

EAST LYME ZONING COMMISSION
REGULAR MEETING
Thursday, DECEMBER 4th, 2003
MINUTES

FILED IN EAST LYME
Dec 5, 2003 AT 4:00 ^PM

L. Blair, ATC
EAST LYME TOWN CLERK

PRESENT: Mark Nickerson, Chairman, Ed Gada, Secretary,
Shawn McLaughlin, Norman Peck, Rosanna Carabelas,
Marc Salerno, Alternate

ALSO PRESENT: William Mulholland, Zoning Official,
Attorney O'Connell, Town Counsel
Rose Ann Hardy, Ex-Officio, Board of Selectmen
William Dwyer, Alternate
Al Littlefield, Alternate

ABSENT: Pamela Brynes

Pledge of Allegiance

The Pledge was observed.

Public Delegations

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

Bob Gadbois, 358 Boston Post Road, East Lyme said that at the last meeting he talked about the Senior Housing project on Rte. 161. He said that he never did get an answer on the fact that there is only one way in and one way out and if there was an accident in front of that driveway how they would get in there for emergency purposes. He also said that he went and read the old minutes of the Commission and that all that they said was that it was addressed in the traffic study.

Mr. Mulholland said that at staff level meetings that the Town Fire Marshall did sign off on this project.

Joe Kwasniewski, 67 Walnut Hill Road, East Lyme said that he was once again asking that the expansion in this Town be slowed down a bit. When things expand, the taxes are supposed to go down but his have only been going up and up and not down.

1. Call to Order

Chairman Nickerson called the Regular Meeting of the Zoning Commission to order at 7:10 PM.

2. Accept Minutes of November 20, 2003 – Public Hearing and Regular Meeting.

Mr. Nickerson called for any corrections or discussion on the Zoning Commission Public Hearing I Minutes of November 20, 2003.

Mr. Peck asked that on Page 2 – six lines up from the bottom that after the word now. – in – 'the sign that is there now.' – that - from I-95 southbound. – be added to the end of that sentence.

Also, on Page 3 – the very last line at the bottom of the page – 'Mr. Peck said that Rte 11 would eliminate Exit 75 if it does go in.' – change would to may.

****MOTION (1)**

Mr. Salerno moved to accept the Zoning Commission Public Hearing I Minutes of November 20, 2003 as amended.

Mr. Gada seconded the motion.

Vote: 5 – 0 – 1. Motion passed.

Abstained: Ms. Carabelas

Mr. Nickerson called for any corrections or discussion on the Zoning Commission Regular Meeting Minutes of November 20, 2003.

****MOTION (2)**

Mr. Salerno moved to accept the Zoning Commission Regular Meeting Minutes of November 20, 2003 as presented.

Mr. Gada seconded the motion.

Vote: 5 – 0 – 1. Motion passed.

Abstained: Ms. Carabelas

3. Election of Commission Officers

a. Election of Chairman

Ms. Hardy, Ex-Officio was asked to Chair for this election. She said that she has been appointed as their Ex-Officio for the next two years.

Ms. Hardy opened the floor for nominations for the position of Chairman of the Zoning Commission.

****MOTION (3)**

Mr. Peck moved to nominate Mr. Nickerson for the position of Chairman of the Zoning Commission.

Mr. Salerno seconded the motion.

Ms. Hardy asked Mr. Peck for comments on the person he had nominated.

Mr. Peck said that he thinks that Mr. Nickerson has done a good job over this year and that he should continue in this capacity.

Ms. Hardy asked Mr. Salerno for comments.

Mr. Salerno said that Mr. Nickerson does a good job, he is prepared for the meetings and that he does research and work outside of the meetings.

Ms. Hardy called three times for any other nominations for the position of Chairman – Hearing none –

Ms. Hardy called for a vote.

Vote: 6 – 0 – 0. Motion passed.

Ms. Hardy congratulated Mr. Nickerson and turned the Chair over to him.

b. Election of Secretary

Mr. Nickerson opened the floor for nominations for the position of Secretary of the Zoning Commission.

****MOTION (4)**

Mr. Peck moved to nominate Mr. Gada for the position of Secretary of the Zoning Commission.

Ms. Carabelas seconded the motion.

Mr. Nickerson asked Mr. Peck for comments on the person he had nominated.

Mr. Peck said that he thought that Mr. Gada wanted to say something.

Mr. Gada said that he would be glad to serve however he sees three dates on the 2004 Meeting Schedule where he would have a conflict. If the Commission does not have a problem with this then he does not.

Mr. Mulholland said that in the unlikely event that the Chairman and Secretary are not available for a meeting that the remaining members would elect a Chair for that specific evening.

Mr. Nickerson called three times for any other nominations for the position of Secretary – Hearing none –

Mr. Nickerson called for a vote.

Vote: 6 – 0 – 0. Motion passed.

Mr. Nickerson congratulated Mr. Gada.

4. Town Attorney

Attorney Edward O'Connell, Town Counsel said that Mr. Mulholland had requested that he give them a very general outline regarding the activities of the Zoning Commission. There is a difference between Planning and Zoning. Planning administers subdivision regulations and is responsible for the Plan of Conservation & Development, which covers the general aspects of land use. Zoning is responsible for the particular uses of the land. The powers of the Zoning Commission are defined and strictly controlled by the State Statutes. These can be found in Title 8 of the CGS. The adopted regulations are the bible that they must use. They

cannot just simply change these at whim and they must entertain applications that are permitted under these regulations. Zoning has two types of capacity. The first is legislative capacity that covers the decisions on the appropriate use of the land. The Commission works in this area. The second is the administrative capacity where the regulations that have been adopted are administered. The Zoning Official primarily does this. The Zoning Commission does not have the power to waive or create exceptions to Zoning. That is a function of the Zoning Board of Appeals (ZBA) and is based on a legal hardship as defined by the law.

There are certain procedures that the Zoning Commission must follow to adopt regulations or decide applications. There must be notice of the public hearing, the meeting must be taped and minutes taken. Publication of the acceptance or denial is very important, as it is what triggers the clock for an appeal to the court from that decision. Also, they must be aware that once the public hearing is closed that they cannot entertain anymore information.

General considerations that they should keep in mind are conflicts of interest – such as an application for property next door to you or belonging to a business associate, family member or friend – one should recuse their self from hearing the application so that there is no bias. They cannot have a pre-disposition or bias towards any applicant or application. They have to treat everyone with an open mind and base their decision on the evidence presented. They should not receive any evidence outside of the public hearing, which is why their public delegations do not allow the public to speak about agenda items. Due to the time limits of the application process, diligence and attendance are important. They should have the same people sitting at hearings so that they know all of the information that was presented. If someone else must be seated, they must have reviewed all of the information up to that point.

They do have interaction with other land use commissions and this is in the form of referrals. They make referrals on zone changes to the Planning Commission for consistency with the Plan of Conservation & Development. This is a very general outline.

Attorney O'Connell then explained that there are two litigation cases against this Commission on Affordable Housing. The appeal briefs on this are in and replies are due by the end of this month. Once all of the replies are done an affordable housing judge will be assigned to the case and will review all of it and they expect that they will get a decision sometime in the spring. There is also a Federal lawsuit that was mentioned in the newspaper today. The Zoning Commission and various officers of the Town have been served in this Federal lawsuit saying that there has been discrimination on the basis of race as a result of the failure to approve the affordable housing zone change for this particular piece of land. The Towns' insurance company has retained some lawyers to represent the Town and some officers and he will work closely with them. He said that he could not discuss anymore details, as it would be subject to Executive Session.

Mr. Nickerson asked if they had any questions.

Mr. McLaughlin asked about a former application for a zone change where the applicant questioned them about a site visit without notification to him. He asked what was legally required here.

Attorney O'Connell said that a site walk should be the subject of an agenda item and it should be scheduled and minutes taken. The applicant must know what the Commission has seen on the site.

Mr. Nickerson asked if they have a continued public hearing and he wanted to go and see the site by himself – if he could report to them what he saw without doing minutes?

Attorney O'Connell said that he would suggest that they schedule a site walk so that they could notice it in accordance with FOI rules as they are subject to the FOI act.

Mr. Peck asked what if he drives by a subject property everyday and notices things – where does one draw the line?

Attorney O'Connell said that is okay as it falls under general knowledge of the area and they are entitled to apply this as the Commission members are from this Town and this area is local to them.

Mr. Peck said that he understood that there was a general change in the Statutes regarding land use commissions speaking at each other's meetings if the applicant requested it.

Attorney O'Connell said not to his knowledge but he would check into it. However, as a general rule, the answer would be no as it is a general conflict of interest. Land use agencies in general would tend to listen more to one another than other people and this creates a conflict.

Ms. Hardy asked about when they send representatives to each other's Commission meetings – sort of in an Ex-Officio capacity.

Attorney O'Connell said that this is the very crux of it because determining if it is an official opinion of the Commission or an individual's thought is a very fine line.

Ms. Hardy said that the Charter Revision Commission is heavily involved into looking into the combining of these two land use commissions and one of the basic perceptions of why they do not get along is due

precisely to the fact that they cannot speak at each other's meetings. However, he is saying that it is State Law that they cannot speak at each other's meetings.

Attorney O'Connell said that it is a very fine line and not easy to apply as it gets into a lot of gray areas. There is no 'bright line' test on this.

Mr. Nickerson suggested that for safety sake and for the Town's sake that they should err on the side of caution and act conservatively.

Attorney O'Connell said that was a good summary.

Mr. Nickerson thanked Attorney O'Connell.

OLD BUSINESS

1. Stormwater

Mr. Nickerson said that this is an on-going process.

NEW BUSINESS

1. Application of Jean-Pierre Lessard, 2 Shore Drive for a Coastal Area Site Plan Review to construct a "garage/barn".

Mr. Nickerson said that Mr. Mulholland would schedule this for review on their next agenda.

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

There was none.

3. Zoning Official

Mr. Mulholland was called away early.

4. Comments from Ex-Officio.

Mr. Nickerson said that he had spoken to Mr. Fraser about the Quonset hut that was donated by the Hathaway's. He said that it was just being stored at the site that it was seen at for the winter season and that it would not be near the road.

Mr. Gada asked if it was being stored as metal with canvas or what.

Mr. Peck said that it was stacked sheet metal sections.

Ms. Hardy reported that she did inquire about the plantings and that they would be put along the roadway however this is all currently in a holding pattern for right now. The plantings are being done to build up a natural visual barrier to the Town garage. She said that she was not able to get the sizes of the plantings that would be installed there however the Board of Selectmen is aware of their concerns.

Mr. Nickerson asked if the plantings would happen anyway?

Ms. Hardy said yes.

Mr. Gada asked what the planned use was for this Quonset hut and if any suggestion was made that other Boards and Commissions be notified in the event of donations to the Town.

Ms. Hardy said that they planned to store equipment from the Highway and Police Departments there – such as: signs for emergency use and possibly flatbed trailers for the transport of these emergency signs, and general 'eyesore' items that are currently outside. It would rest on a cement pod/platform but not be designed to be a permanent structure. Her understanding is that there is a plan in mind but not on paper and that this was a gift that had to be taken in.

Mr. Nickerson asked if that property was zoned for that use as he thought it was residential.

Mr. Peck suggested that the Town could be expanding a non-conforming use.

Ms. Hardy said that she would be the go-between on this and would get more information and let the Board of Selectmen know that they would like a formal report on this.

Mr. Peck asked Ms. Hardy if there was any discussion on using the Town dump for storage of structures and equipment like that.

Ms. Hardy said no – not to her knowledge and not at any Board of Selectmen meetings.

Ms. Hardy further reported that Mr. Hunt and Mr. Petetin had been re-appointed as regular members of the ZBA and that Mr. Boguszewski and Mr. Mostowy had been moved up to regular members from alternates of the ZBA. Mr. Craig Mason and Mr. Robert Bulmer were appointed as new alternate members to the ZBA. Ms. Hardy also said that the Charter Revision Commission had heard from many speakers from this Town on the possible combining of the Planning & Zoning Commissions. The general consensus was that it was not a good idea for this Town. However in all fairness they would have a speaker from a Town of similar size that does have a combined Planning & Zoning Commission.

Lastly, she said that as she has sat here for the last four years and listened to public delegations where the public has the opportunity to speak only on items not on the agenda. She asked when the public could speak about items on the agenda that do not have a public hearing.

Mr. Peck said that, that is what the regulations are for and that is how they are written. There are certain items that the public has input on and others that it does not.

Mr. Nickerson said that perhaps a letter could be written, as then it becomes correspondence.

5. Comments from Zoning Board Liaison to Planning Commission

Mr. McLaughlin reported that he had gone to the Planning Commission meeting and that they have one application continued to their next meeting. They did one lot line revision and have approved subdivision applications that add up to 314 new homes. They are also talking about revising their time frames on applications and the State fees although he understood this was set by Statute.

6. Liaison to Planning Commission Meeting

To come.

7. Comments from Chairman

Mr. Nickerson welcomed new regular members Rosanna Carabelas and Pamela Brynes and new alternate member Al Littlefield to the Commission.

8. Adjournment

****MOTION (5)**

Mr. Gada moved to adjourn this Regular Meeting of the East Lyme Zoning Commission at 8:35 PM.

Mr. Salerno seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary