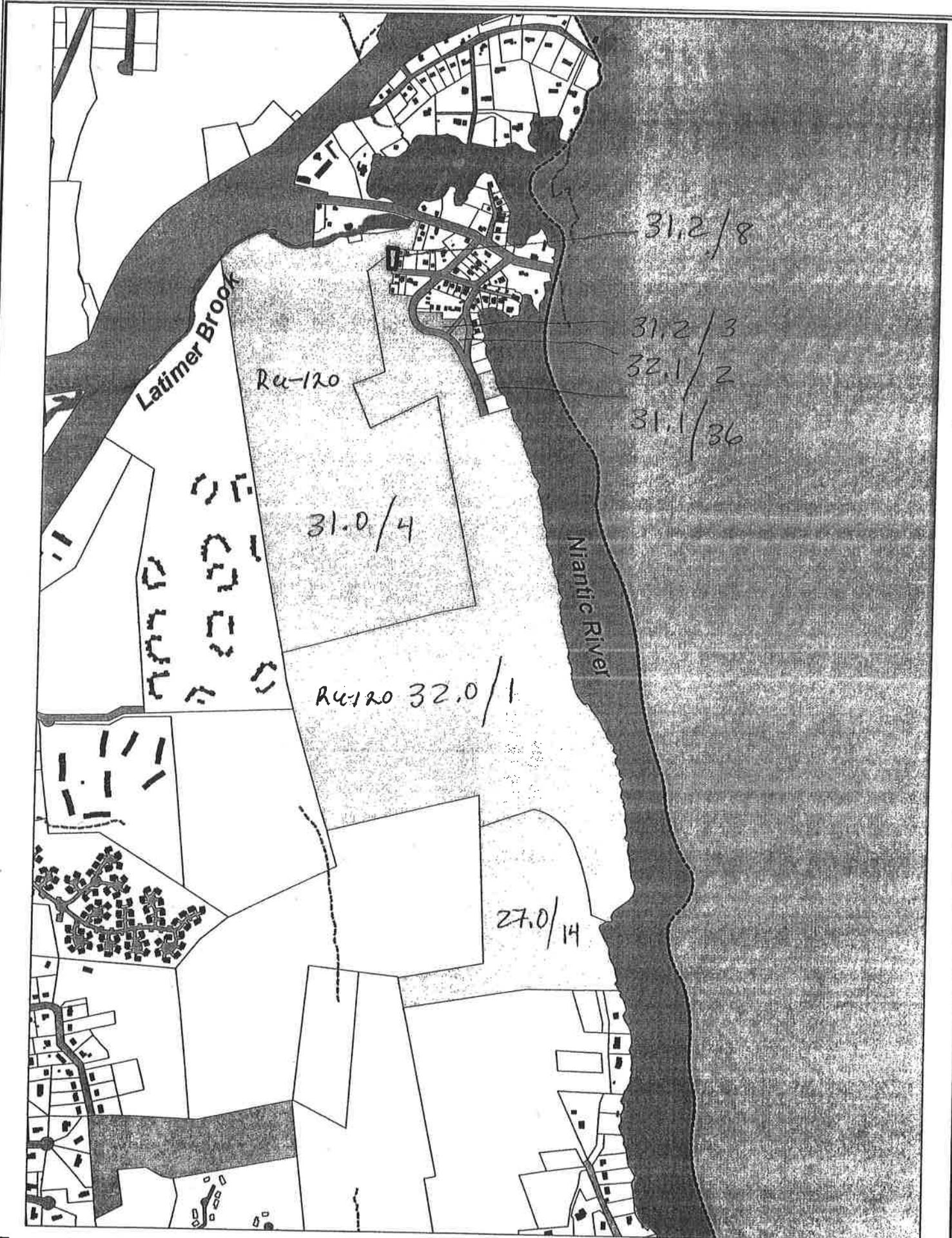
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of the median income. Such restrictions shall remain in force for at least forty years after the initial occupation of the proposed development.

Within the AHCD herein described, not less than fifteen percent of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to sixty percent of the median income. The remainder of the dwelling units conveyed subject to the deed restrictions shall be sold or rented to persons and families whose income is less than or equal to eighty per cent of the median income.

'Median income' means, after adjustments for family size, the lesser of the state median income or the area median income for the area in which East Lyme is located, as determined by the United States Department of Housing and Urban Development.

- 7.2 The owner of the land and buildings within the AHCD may, during such 40 year period, change the designation of which units within the AHCD shall be maintained as affordable, provided that the minimum 30% set aside shall be maintained, and the AHCD as a whole shall continue to comply with the provisions of these restrictions.
- 7.3 These restrictions may be enforced by the applicant or by the East Lyme Zoning Enforcement Officer or the East Lyme Housing Authority, or any other suitable town agency selected by its Board of Selectmen.



Town of East Lyme

Planning Commission



This map is for assessment purposes only.  
It is not to be used for conveyance or as a lot survey.



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8/5/04

Date Printed: July 14, 2004

PH I + II

100

# TOWN OF EAST LYME

## Zoning Commission

P.O. Box 519  
Niantic, CT 06357

July 20, 2004

Advertising Department  
The Day Publishing Co.  
Eugene O'Neill Drive  
New London, CT 06320

FILED IN EAST LYME TOWN  
CLERK'S OFFICE

July 23 2004 at 9:55 AM  
PM  
Kathleen B. Williams  
EAST LYME TOWN CLERK

Please publish the following notice on July 23, 2004 and again on August 2, 2004.

### TOWN OF EAST LYME ZONING COMMISSION Notice of Public Hearing

The East Lyme Zoning Commission will hold a Public Hearing on August 5, 2004, at 7:30 p.m., at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, CT, to consider the following:

1 Application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC to amend the East Lyme Zoning Regulations by adding a new Section entitled "Affordable Housing Conservation District."

2 Application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC for a change of zone for properties identified in the application as "Tax Map 27, Lot 14; Map 31, Lot 4; Map 31.2, lots 3 and 8; Map 32.1, lots 2 and 36; Map 32, Lot 1, from their existing zoning designation to an affordable housing development zoning district designation.

Copies of the applications are available for public viewing in the offices of the Town Clerk and the Zoning Official.

*Mark Nickerson*  
Mark Nickerson,  
Chairman

Zoning Commission 8/5/04 1 pg.



# STATE OF CONNECTICUT DEPARTMENT OF ENVIRONMENTAL PROTECTION



August 4, 2004

Mr. Edward P. Gada, Chairman  
East Lyme Zoning Commission  
P.O. Drawer 519  
Niantic, Connecticut 06357

### Fax Transmittal Memo

# of Pages **5**

To: <i>Bill Mulholland</i>	From: <i>Harvey Belmont</i>
Co: <i>739-6930</i>	Co: <i>OLISP CT DEP</i>

**Subject:** Possible Zone Change Application and Amendment Proposal for a Affordable Housing Conservation District Regulation (AHCD) by Landmark Development Group LLC,

**Finding:** Inconsistent, with comments

Dear Commissioners:

Thank you for notifying this Office of the "Possible Zone Change Application & Amendment Proposal" noted above. The submissions received by OLISP on July 19<sup>th</sup>, 2004 consist in their entirety of a cover letter to OLISP from your Commission dated July 14, 2004, the proposed affordable housing conservation district text (an exact copy of that previously proposed in September of 2002) and two letters from Murtha Cullina LLP to William Mulholland dated May 12, 2004 and July 9, 2004 respectively. While we understand that revised conceptual site plans were submitted to the town on July 30, 2004, OLISP has not been forwarded these plans to aid in our review of the possible zone change and regulation amendment.

Exactly what is being applied for is not clear to us. Murtha Cullina LLP's letter of July 9, 2004 on behalf of the applicant states that the submission is not intended, nor is it apparently eligible, to be characterized "as a site plan application, special permit or any other type of application." Accordingly, we presume that a coastal site plan review (CSPR) application is not being sought at this time. However, if the commission determines that the submissions do constitute a CSPR application, we request the hearing be held open to afford us an opportunity to review and comment on the complete coastal site plan review application and any corresponding site plans that have been submitted. Otherwise, if the commission determines that a CSPR application has been submitted, we recommend the coastal site plan be denied without prejudice due to the omission of an actual CSPR application being submitted in accordance with the CGS Section 22a-109 and 22a-108 of the Connecticut Coastal Management Act (CCMA).

On the other hand, your letter of July 14 states that, "It is possible that this application may ultimately be viewed as an official zone change request and an amendment proposal that would be reviewed as such." If the commission determines that the submission is a zone change request, C.G.S. Section 22a-104(e) requires that any zoning regulations or changes thereto affecting the area within the coastal boundary, shall be consistent with the policies of C.G.S. Section 22a-92 and the criteria of subsection (b) of Section 22a-102 of the CCMA. Further, this section requires that notification be sent to the Commissioner of Environmental Protection at least 35 days prior to the commencement of the public hearing. Once notified, our Office is responsible for reviewing the proposal's consistency with the policies of Section 22a-92

*Zoning Commission 8/5/04 QH 1 + 11 5pg.  
Read 4th*

and the criteria of Section 22a-102(b) of the CCMA. Since we were not notified of this "Possible Zone Change Application" until July 19, 2004, pursuant to Section 22a-104(e) the commission may not commence a public hearing on a zone change application until August 23, 2004. However, your July 14, 2004 letter states that the commission has "tentatively scheduled a Public Hearing for August 5, 2004." We strongly recommend that any public hearing on a zone change application associated with this submission be postponed until August 23, 2004.

Notwithstanding the apparent procedural irregularities associated with the "Possible Zone Change Application & Amendment Proposal," given the extensive and complex history of development proposals for the Oswegatchie Hills area, OLISP believes it would be useful to the commission to provide substantive comments on the materials we received on July 19, 2004. To the extent that these materials constitute all or part of a zone change application pursuant to Section 22a-104(e), the commission must consider our comments before final action on such proposed zone change.

#### Current Proposal

Based on the materials received on July 19, the proposed zone change and regulation amendments would change the RU 120 designation for the subject parcel. The proposal includes an affordable housing zone change and regulation amendment to allow 352 total units in Phase I on approximately 230 acres of land along the Niantic River. Since this appears to be an exact duplicate of the Affordable Housing Conservation District (AHDC) that was previously submitted, OLISP again submits detailed comments very similar to that previously submitted in a letter to Mark Nickerson on September 18, 2002 (attached). As the Commission is aware, OLISP also provided written comments dated April 24, 2002 (attached) to another Landmark proposal which were delivered in person at the hearing on April 25, 2002.

Based on the applicant's letter of May 12, 2004, the current proposal is virtually identical to the previous proposal, except that the project is now being phased with Phase I including 352 initial units. However, the July 19 proposal's overall allowable densities would appear to be exactly the same as the last proposal (since the proposed AHDC is exactly the same text). The only other item that has changed is the fact that the underlying zoning in the Oswegatchie Hill area is now RU120, which allows one single family on a minimum of almost 3 acres.

As detailed below, OLISP finds the affordable housing conservation district regulation and zone change inconsistent with the policies and standards of the CCMA based on severe development constraints at the site, and the proposal's unacceptable adverse impacts to water quality and coastal resources, as well as inconsistency with the CCMA, the Town's Plan of Development, Municipal Coastal Program and Harbor Management Plan. The basis for these findings has been set forth in more detail in our enclosed April 24, 2002 letter; but we will summarize that discussion in this letter for the convenience of the commission's deliberations.

1. The reduction in overall potential density will not significantly alleviate any of the potential adverse impacts to coastal resources, water quality, submerged aquatic vegetation, finfish, shellfish and wildlife on the Oswegatchie Hills site or other potential sites and in the Niantic River and Latimer Brook. The proposal would allow for inappropriately intensive development to be proposed in the Oswegatchie Hill region of East Lyme in an area incapable of supporting intensive development without significant environmental consequences. The subject site is characterized by both shallow depth-to-bedrock and steep slopes which, as noted in our April 24, 2002 letter, would mandate significant alterations of the site to provide suitable land for road access, septic systems or water and sewer service, and inhabited structures. Such alteration of this natural area and associated runoff would significantly impact coastal resources and water quality along the river. Such a development would also cause sedimentation and erosion, nitrogen loading, and impacts on submerged aquatic vegetation, finfish, shellfish and wildlife on the site and in the Niantic River and Latimer Brook. These potential adverse impacts and severe development constraint are discussed in detail in the April 24, 2002 letter.
2. Given the overall potential density and resource constraints of the Oswegatchie Hills site, the proposed 100 foot setback for residential units from inland wetlands, the Niantic River and Latimer Brook would not minimize the adverse impacts to the coastal resources, water quality to any significant degree. This setback only applies to residential units and does not include a restriction on clear-cutting or other ground disturbances including blasting, grading or filling on steep slopes which can have equal if not greater potential to adversely impact resources and water quality. By contrast, the current zoning allows only one residential unit per 120,000 square feet, which is significantly less overall disturbance, clear-cutting, blasting, grading and filling in proximity to sensitive coastal resources.
3. In an apparent effort to satisfy the water-dependent use criteria of the CCMA, the proposal has been modified to specify 20 percent of the shoreline as public access for sites which adjoin the Niantic River (per Section 4 -- Open Space and Coastal Access Plan). However, we find this proposal for 20 percent shoreline public access to be too restrictive and limited in scope to comply with the water-dependent use criteria of the statute. The CCMA coastal site plan review process requires that both active water-dependent uses (e.g., marina) and passive uses (e.g., linear public access) be evaluated on a case-by case basis, taking into account a site's unique characteristics (topography, resources etc.), consistency with CCMA criteria and other town plans as well as the effects of the proposed use on future water-dependent development opportunities. No two sites are the same, and a percentage "cookie cutter" approach to meet the water-dependent use criteria is simply not appropriate and would undercut the required evaluation process each coastal town must undertake during the coastal site plan review process on a site by site basis. Rather, we would recommend that any affordable housing regulation and zone change proposal incorporate a general reference to the statutory water-dependent use criteria giving highest priority and preference to water-dependent uses (as detailed in our attached April 24, 2002 comments) along with acknowledgement of the Town's water-dependent and public access planning goals. With respect to the Oswegatchie Hills site, a 20 percent shoreline access is certainly not appropriate for

August 4, 2004

- this site for the reasons noted above and for the same reasons detailed in our April 24, 2002 comments. Specifically, overall intensity of the development anticipated with the modified regulation would likely make it difficult to provide any meaningful public access to meet the water-dependent use criteria. The development density proposed would necessarily entail the removal of much of the sensitive resource features that make Oswegatchie Hills appealing as a potential public access site.
4. The current proposal includes a Section 5 – Environmental Review Section -- for areas within 200 feet of the Niantic River to require an environmental assessment of the coastal resources and the potential for any adverse impacts that may occur as a result of such development. However, Section 5 is inconsistent with the CCMA's Coastal Site Plan Review process and should be eliminated or revised to conform to the applicable statutes. The CCMA already requires that coastal site plan review be conducted (per sections 22a-105 through 109 of the C.G.S.) for significant development projects in areas within the town's coastal boundary area (as legally defined, approximately 1000 feet from the Niantic River or Long Island Sound) with a similar purpose. Furthermore, the coastal site plan review process, long established and implemented locally, is more comprehensive in scope and legally based than the poorly defined environmental review process proposed.
  5. The current proposal OLISP received does not address the feasibility of sewer and water extension per the Sewer and Water Section issues as detailed in the April 24, 2002 letter.
  6. Given the soils, steep slopes, and shallow depth to bedrock at the Oswegatchie Hills site, the current proposal does not address the feasibility of community septic system or individual systems per the Sewer and Water Section issues and Coastal Resources and Water Quality Impacts Section issues as detailed in the April 24, 2002 letter. Any affordable housing regulation adopted should require a determination as to whether public sewer and water or private community septic system and wells can serve any development proposal prior to the development proposal being reviewed by the town.
  7. The current proposal does not address the Inconsistencies with Town Plans Section as detailed in the April 24, 2002 letter.
  8. The current proposal does not address compliance with CGS sections 8-2(b) and 8-23 as detailed in the April 24, 2002 letter.

In conclusion, it is not clear whether or not the "Possible Zone Change Application & Amendment Proposal" submitted by Landmark Development Group LLC and received by OLISP on July 19, 2004 is properly before the commission either as a coastal site plan review application or as a zone change request. If the submission is a coastal site plan review application, it is incomplete. If the submission is a zone change application, the commission must allow 35 days for OLISP to submit comments pursuant to CGS section 22a-104(e). To the extent that a zone change application is properly before the commission, OLISP finds the proposed regulation and zone change inconsistent with the policies and standards of the Connecticut Coastal Management Act, based on severe development constraints, the potential to adversely impact resources and water quality, inconsistency with the water-dependent use policies, the Town's Plan of Development (POD), Municipal Coastal Program (MCP) and Harbor

East Lyme ZC

- 5 -

August 4, 2004

Management Plan (HMP). The proposed regulation and zone change do not take into account reasonable consideration for the restoration and protection of the ecosystem and habitat of Long Island Sound. OLISP also believes that the intensity of the proposal would be inconsistent with C.G.S. section 22a-422, which states in part "that the pollution of the waters of the state is inimical to the public health, safety and welfare of the inhabitants of the state, is a public nuisance and is harmful to wildlife, fish and aquatic life and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water." Finally, in keeping with the explicit recommendations of the Town in its POD, MCP and HMP, and the policies and standards of the CCMA, we would strongly recommend denial of the proposed regulation and zone change of the subject Oswegatchie Hills site.

Should you have any questions regarding this letter or any other coastal management or Long Island Sound matter, please feel free to contact me at 860-424-3034.

Sincerely,



Marcy L. Balint, Sr. Coastal Planner  
Office of Long Island Sound Programs

Attachments

**SOUTHEASTERN CONNECTICUT COUNCIL OF GOVERNMENTS  
REGIONAL PLANNING COMMISSION  
5 Connecticut Avenue, Norwich, Connecticut 06360  
(860) 889-2324/Fax: (860) 889-1222/Email: seccog@snet.net**

---

July 27, 2004

Mr. Edward P. Gada, Chairman  
East Lyme Zoning Commission  
PO Box 519  
Niantic, CT 06357

Dear Mr. Gada:

I am writing in response to the proposed zone change and amendments to East Lyme's Zoning Regulations as contained in correspondence dated July 14, 2004 (received July 15, 2004), sent by certified mail, number 70033110000497757220. The proposal was submitted by Landmark Development Group LLC and Jarvis of Cheshire LLC for a development of a residential community as "affordable housing".

The proposed changes were referred to this agency under Section 8-3b of the Connecticut General Statutes. The Committee was scheduled to review this referral on July 19, 2004, but lacked a quorum. Consequently, a special meeting was scheduled and held on Monday, July 26, 2004.

Based on a review of the material submitted in correspondence dated July 14, 2004, which included proposed amendments to the town's zoning regulations with a date of 7/17/02, the Committee finds that the proposed text amendments are not consistent with the Regional Plan of Conservation and Development, adopted by the Southeastern Connecticut Council of Governments on October 15, 1997. The Regional Conservation and Development Policy Guide Map (attached) classified the project area as Existing and Proposed Low Density, and Proposed Conservation Area, not high density/residential or mixed urban uses, as proposed. Consequently, the committee concluded that the density proposed in the regulation for this area could have an adverse inter-municipal impact. In addition, the amendment's proposed high density could have an adverse impact with regards to increased traffic on the adjacent State route system given the project's possible location.

If you have any questions, please call me at 889-2324.

Sincerely,



Robert J. Baron, Jr. Vice Chairman  
Regional Planning Commission and  
Reference Committee Member

RJB/wl

C:\MyFiles\RP C\referencecmteltrsJul04.wpd

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Member Municipalities: Bozrah \* Colchester \* East Lyme \* Franklin \* Griswold \* City of Groton \* Town of Groton \* Ledyard \* Lisbon \* Montville \* New London \* North Stonington \* Norwich \* Preston \* Salem \* Sprague \* Stonington \* Stonington Borough \* Voluntown \* Waterford

Zoning Commission

8/5/04

RH I + II

Read  
STN

# Town of

P.O. Drawer 519  
Planning Commission



# East Lyme

108 Pennsylvania Ave  
Niantic, Connecticut 06357  
(860) 691-4114  
Fax (860) 739-6930

August 5, 2004

Mr. Mark Nickerson  
East Lyme Zoning Commission  
P.O. Box 519  
Niantic, CT 06357

**RE: 8-3a Referral -Application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC for a Possible Zone Change Application & Amendment to the Zoning Regulations to allow an affordable housing development (Assessor's Map 27, Lot 14; Map 31, Lot 4; Map 31.2, Lots 3 & 8; Map 32.1, Lots 2 & 36; and Map 32, Lot 1)**

Dear Mr. Nickerson,

At its meeting on July 20, 2004, the East Lyme Planning Commission found the above referenced application INCONSISTENT with the Plan of Conservation and Development. It is the finding of the Planning Commission that the application submitted for review under 8-3a of the CT General Statutes is the same or substantially the same as the application submitted in September 2002. In as much as the issues that prompted the findings of the Report to the Zoning Commission dated September 17, 2002, the Planning Commission hereby submits a copy of this report (Attachment A) in response to the current application for a possible zone change and amendment to the zoning regulations. As an update to this report, please note the following:

1. Affordable Housing Regulations have since been adopted by the Town based on the recommendations contained in Section B. of the Report. A copy of the regulations that went into effect on August 15, 2003 is hereby included in this report (Attachment B).
2. The applicant has submitted a set of plans for Phase I of a development consisting of 352 units on a portion of the properties proposed for designation as an Affordable Housing District. It must be assumed by this reference and notes on the plans that future phases of development are planned for the remaining undeveloped portions of the property. The analysis contained in Section C of the September 17 Report (Attachment A) pertaining to a proposed density of up to 688 units remains valid.
3. While it appears from the plans submitted, access for Phase I of the development is proposed through Calkins and River Road, there is significant evidence from a previous traffic analysis prepared by Wilbur Smith & Associates (included with Attachment D) calling the adequacy of these existing roads to handle additional traffic into question. Because of narrow right of ways and existing development patterns, there is little to no potential to upgrade these roads to make them adequate to serve an additional 352 units. It will likely become necessary to utilize the road frontage on Boston Post Road adjacent to Latimer Brook for access. As noted in item No. 4 of Section C (Attachment A), there are environmental consequences of using this frontage as access point. The applicant shows additional access from the property to the North but has submitted no evidence indicating that an easement has been obtained.

Zoning Commission 8/5/04 RH1 + II 2 PG. Read 6th

4. The Report from the Planning Commission dated September 17, 2002 includes by reference the previous Report from the Planning Commission dated March 20, 2002. This report in its entirety is included as part of this referral (Attachment C). The report contains a description of the physical features and site constraints of the property proposed for the affordable housing development, a history of the Town's efforts to protect this property from unsuitable development and specific findings related to consistency with the Plan of Conservation and Development for the development of affordable housing in the Oswegatchie Hills area.
5. Exhibit No. 6 from the public hearing for the application submitted in November 2001 containing supporting documents for the March 20, 2002 Report is included with this report (Attachment D).
6. The Soil Suitability Analysis submitted as Exhibit No. 7 has been updated with additional information and is included with this report (Attachment E).
7. Since the time of the previous reports issued by the Planning Commission on this matter, the state plan of conservation and development has undergone an update. The Town of East Lyme has been informed that the Locational Guide Map of the Recommended Conservation and Development Policies Plan for CT 2004-2009 will include designation of a portion of the property which is the subject of this application as a Conservation Area. This area coincides with the similarly designated Conservation Area currently under the purview of the Niantic River Gateway Commission.

**VOTE: 5-0-0**

Respectfully submitted,

  
Francine Schwartz, Chairwoman *M. P.*

received  
7/30/04 CIA

# MURTHA CULLINA LLP

A T T O R N E Y S A T L A W

CITYPLACE I  
185 ASYLUM STREET  
HARTFORD, CONNECTICUT 06103-3469

TELEPHONE (860) 240-6000  
FACSIMILE (860) 240-6150  
www.murthlaw.com

MICHAEL A. ZIZKA  
(860) 240-6144  
MZIZKA@MURTHALAW.COM

July 22, 2004

## TO BE HAND DELIVERED

East Lyme Zoning Commission  
Town Hall  
108 Pennsylvania Avenue  
Niantic, Connecticut 06357

Re: Application for Approval of Affordable Housing Plans

Dear Commission Members:

As you may recall, this firm is legal counsel to Landmark Development Group, LLC and Jarvis of Cheshire, LLC (hereafter referred to as "Applicants") in connection with their pending application for approval of an "affordable housing application," as defined by Conn. Gen. Stat. § 8-30g. The application proposes the creation of 120 apartment units, which would be rented at rates that would qualify the units as "affordable housing" units under state law, and 232 market-rate condominiums.

This letter is to be hand delivered by the Applicants, accompanied by copies of plans for the affordable housing development showing several different, but equally feasible, methods of providing sewer and water service to the proposed residences. It is the Applicants' position that that they are legally entitled to connect the proposed development to the public sewer and to public water. Consequently, the Applicants are planning to sewer the proposed development by gravity lines to Calkins Road, and thence to Boston Post Road in the area previously approved for the Golden Spur Hotel. The accompanying development plans show this proposed sewer layout. As noted above, the Applicants contend that they have a legal right to this connection and they will pursue it through all appropriate legal means.

Even if the proposed sewer route through Calkins Road should prove unavailable, the Applicants could also create an alternative route through an existing right-of-way to King Arthur Drive. Although the Applicants will use the Calkins Road route if that route is ultimately approved by the anticipated judicial processes, the alternative King Arthur Drive route is also shown on the accompanying plans to demonstrate its feasibility.

Zoning Commission PH I + II 8/5/04 2 pgs.

Read  
7TH

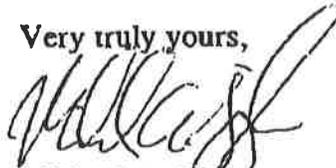
East Lyme Zoning Commission

July 22, 2004

Page 2

Finally, even if the Water and Sewer Commission were successful in its effort to block a sewer connection for this affordable housing project, the Applicants have adequate soil quality and capacity for on-site, subsurface sewage disposal facilities. The land will also support on-site water supplies, if necessary, and proposed locations for on-site wells are shown on the plans. Septic testing results are shown on the plans previously submitted to the Commission. Therefore, the proposed development can be properly served by sewer and water facilities regardless of whether access is provided to the public sanitary sewer line or to public water.

Very truly yours,



Michael A. Zizka

cc: Glenn Russo, Landmark Development Group, LLC

# Town of



# East Lyme

Office of Water & Sewer Commission

Tel: 860-739-6931 • Fax: 860-739-6930

Post Office Box 519

Niantic, Connecticut 06357

TO: Edward Gada, Secretary

FROM: Wayne Fraser *WF*

DATE: July 29, 2004

RE: Referral - Possible Zone Change Application & Amendment Proposal  
Landmark Development, LLC

**received**  
8/2/04 (E)

Your subject referral dated July 14, 2004 was considered by the Water & Sewer Commission on July 27, 2004. It was determined by the Commission that the property described is not served by Town water and is not within the sewer shed.

A copy of the Commission's motion is attached.

WLF/emn

Zoning Commission PH 1 - II 8/5/04

Rec'd  
8/2/04  
2 pgs.

**\*\*MOTION (8)**

Mr. DiGiovanna moved to reply to the Zoning Commission regarding the Spinnaker RU-40 to SU-E zone change for 21 units of elderly housing that this location is within the sewer shed and is served by water.

Mr. Spencer seconded the motion.

Vote: 5 - 0 - 0. Motion passed.

Note: Mr. Zoller rejoined the table.

**\*\*MOTION (9)**

Mr. DiGiovanna moved to reply to the Zoning Commission regarding the 'Riverview Heights' possible zone change and amendment proposal of Landmark Development Group LLC for an affordable housing community, that water and sewer are not available to this site which is excluded from the sewer shed and not served by water.

Mr. Zoller seconded the motion.

Mr. Mingo noted that he did not feel that they should be discussing this, as they are currently involved in litigation with this same developer.

Vote: 5 - 0 - 1. Motion passed.

Abstained: Mr. Mingo

Mr. William Mulholland  
Zoning Officer  
East Lyme Town Hall  
Pennsylvania Avenue  
Niantic, CT 06357

August 2, 2004

Re: Possible zone change application and amendment proposal, Landmark  
Development Group LLC

Dear Mr. Mulholland,

Thank you for the recent letter regarding the possible zone change and  
proposed review by the Niantic River Gateway Commission.

In as much as the Niantic River Gateway Commission, per Connecticut State  
Statutes Section 25-109g(b), is required to review and act upon any  
proposed zone change affecting land that falls within the Niantic River  
Gateway Conservation Zone, it is premature to comment at this time upon  
any proposal currently before the town's zoning and/or planning  
commission(s).

As always, I appreciate your courtesies.

Sincerely,



Mark H. Powers  
4 Round Rock Road  
Niantic, CT 06357

10/2/04  
received

Zoning Commission RH I+II 8/5/04

Read  
9th



**TOWN OF EAST LYME**  
EAST LYME HARBOR MANAGEMENT/SHELLFISH COMMISSION

Chairman  
Donald F. Landers Jr.

Treasurer  
Steven Dinsmore

Secretary  
Marvin Schutt

July 28, 2004

Mr. Ed Gada, <sup>Secretary</sup>~~Chairman~~  
East Lyme Zoning Commission  
Town of East Lyme  
P.O. Box 519  
Niantic, CT 06357

**RE: Referral – Possible Zone Change Application & Amendment Proposal Landmark Development Group, LLC and Jarvis of Cheshire, LLC**

Dear Mr. Gada,

The members of East Lyme Harbor Management/Shellfish Commission wish to thank the Zoning Commission for providing the commission with the opportunity to review the subject zoning change request. As you know, the commission provided a consistency review of an earlier Landmark Development Group LLC proposal in March 2002 and concluded that the proposed development was fundamentally inconsistent with the Town's Harbor Management Plan (HMP)<sup>1</sup>. Following a review of the current development plan, our conclusions remain the same. We continue to find significant inconsistencies between the development plan and the goals, objectives and policies adopted in the East Lyme HMP. Our findings of inconsistency are the same as in 2002 and the details are provided below.

**Consistency Review**

A consistency review of a proposal submitted to the Harbor Management Commission consists of a review of the Harbor Management Plan to determine whether the proposal is consistent with the Commission's Goals, Objectives, Policies and Water Use Plans and Management Guidelines. The East Lyme Harbor Management Commission's Goals, Objectives, and Policies are contained in Chapter 4 of the Harbor Management Plan. The East Lyme Harbor Management Water Use and Management Guidelines are contained in Chapter 5 of the Harbor Management Plan.

The East Lyme Harbor Management Water Use and Management Guidelines identified in Chapter 5, Page 5-4 for the Oswegatchie Hills are reprinted below:

**“6. Oswegatchie Hill Waterfront**

- a) The Town should implement (through appropriate zoning and other regulations) the policies of the East Lyme Coastal Area Development Plan to protect the natural resource values of the Oswegatchie Hill area.

*submitted this evening*  
*Zoning Commission PH I+II 8/5/04*

*Read*  
*10th*



EAST LYME HARBOR MANAGEMENT/SHELLFISH COMMISSION

- b) Any future development in the Oswegatchie Hill area should be of a density and type consistent with the capability of coastal land and water resources in the area to accommodate this development without significant impacts on natural resource values occurring.
- c) The Town should pursue any opportunities that may arise in the future to acquire land that is now privately-owned in the Oswegatchie Hill area and to maintain this land as permanent Town open space.
- d) The Town should also encourage the use of private initiatives, including the use of conservation easements and other measures, to protect undeveloped lands in the Oswegatchie Hill area.
- e) Through its Coastal Site Plan Review process, the Town should require that future proposals to develop the Oswegatchie Hill waterfront provide for suitable public water access facilities in accordance with the policies of the Connecticut Coastal Management Act. The Town should identify the types of future public water access facilities most desirable for this area as soon as possible.”

The development plan under review is clearly inconsistent with these guidelines. The proposal's impact on the natural resources of the Oswegatchie Hills would be extremely detrimental. The density of the proposed development continues to be enormously high (5 to 8, three-story units per acre). The proposal is at crossed purposes with the stated desire of the commission to protect undeveloped lands in Oswegatchie Hills. If the development goes forward, the Open Space Plan and provision to provide general public water access facilities should be increased and include areas at least 200 ft in depth as measured landward of the shoreline.

In addition, the proposed development plan continues to be inconsistent with several other sections of the HMP.

For example, in Chapter 1 of the HMP, one of the major concerns identified in the Upper Niantic River Planning Unit is poor water quality. The plan states: "Future development, particularly of Oswegatchie Hill, could intensify water quality problems". Water quality in this area continues to be a major concern of the Commission and other State agencies. Recently, fish-kills have been reported during the summer in the Upper Niantic River. These events were attributed to low dissolved oxygen levels resulting from nuisance blooms of algae brought on by high nutrient run-off in the over-developed watershed.

In Chapter 3 of the Plan, one of the major Waterfront Use and Development Issues identified is "Possible Future Development in the Oswegatchie Hill Area". "...The possibility of future development in this area raises a number of concerns, including those related to the loss of a valuable natural watershed and wildlife habitat area, potential impacts on water quality in the Niantic River and other environmental impacts, and the need for special Town controls to protect natural values in the area. ..." Chapter 3 also includes "Protection of Scenic Quality"



EAST LYME HARBOR MANAGEMENT/SHELLFISH COMMISSION

as a Coastal resource Issue for the Town, and specifically mentions possible development of the Oswegatchie Hill area as a particular area of concern.

In Chapter 4 of the Plan, one of the coastal resources policies states, "Development activities in East Lyme's marine area should be balanced with the need to protect coastal resources and should not result in significant reductions in natural resource values". The scope and density of the proposed development is clearly inconsistent with this policy.

In conclusion, it is hard to imagine any development proposal that would be so dramatically opposed to the goals and objectives of the Harbor Management Plan. Oswegatchie Hills is one of the largest undeveloped parcels of land in the Connecticut coastal area of Long Island Sound. We should protect this unspoiled hillside from development that would destroy its natural beauty and environmental resource values. The Niantic River is one of the last rivers in the State of Connecticut where water quality is still suitable for recreational harvesting of clams, oysters and scallops. We must protect the Niantic River by preserving the natural environment of the hills above it. We urge that the zoning commission disapprove this zoning change request. Thank you for the opportunity to comment on this important matter.

Sincerely

Don Landers  
Chairman

cc: Wayne Fraser  
ELHMSC File

<sup>1</sup> Letter from East Lyme Harbor Management/Shellfish Commission to Mr. Mark Nickerson, Chairman, East Lyme Zoning Commission dated March 26, 2002.

# TOWN OF EAST LYME

## ZONING COMMISSION

P. O. BOX 519

NIANTIC, CONNECTICUT 06357

1-860-691-4114

July 14, 2004

Hand-delivered

Town of East Lyme  
Town Clerk  
108 Pennsylvania Avenue  
Niantic, CT 06357

FILED IN EAST LYME TOWN  
CLERK'S OFFICE  
JUL 14 20 04 at 1:35 AM  
ESTER B. WILLIAMS  
EAST LYME TOWN CLERK

RE: Referral – Possible Zone Change Application & Amendment Proposal  
Landmark Development Group LLC

TO: East Lyme Town Clerk:

I am writing to refer the following application for your review and comment:

Application of Landmark Development Group LLC and Jarvis of Cheshire LLC for a “development of a residential community as an ‘affordable housing’”, as defined in Connecticut General Statute Section 8-30g(a)(1). A site plan accompanied the filing and is entitled “Riverview Heights”. The affected properties are identified in the application as East Lyme Assessor’s “Map 27, Lot 14; Map 31, Lot 4; Map 31.2, Lots 3 and 8; Map 32.1, Lots 2 and 36; and Map 32, Lot 1”.

It is possible that this application may ultimately be viewed as an official zone change request and an amendment proposal that would be reviewed as such. The Zoning Commission has tentatively scheduled a Public Hearing for August 5, 2004, at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, Connecticut at 7:30 P.M. Please forward your comments for inclusion into the public hearing record.

If you have any questions, please do not hesitate to contact the East Lyme Zoning Official, William Mulholland.

Very truly yours,  
Edward P. Gada, Chairman



EPG:drm  
Attachments

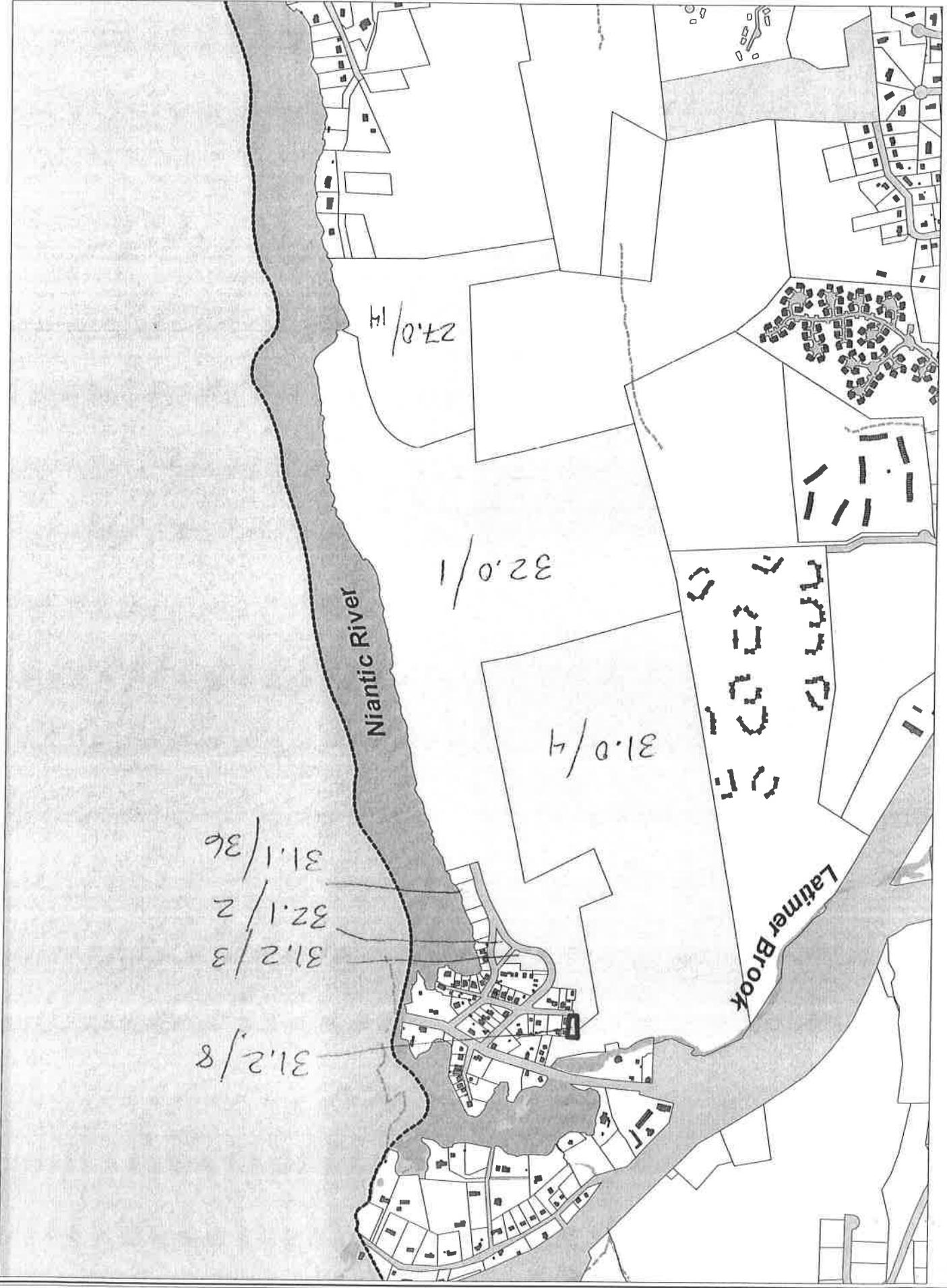


This map is not to be used for assessment purposes or as a lot survey.



1:11100

Date Printed: July 14, 2004



07/17/02 CIA

**PROPOSED AMENDMENTS TO  
EAST LYME ZONING REGULATIONS  
(MODIFIED PURSUANT TO CONN. GEN. STAT. § 8-30g(h))**

The Applicants propose to amend the Zoning Regulations of the Town of East Lyme by adding the following new section, entitled "Affordable Housing Conservation District."

**SECTION \_\_\_: - AFFORDABLE HOUSING CONSERVATION DISTRICT**

General Description and Purpose: A district designed to provide for, encourage and accommodate affordable housing, as defined by the Connecticut General Statutes §§ 8-39a and 8-30g, *et seq.*, within a development that also provides substantial open space, conserves important natural resources, and helps fulfill coastal area management objectives.

1. DESIGNATION OF AFFORDABLE HOUSING CONSERVATION DISTRICT - An Affordable Housing Conservation District (AHCD) may be proposed for and located on parcels of land, or combinations of adjacent parcels of land, containing at least fifty (50) acres, which may include areas of significant natural value, such as inland wetland areas or shoreline areas along rivers or estuaries.

2. PERMITTED USES - The following uses of buildings and/or land and no others are permitted:

2.1 Single-family detached dwellings.

2.2 Multi-family dwellings.

2.3 Public open space and recreational facilities.

2.4 Any accessory use customarily incidental to any of the above permitted uses.

3. DIMENSIONAL AND BULK REGULATIONS

3.1 LOT SIZE - Lots for single-family dwellings shall be no less than 40,000 square feet. Lots for multi-family dwellings shall be no less than 400,000 square feet.

3.2 HEIGHT - The maximum height of single-family detached dwellings shall be thirty-five (35) feet. The maximum height of multi-family structures shall be forty-five (45) feet.

7/7/02 CIA

**3.3. MULTI-FAMILY UNIT DENSITY** - The maximum number of multi-family dwelling units permitted on any lot shall be as follows:

- 1 bedroom: : 5445 Sq. Ft./Unit (8 units/acre)
- 2 bedrooms : 7260 Sq. Ft./Unit (6 units/acre)
- 3 or more bedrooms : 8712 Sq. Ft./Unit (5 units/acre)

The foregoing densities are maximum densities that may be permitted within an AHCD. Where public sewer or water connections are not available, it is understood that the maximum number of dwelling units may be further limited by the natural capacity of the land to accommodate subsurface sewage disposal systems and /or water supply wells. At the time of submission of a proposed site plan for the development of an approved AHCD, the applicant must provide information demonstrating the feasibility of accommodating all proposed dwelling units with public or private sewage disposal and water supply facilities.

**3.4. YARDS**

- Front Yard : 25 feet.
- Side Yards : 25 feet.
- Rear Yard : 50 feet.

**3.5. WETLAND SETBACKS** - No residential building shall be constructed within one hundred (100) feet of any inland wetland, as defined by Conn. Gen. Stat. § 22a-38. No residential building shall be constructed within one hundred (100) feet of the Niantic River or Latimer's Brook.

**3.6. LOT COVERAGE** - The total lot coverage of all buildings and structures on any lot shall not be greater than 30 percent of the lot area.

**3.7. TRAFFIC ACCESS** - Any proposed intersection of an interior access road with an existing state or local highway shall meet applicable state traffic regulations.

**3.8. OFF-STREET PARKING** - Off-street parking spaces shall be provided in accordance with the following minimum requirements:

- a. Two spaces for each detached single-family dwelling.
- b. In multi-family dwellings, one and one-half spaces for a one-bedroom unit, two spaces for units containing two or more bedrooms, and one additional guest parking space for every three multi-family units on a lot.

- c. Spaces within garages shall count towards the required minimum number of spaces.
4. OPEN SPACE AND COASTAL ACCESS PLAN - No development shall be permitted in any Affordable Housing Conservation District unless, prior to the approval of such development, a plan is submitted pursuant to which no less than twenty percent (20%) of the area to be developed has been set aside as open space, to be dedicated to the Town of East Lyme or such other governmental entity, land trust, or nonprofit eleemosynary or conservation organization as the East Lyme Zoning Commission may designate. If any portion of the AHCD adjoins the Niantic River, the Open Space Plan must provide for public access along at least twenty percent (20%) of the shoreline, with such access areas being at least one hundred (100) feet in depth, as measured landward from the shoreline.
5. ENVIRONMENTAL REVIEW - Any development plan for property located within two hundred (200) feet of the Niantic River shall be accompanied by an environmental assessment of the coastal resources within such area and the potential for any adverse impacts that may occur as a result of such development.
6. PHASED APPROVAL - The applicant may request an approval of the development plan to be completed in stages. The minimum amount of land to be included within any single stage of development shall be five acres. Each stage shall be capable of independent existence without the completion of succeeding stages. Buffer requirements shall not apply to the common line between stages of development.
7. AFFORDABLE HOUSING RESTRICTIONS
- 7.1 Prior to the issuance of any building permit for a development approved pursuant to this Article, there shall be recorded in the East Lyme land records a document entitled "Affordable Housing Development Restrictions," executed by the owner of the AHCD; dated, witnessed, and acknowledged in the manner required for deeds; containing a real estate description of the AHCD and containing substantially the following language in accordance with § 8-30g *et seq.*:
- "Not less than thirty per cent of the dwelling units of a development in the AHCD will be conveyed by deeds containing covenants or restrictions ("deed restrictions") which shall require that such dwelling units shall be sold or rented, at or below prices which will preserve the units as housing for which persons pay thirty per cent or less of their annual income, where such income is less than or equal to eighty percent

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of the median income. Such restrictions shall remain in force for at least forty years after the initial occupation of the proposed development.

Within the AHCD herein described, not less than fifteen percent of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to sixty percent of the median income. The remainder of the dwelling units conveyed subject to the deed restrictions shall be sold or rented to persons and families whose income is less than or equal to eighty per cent of the median income.

'Median income' means, after adjustments for family size, the lesser of the state median income or the area median income for the area in which East Lyme is located, as determined by the United States Department of Housing and Urban Development.

- 7.2 The owner of the land and buildings within the AHCD may, during such 40 year period, change the designation of which units within the AHCD shall be maintained as affordable, provided that the minimum 30% set aside shall be maintained, and the AHCD as a whole shall continue to comply with the provisions of these restrictions.
- 7.3 These restrictions may be enforced by the applicant or by the East Lyme Zoning Enforcement Officer or the East Lyme Housing Authority, or any other suitable town agency selected by its Board of Selectmen.

**MURTHA CULLINA LLP**

ATTORNEYS AT LAW

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May 12, 2004

TOWN OF EAST LYME

received

5/12/04

2:45 PM

ck # 1000-420.00  
ck # 1001-300.00**VIA FACSIMILE  
AND U.S. MAIL**William Mulholland, Zoning Officer  
East Lyme Town Hall  
108 Pennsylvania Avenue  
Niantic, Connecticut 06357Re: Application for Approval of Affordable Housing Plans

Dear Bill:

On behalf of Landmark Development Group LLC and Jarvis of Cheshire LLC, Glenn Russo will today be filing five copies of a set of plans (hereafter referred to as the "Plans") entitled "Riverview Heights (A Residential Community) Boston Post Road East Lyme, Connecticut," prepared by ASW Consulting Group, LLC. Each set consists of 28 pages (including the title sheet), with the Overall Site Plan (Drawing No. O-1) signed by Jason J. Sarojak, P.E. on 4-26-04. Please note that the last page is a sheet that is separate from the main, 27-page set and is not listed on the first page, but the page has been stapled to the main set for convenience.

This cover letter and the Plans comprise the application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC, to the East Lyme Zoning Commission for the development of the residential community shown in the Plans as an "affordable housing development," as defined in Conn. Gen. Stat. Section 8-30g(a)(1). A portion of the property on which the development is proposed (hereafter referred to as the "Property") is owned by Jarvis of Cheshire, LLC, and the remainder is owned by The Sargent's Head Realty Corporation, with whom Landmark has an agreement to purchase. The Property consists of Tax Map 27, Lot 14; Map 31, Lot 4; Map 31.2, Lots 3 and 8; Map 32.1, Lots 2 and 36; and Map 32, Lot 1. This development will be phase 1 of a multi-phased affordable housing application. Phase 1 will consist of 352 total units, of which 232 (66%) will be market-rate condominiums and 120 (34%) will be affordable housing rental units.

As you know, Landmark previously applied for an amendment to the East Lyme Zoning Regulations and a zone change for the Property in order to develop affordable housing

MURTHA CULLINA LLP

William Mulholland, Zoning Officer

May 12, 2004

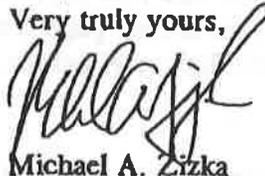
Page 2

that would be consistent with East Lyme's regulations. Since those applications were denied, the existing zoning regulations and zoning map contain no applicable provisions for this type of a development of the Property. Consequently, I understand that you have advised Mr. Russo that there is no specific application form that should be used, and that Mr. Russo should simply file five sets of plans and this cover letter. We ask that you notify us immediately if there is anything else that you decide you need in connection with this application, and we also ask that we be notified in writing in advance of any meetings or hearings at which this application will be considered by the Zoning Commission.

State law requires the filing of an affordability plan in connection with an affordable housing application. However, Landmark previously filed an affordability plan in connection with its prior (zoning amendment and zone change) applications for the Property, and Landmark will be using the same plan for this application. We can provide you with additional copies of that plan if you wish.

Please contact me immediately with any questions, comments or concerns you may have so that we may provide a prompt response. Given the Town's and the Zoning Commission's transparent desire to prevent the development of the Property for affordable housing, we have no illusions that this application will be given favorable, or even objective, consideration but we wish to make it clear that we are prepared to provide you with such materials as you or the Commission may reasonably decide you need.

Very truly yours,



Michael A. Zizka

cc: Glenn Russo, Landmark Development Group, LLC

FAX 1-860-613-0754 303 5/12/04

# MURTHA CULLINA LLP

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July 9, 2004

**VIA FACSIMILE  
AND U.S. MAIL**

William Mulholland, Zoning Officer  
East Lyme Town Hall  
108 Pennsylvania Avenue  
Niantic, Connecticut 06357

Re: Application for Approval of Affordable Housing Plans

Dear Bill:

This is in response to your letter dated July 6, 2004.

Your letter asks a very basic question about the nature of the application; specifically, what type of application is it? You even note on page two of your letter that it is "a threshold inquiry." It is, therefore, hard to understand why you waited *eight weeks* to ask.

At any rate, the proposed development, as you know, does not fall under any regulations that currently apply to the site. Consequently, we cannot characterize it as a site plan application, special permit application, or any other type of application. Those characterizations refer to uses that are expressly allowed as of right on a parcel or expressly allowable as special permit uses on a parcel under that parcel's existing zoning structure. Since the uses the applicants propose in this case are not allowed either as of right or by special permit on their parcel at this time, we can only describe the application as an "affordable housing application" under Conn. Gen. Stat. § 8-30g. As a practical matter, since the standards that control the decision on an affordable housing application are the state standards set forth in the statute, and not any local standards, there is really little point in trying to characterize the application in any other manner.

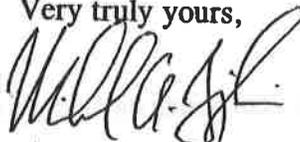
You claim in your letter that Section 32 of the Zoning Regulations "would seem to apply" to the application. To the contrary, and as you well know, Section 32 was deliberately written in such a way as to preclude its use for this type of application, or for any application that potentially involves the use of septic systems. The applicants are not applying pursuant to Section 32; consequently, they need not seek any special permit pursuant to that section.

William Mulholland, Zoning Officer  
July 9, 2004  
Page 2

You also claim that no regulations were submitted as part of the application. If the courts should rule in favor of the applicants in their pending appeal, then the regulations previously proposed will become applicable to the property. Those are the regulations that we have proposed to govern the units.

You have asked that for "copies" of the affordability plan to be submitted as part of this current application. We are preparing the affordability plan and expect to deliver it to you within the next two weeks. It will not differ materially from the plan proposed in connection with the zone change application that is now before the Superior Court, but it will be updated to the specifics of the current application. State law requires us to file one copy of the plan, but we will be pleased to provide you with additional copies. Please let me know how many more you would like to have us supply.

Very truly yours,



Michael A. Zizka

Enclosure

cc: Glenn Russo, Landmark Development Group, LLC (w/out encl.)