

**EAST LYME ZONING COMMISSION  
PUBLIC HEARING I  
Thursday, FEBRUARY 5th, 2004  
MINUTES**

FILED IN EAST LYME P  
Feb 9, 2004 AT 3:50 M  
*J. Blair*  
EAST LYME TOWN CLERK

The East Lyme Zoning Commission held the Theodore Harris application Public Hearing to amend/modify Section 12 of the Zoning Regulations on February 5, 2004 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Acting Chairman Salerno opened the continued Public Hearing and called it to order at 7:35 PM.

**PRESENT:** Marc Salerno, Acting Chairman, Rosanna Carabelas,  
Acting Secretary, Shawn McLaughlin, Al Littlefield,  
Alternate, William Dwyer, Alternate

**ALSO PRESENT:** William Mulholland, Zoning Official  
Rose Ann Hardy, Ex-Officio, Board of Selectmen  
Attorney Theodore Harris, Applicant

**ABSENT:** Mark Nickerson, Chairman, Ed Gada, Secretary,  
Norm Peck, Pamela Brynes

**PANEL:** Marc Salerno, Acting Chairman, Rosanna Carabelas,  
Acting Secretary, Shawn McLaughlin, Al Littlefield,  
Alternate, William Dwyer, Alternate

Mr. Mulholland informed the Commission that as they did not have a Chairman or Secretary this evening that they would need to elect a Chairman for the evening and that he/she in turn would appoint an Acting Secretary for the evening.

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

**Mr. Dwyer moved to elect Mr. Salerno to be the Acting Chairman of the Zoning Commission for the evening.**

**Mr. Littlefield seconded the motion.**

**Vote: 5 – 0 – 0. Motion passed.**

Mr. Salerno, Acting Chairman appointed Ms. Carabelas as the Acting Secretary for the evening.

**Pledge of Allegiance**

The Pledge was observed.

**Public Hearing I**

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

Mr. Mulholland noted that they would be continuing this public hearing until their March 4, 2004 meeting and that he had received a letter from Attorney Harris requesting and granting a 35-day extension to their next meeting for this public hearing. This letter was dated February 5, 2004.

Mr. Mulholland also noted for the benefit of the public in the audience that he was in receipt of another letter from Attorney Harris regarding the Herb Chambers Companies/Saturn dealership public hearing that was to be conducted after this one – that public hearing would be opened and continued immediately. They would not be presenting anything or hearing from the public this evening.

Attorney Harris passed out a revised proposal reflecting areas that the Commission had requested be changed at their last public hearing. (Attached at end of Minutes) He explained these changes noting that the may had been changed to shall in Section I. as requested.

The density calculation would now be based on eighty-five percent (85%) of the gross land area of the community, which is a reduction of 15%. While density is not really the concern here, the topography is and this allows for flexibility of design with regard for the topography and takes into consideration that the roads and paved areas generally comprise 15%.

The Chair had expressed an interest in seeing some other Use Restrictions so he has attached an Alternative #8 that was culled from various other SU-E condo documents. He noted that it allows for no more than three full-time occupants in any one unit and has provisions for visitations by college age young adults 21 and over and provisions for grandchildren who come to visit. There is also a provision for a caregiver for someone who has medical or health needs.

Mr. Mulholland said that he felt that there should be some provision for a caregiver as a third party and that this should be decided on a case by case basis. If people there are in their eighties and wish to stay in their home, this may be warranted and should be allowed.

Ms. Carabelas asked if there was a limit to the number of people per household.

Attorney Harris said yes, a total of three.

Ms. Carabelas asked if they were looking at two or three bedroom units.

Attorney Harris said that the size of the units does not necessarily reflect the use. While they would generally be two to three bedrooms, the reason for the size is that the people purchasing these types of homes really like the elbowroom and space. There is a restriction of no more than three weeks for people who come to visit to stay.

Mr. Mulholland noted that most condo documents for SU-E now allow only a two-week visit because the people who are buying into these units are specific about what they want. This experience is based upon some 300+ units that have been done in this Town to date.

Attorney Harris continued that under #9 that he had added that the Commission may require sidewalks and/or walking trails in portions of the community where deemed appropriate. He added that some of these may also be on the plans and that this would still allow them the flexibility to require others. Lastly he said that #10 was a new section on Internal Roadways that comes from the standard Special Use regulations. To this he added that the Commission might also require that the roads be constructed to one or more of the standards contained in the East Lyme Subdivision Regulations. He explained that this allowed for flexibility based on the nature and use of the road. He said that he would be happy to answer any questions that they might have.

Mr. Mulholland asked that the referral items be read into the record, as this is the deadline for referrals.

Ms. Carabelas, Acting Secretary read the following correspondence into the record:

1. Letter dated 2/2/04 to EL Zoning Commission c/o Wm. Mulholland ZEO from Marcy L. Balint, Sr. Coastal Planner State of CT DEP – Re: Proposed Zoning Regulation to add a new Section Open Space/Residential Community to Section 12 of the Zoning Regulations – finding the proposed amendment generally consistent with the policies and standards of the CCM Act.
2. Letter dated 2/5/04 to Mark Nickerson, Chairman-Zoning Commission from Francine Schwartz, Chairman Planning Commission – Re: 8-3a Referral – Application of Atty. Theodore Harris for a Proposed Amendment to Section 12 and Section 25.5 of the Zoning Regulations concerning Open Space/Recreation Residential Community in Special Use (SU) District – noting five areas of concern that have emerged as the focus of their review.

Mr. Mulholland noted that with reference to the site capability that was mentioned that nothing is site specific at this point and that should this happen in the future this Commission would review it very carefully before any decision was made.

Mr. Dwyer asked if, in the case of the sidewalks would they be decided at a later time with the site plans.

Attorney Harris said yes and added that he would think that most developers would want them with buildings such as restaurants and would design them into the plans.

Mr. Dwyer said that he wanted to be clear that if this was approved as it is now that this gives the Commission the authority to mandate sidewalks later on if they do not see any where they feel they should be.

Attorney Harris replied exactly – that is what this does.

Mr. Mulholland further clarified that this is by Special Permit and a site plan would have to be presented and a public hearing held and all of that would be discussed through that process.

Mr. Salerno asked about owning a lot of land that has ponds on it and if they would be included in the acreage. Mr. Mulholland said that an existing 200 acres is typically based upon the regulation where it is counted as part of it. They would have to ask for a provision to be put in if they did not want it counted – however he said that there are two sides to the argument that they should consider. A 50 acre lake means that 50 acres is not going to have any homes built on it and it can be argued that one should be allowed to cluster homes near it and not be penalized for a beautiful pond and be able to consider the pond open space.

Attorney Harris noted that under our subdivision regulations that a cluster subdivision could be done with smaller lots and a requirement of 30% open space of which no more than 15% of that can be wetland areas. This proposal is taking 15% off the top and then the 40% open space. With these factors, this proposal is not going to increase density but rather allow a better design and product in the end. He said that he is not sure that the calculation that they are speaking about is really the type that they want to do and he will provide them with visual samples at their next meeting.

Mr. Salerno asked what the Coastal area buffer was.

Attorney Harris replied 1000'.

Mr. Mulholland suggested that they write down questions that they might have for the next meeting.

Mr. Salerno called for anyone from the public who wished to speak in favor of this application –  
Hearing no one – He called for anyone who wished to speak against this application –

Mark Butterfield, 6 Upper Walnut Hill Road, East Lyme said that he has lived in Town his entire life and that his parents and brother also own property in Town. He has listened to Mr. Harris speak two times before on this subject and said that we have been impressed with his presentations. The first time he was here he was able to turn property from R-80 to Special Use and the second time he turned property from Special Use into 70 SU-E units and that is on Upper Walnut Hill Road. He said that while this proposal hasn't yet been geared to any specific piece of property that he thinks that the Commission is smart enough to see that the size and requirements that go along with this are limited to the north end of Town and that this would fit the Walnut Hill Country Club that is operative today on Holmes Road. He would like to caution this Commission that in fact there are many properties that could meet this requirement. He owns a horse farm up there and any three of his neighbors – if they combined their properties as they have the right to and the required road frontage to do so – would meet the 200 acre requirement. In fact, the area surrounding the current golf course could be developed into condos. It is not a small undertaking to accept this proposal into the Zoning requirements. If he takes just his property and some from the Brooks, Kramm, Stefanik, Tomachek, or Eslinger properties they would meet these regulations and would be allowed to build condos on that property. These are the farms that are left in East Lyme today and this proposal threatens these farms. On a daily basis we receive letters or visits from developers wishing to buy our property and subdivide it and it is certainly within their rights to ask. A change in the Zoning amendment like this takes property that we have today and in fact would increase it's value and increase the likelihood that we would all opt to combine and sell our properties. He asked that they take this into consideration and that the rules should not be written in such a fashion that the only one who benefits is the Walnut Hill Country Club. Everyone should have the opportunity to meet these requirements. They have seen recently as with Oswegatchie Hills that when something is unfavorable to the developer that the affordable housing issue comes up. If they make a rule today that says there is a 200 acre limit for condos in an area then his 100 acres argument becomes that it is a biased opinion to purposely prohibit affordable housing. Mr. Harris' purpose here is to convince you that this is a good idea and we have elected you to watch out for our interests as to whether it is a good idea or a bad idea. Your individual views define how this Town should look in the future. We've developed this end of Town, his family lives extensively at this end of Town and he thinks they should stick to current zoning regulations for rural areas. The R-80 and zoning requirements today that allow cluster subdivisions provide adequate ability to develop areas. This rule allows rural areas to be more densely populated without considering our environment. These are our horse and cow farms, hayfields and hay lots and there is enough pressure on these people to subdivide now and this will add more pressure to it.

He said that he had a question on the may being changed to shall and did not understand what this referred to.

Mr. Mulholland read: "I. Add new Section 1.43a: Open Space/Recreational Community. A community developed under a condominium form of ownership which shall contain single family and/or duplex units centered around large areas of Open Space devoted to passive and/or active recreational activities. Such recreational activities shall include items such as picnic areas, swimming pools, golf courses, golf driving ranges or putting facilities, equestrian facilities, hiking trails or tennis courts, and/or similar activities whether or

not operated as a business for profit, together with such ancillary activities and facilities reasonable and appropriate to such recreational uses, including but not limited to restaurants, club houses, locker rooms and other similar ancillary activities.”

Mr. Butterfield asked if this was to say that it should have a golf course or some of the other listed items.

Mr. Mulholland said that it is his opinion that the recreation component has to be there or otherwise this is just another subdivision.

Mr. Butterfield asked Mr. Mulholland if there are any properties today that come to mind to suit this and meet this requirement.

Mr. Mulholland said that there are no specific ones that come to mind. Oswegatchie Hills would but it has been taken out of the equation. But, as you have stated, any developer who is financially able can put parcels together and get 200 acres and this is done all the time.

Mr. Butterfield said that he is an engineer and his point is that they can meet these requirements and that there are at least four to five parcels that could be reconfigured by lot line revision and get this. The only areas today are in the north area currently near the Walnut Hill Country Club.

Patricia Butterfield, 6 Upper Walnut Hill Road, East Lyme said that she was very aware that this is not an application asking for a specific piece of property to be changed. But, those of you who have been here through the zoning changes of R-80 to the golf course and condos know that the client that has employed Mr. Harris to get these things through has told us nice things are going to happen up there. And, nothing has been done except the land has been cleared and every few months we see another proposal for a zoning change up there. It's rural up there and we choose to live there. We don't have wide roads or sidewalks, public water or sewer. We are the last people to get plowed out or sanded and the last to have the sand swept up in the summer. We have been to these hearings, we have been here when the Selectman has let us know that he has been out to lunch with Mr. Harris' client. And we've come and presented our concerns. And granted our concerns may not have been legitimate zoning problems that would prevent you from actually granting a change - but, at he last meeting that we came to several of the neighbors had come with concerns about the proposed changes. No sooner did we walk out the door, the next morning in the paper we read that you had approved that change. So, you people are elected by us, your job is to look out for the best interest of the whole Town and sometimes it seems that you look out for the best interests of certain individuals.

Randy White, 41 West Main Street, Niantic asked who runs this – the inmates or the jailers. It seems these proposals should come from the Zoning Board or from the Town rather than just someone coming to them and presenting their self-interest. He thinks that this is a concern – not necessarily this one proposal but the idea of a developer coming like this and requesting a change for one reason. He does not think this is how it should go - just for self-interest – the Town should decide.

Mr. Mulholland asked the Chair if he could respond to this.

Mr. Salerno asked Mr. Mulholland to please do so.

Mr. Mulholland said that the way that the State Statutes are written anyone – applicant, citizen or someone from Mars – can come before them with a proposal and this Commission is obligated under State Statutes to entertain it whether they concur with it or not. They have an obligation to hear it and treat it fairly and be open-minded and make a decision. And, you are correct, the Town should zone for itself and it has – it has a set of Zoning Regulations on the map. But State Statutes allow anyone to come and petition the Board for changes so they have to go through these processes and make decisions and these are difficult for everyone involved. And – this is difficult even for those looking for a tool shed. It can seem like East Lyme has been discovered and it will most likely continue to seem this way.

Mr. White thanked Mr. Mulholland for the explanation.

Bob Gadbois, 358 Boston Post Road, East Lyme said that he thinks that this puts a big burden on the Town police, fire, ambulance and schools. He doesn't mind homes being built he just does not like seeing this type of development built.

Mr. Salerno asked if anyone else wished to speak –

Hearing no one - he asked if Attorney Harris wished to say anything.

Attorney Harris said that he would like to note a few things. First, this is not site specific and the large acreage allows for large buffers between other properties. This is an attempt for a better design and not for more

density. The overall approach is to have a better-looking product in the end. He also noted that it is interesting that Mr. Butterfield indicated that such a proposal would increase property values in his area – that is one of the considerations of this Commission and ironically Mr. Butterfield indicated that it would actually increase them. There is going to be pressure regardless of what proposal comes before this Commission. This is an attempt to provide a unique product – one more consistent with the topography. It is not a multi-family proposal, it is largely detached single family units. The point is that it is not oriented to one area of Town. And, yes you can group properties together and it is not as easy a project as you think to get them all together. This is going to be a unique project and not everyone is going to have the where withal to design this community, as it is a large parcel and not an easy project.

Mr. Salerno asked if there were any other questions –  
Hearing none -

Mr. Salerno adjourned this Public Hearing at 8:28 PM and continued it to March 4, 2004 at 7:30 PM.

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary

**PROPOSED ADDITION TO SECTION 12 OF THE ZONING REGULATIONS**

I. Add new Section 1.43a: Open Space/Recreational Community. A community developed under a condominium form of ownership which shall contain single family and/or duplex units centered around large areas of Open Space devoted to passive and/or active recreational activities. Such recreational activities shall include items such as picnic areas, swimming pools, golf courses, golf driving ranges or putting facilities, equestrian facilities, hiking trails or tennis courts, and/or similar activities whether or not operated as a business for profit, together with such ancillary activities and facilities reasonable and appropriate to such recreational uses, including but not limited to restaurants, club houses, locker rooms and other similar ancillary activities.

as requested

Reason for shall is to be sure that it is focused on recreational activities that

II. Add new Section 12.1.4 as follows, and renumber existing Section 12.1.4 to 12.1.5

These happen

Open Space/Recreational Community, subject to the standards in Section 25.5

III. Section 25.5 Add new Section 25.5 as follows:

Open Space/Recreational Communities (SU)

1. All such facilities shall be located on a parcel or parcels of land totaling not less than two hundred (200) acres.

2. Not less than forty (40) percent of the overall area thereof, shall be devoted to such open space/recreational uses.

3. Single family and/or duplex residential units, only, shall be allowed under a common interest form of ownership.

4. Density: The average number of dwelling units per acre within the Community shall not exceed that which would be allowable based upon the minimum lot size of the underlying zone.

\* This density calculation shall be based on eighty-five (85%) percent of the gross land area of the community.

reduced area used by 15%

5. Grouping: The shortest distance between any two structures shall be not less than the height of the taller structure, with a minimum of 24 feet. Courts shall be completely open on one side. Maximum heights of any building in the development shall be two stories, but such height shall not in any event exceed 30 feet. The Commission may waive the separation requirement if design of the proposed development is benefitted by closer spacing.

6. Buffer area: There shall be provided a landscaped side or rear yard buffer area of at least 100 feet in width adjacent to each property line of the parcel to be developed. All buffer areas shall be planted or preserved in a natural state in a mixture of evergreen and deciduous trees and shrubs and shall be maintained in proper order so as to protect adjacent properties and present a reasonably opaque, natural barrier to a height of ten feet. If, in the opinion of the Zoning Commission, the

\* Revised - shows changes 2/5/04 - Zoning Attachment 4pgs.

individual topographical and natural qualities of the site should suggest that this buffer region is not appropriate, the Commission reserves the right to alter the buffer requirements by vote of three-fourths of all the members of the Commission. This buffer may not be increased to more than double nor decreased to less than half of the requirements herein.

7. Contiguous Parcels: The Commission may allow such community to be composed of individual parcels totaling not less than 200 acres developed, designed and built under a common plan, provided that all such parcels shall be contiguous and subject to rules and regulations common to all parcels. The Commission may reduce the frontage requirements of each individual parcel to not less than fifty (50) feet, provided that the combined frontage of all such parcels shall not be less than five hundred (500) feet. In addition, the Commission may waive the buffer and set back requirements as contained in Section 12 and Section 24, with respect to the boundaries between such contiguous parcels.

8. **Use Restrictions:** Not less than sixty (60) percent of the residential units (each portion of a duplex being a residential unit) shall be occupied by senior citizens, age fifty-five (55) or older as follows:

- a. At least one person who is at least fifty-five (55) years of age or older.
- b. Occupant pursuant to (a) who survives; and
- c. Occupant pursuant to (a) above who is co-occupant has entered into a long term continuing care facility.
- d. In (b) and (c) above remaining occupants remarries or co-habitates must meet all occupant requirements.
- e. For the purpose of such calculation, age restricted units contained on the same parcel as part of an SUE Zone shall be included

Culled from Condo doc  
See Att. # 8  
at end -

9. Access Streets and Sidewalks: The placement, size, arrangement and use of access routes to public or private streets shall be adequate to serve residents and provide no hindrance to the safety of existing or proposed streets. **The Commission may require the sidewalks and/or walking trails to be constructed in portions of the Community where the nature of contemplated activities indicates that there will be significant amounts of pedestrian traffic.** Where it is anticipated that children will be waiting for a school bus in or near a public highway, sufficient area shall be reserved and/or shelter provided. In developments in excess of fifty (50) units, at least two points of access shall be provided to a public highway, provided however that in the event the topography or location of frontage of the property makes such impracticable or impossible, the Commission may waive the requirement of two entrances upon the showing that one entrance is sufficient to maintain the public health and safety of the residents, including consideration of emergency access.

Provision for Comm. to require if approp.

10. **Internal Roadways:** The main access road shall be no less than twenty-four (24) feet in width and interior roadways shall be no less than twenty (20) feet in width. Provided however, the Commission may require roadways in portions of the community to be in excess of the required

new section comes from The standard SU reqs.

width where higher traffic levels, or visits from the general public in conjunction with recreational activities may be expected. The Commission may also require that such roads be constructed to one or more of the standards contained in the East Lyme Subdivision Regulations for geometry, surfacing, lighting and drainage. In areas of twenty (20) foot roadways, parking on the street shall be prohibited by adequate signage.

*flex. b. r. r.  
based  
on nature  
and  
use.*

11. Utilities: No such development shall be approved unless the Commission is given clear satisfactory evidence of the means of providing water supply, has public sewer, or is suitable for approval by the Department of Health and/or Department of Environmental Protection for on-site septic systems. This provision shall not require a permit from such agencies prior to such approval; but only sufficient evidence that the site is capable of supporting such approval.

12. No such development may be constructed on a parcel if any portion of it lies within the coastal boundary as defined by Section 22a-94 of the Connecticut General Statutes and as delineated in the coastal boundary map for the Town of East Lyme.

IV. Modify Section 12.3.2 as follows: (Add bold face item)

“For multifamily and **open space/recreational community** development, the following plans and information shall be included in addition to the information required to be submitted under Section 25...”

*Chair expressed  
interest in  
alternatives*

ALTERNATIVE #8

*(Proposed)*

8. Use Restrictions: A. Not less than sixty (60) percent of the residential units (each portion of a duplex being a residential unit) shall be occupied by senior citizens, age fifty-five (55) or older as follows:

(a) Except as provided herein, each unit shall be occupied by at least one person who is age 55 years or older ("Age Qualified Occupant") or, a co-occupant with such Age-Qualified Occupants who survives the Age-Qualified Occupant or (2) a co-occupant with such Age-Qualified Occupant, who enters into a long term continuing care facility. In either of such exceptions, the remaining occupant of the unit who subsequently remarries or cohabitates must meet all occupancy requirements.

(b) There shall be no more than three (3) full time occupants in any one unit.

(c) Except as specifically provided herein, all occupants must be twenty-one (21) years of age or older.

(d) Children of an Age-Qualified Occupant or of his or her spouse who attend an accredited college or university may reside at the Unit for any period up to 120 consecutive days provided that such stays occur not more frequently than 60 days apart, except for legal and religious holidays generally observed in the State of Connecticut. Other persons may reside in the Unit for temporary visits for period not exceed three (3) weeks, provided that, during such visits, no more than six (6) persons may occupy a Unit at any one time.

(e) A personal care attendant who has been employed for an Age-Qualified Occupant to attend to the Age-Qualified Occupant's medical or health needs, provided that (i) the personal care attendant is 21 years or older; (ii) the personal care attendant is not paying the Age-Qualified Occupant any for or rent.

B. For the purpose of such calculation, age restricted units contained on the same parcel as part of an SUE Zone shall be included.

*Based upon what has  
been seen in some current  
SU-E docs.*