

**EAST LYME ZONING COMMISSION  
REGULAR MEETING  
Thursday, JULY 8th, 2004  
MINUTES**

**PRESENT:** Mark Nickerson, Chairman, Norm Peck, Shawn  
McLaughlin, Pamela Byrnes, Marc Salerno, Alternate,  
William Henderson, Alternate

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

**ABSENT:** Ed Gada, Secretary, Rosanna Carabelas, William Dwyer,  
Alternate

FILED IN EAST LYME  
7/14, 2004 AT 10:00 AM  
Esth Bull  
EAST LYME TOWN CLERK

**1. Call to Order**

Chairman Nickerson called the Regular Meeting of the Zoning Commission to order at 10:05 PM immediately following the two previously scheduled Public Hearings.

**Public Delegations**

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

Joe Kwasniewski, 67 Walnut Hill Road, East Lyme said that he again asks the Commission to slow down the progress in East Lyme. It is his opinion, and he does not know if it is true or not, that they should not satisfy a handful of developers. He said that experience is a good teacher.

Bob Gadbois, 358 Boston Post Road, East Lyme said that he would like to hear from the Zoning Official during his report what the status is on the rocks on Rte. 161 and if he has anymore information on it.

**2. Accept Minutes of June 17, 2004 - Public Hearings I, II & III and Regular Meeting**

Mr. Nickerson called for any changes or corrections to the Public Hearing I, II & III Minutes or the Regular Meeting Minutes of June 17, 2004.

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

Mr. Peck moved to accept the Zoning Commission Public Hearing I, II & III Minutes and Regular Meeting Minutes of June 17, 2004 as presented.

Ms. Byrnes seconded the motion.

Vote: 4- 0 - 2. Motion passed.

Abstained: Mr. Salerno and Mr. Henderson

**3. Application of Pauline Lord to amend Section 20.1 and 25.5 of the Zoning Regulations to permit leasing of property for private social events or assemblies as an accessory use to an agricultural use.**

Mr. Nickerson said that while he appreciates what they are trying to do here as he said at the last meeting he disagrees with parties in a residential area. He asked if they had thought about this and if there was any discussion on it.

Mr. Salerno asked if there would be off-street parking.

Mr. Mulholland said that they heard testimony the last time that suitable area would be available to provide parking for 350 guests.

Mr. Nickerson added that they had said that they would provide one spot for every three guests.

Mr. Peck said that he feels that this could be a nice thing if it had controls. He suggested the following controls could be added and offered them for discussion:

- ◆ Acreage – it would be necessary to have 30 or even 50 acres to even consider this type of event.
- ◆ Setback requirement – of the event itself and where the event itself takes place – the tent, etc. has to be 500' from the nearest boundary.
- ◆ Limit the number of events to no more than 10 per year.
- ◆ The Special Permit would be for a period of one year and would be renewed upon application if it is found acceptable based on the previous permit.
- ◆ Modify #3 regarding the maximum number of invited guests from 350 to 150 for a trial basis.
- ◆ Parking – the parking area provided shall be gravel or grass and no paving of an area will be done.
- ◆ No new buildings shall be built to accommodate these events. This is an accessory use and by definition it is an accessory to the agriculture.
- ◆ There will be no on-street parking and a time limit on the noise (entertainment) that should end at 6 PM rather than 9 PM as an event from 10 AM until 9 PM is a long event.
- ◆ Tighten up the traffic controls.

Mr. Mulholland asked if they wanted to state the size of the tent or put limits on it.

Ms. Byrnes said that they could hold a carnival as it says 'private social event or assembly'. She also asked if they would want to see more than one of these on a weekend. She asked because someone could hold 10 events basically over three weekends and that would be a heavy concentration. She said that at the same time that she wants to go on the record that she supports ways to make small business/farms work.

Mr. Nickerson said for the record that he still is not sure that this belongs in a residential area or that it is an accessory use to a farm. It is different from someone who holds a party on their property once or twice a year. Also, when we start limiting this by the number of people and setbacks, one has to wonder if this applies to all of the farms in Town.

Ms. Byrnes said that she also looks at it that if they do not do something that this could become a sub-development or a golf course or something so this might not be so bad as she personally would rather have 10 weddings per year rather than 45 houses.

Mr. Nickerson said that there is a lot here that really needs to be addressed and if this amendment goes through, there is a lot that has to be done on it. He is not sure that they should be doing this work for this application as the applicant had specifics in mind.

Mr. Henderson said that he supported Mr. Peck's proposal and the one-year stint for the Special Permit. He suggested a limit on the time of the event of 10 AM to 5 PM.

Ms. Byrnes said that would not work if there were a 4 PM wedding.

Mr. Mulholland noted that they are saying weddings and the proposed amendment says 'private social event or assembly'. They need to know what this entails.

Mr. Peck asked if they thought it would be fair if they went to 8 PM?

Mr. Henderson said okay.

Mr. Nickerson said that he thinks that they should limit and specify the functions and that they should think about 10 per year and if that is too much and how they might want to spread them out. He said that he thinks that 10 per year is too many as that is 10 events being held during prime time on weekends where the residential community is disrupted. Also, at this point they are writing this for the applicant.

Ms. Byrnes said that she has a problem with the concentration of the events and not the number.

Mr. Mulholland reminded them that they are acting in a legislative capacity.

Mr. Salerno said that he agrees with Mr. Nickerson that they are now writing this and that it should be sent back to the applicant who should be writing the specifics.

Mr. Henderson said that the issue is balance and they can't allow it to expand too much.

Mr. Peck said that if it is going to be a commercial application that they will need insurance.

Mr. Nickerson asked about alcohol. He noted that if a drunk driver leaving a party injured someone that they had issued a special permit for, then the Town could be liable. With a bar or establishment, they are held responsible if something happens. So, this has to be carefully looked at.

Mr. Mulholland said that alcohol is another issue. The regulations would not allow a liquor permit at this time without changes being made to it.

Ms. Byrnes reminded them that the applicant had said that they had looked at Stonington Vineyards for guidance on this and a liquor permit is not a concern of a vineyard as they can and do have liquor there. She said that she thinks that this was not considered.

Mr. Mulholland noted that if each private party is bringing in liquor and only renting space and the farm is not selling it to them then that is a different thing. However, they have to consider that there is a large profit in the sale of liquor for any event.

Mr. McLaughlin said that he felt that they were changing the original application too much here and making a lot of changes and that the applicant should be doing this. The original application should have been more formal and it is too vague.

Mr. Nickerson called for a motion on this.

**\*\*MOTION (2)**

**Mr. McLaughlin moved to deny the application of Pauline Lord to amend Section 20.1 and 25.5 of the zoning regulations to permit leasing of property for private social events or assemblies as an accessory use to an agricultural use as presented.**

**Mr. Salerno seconded the motion.**

Mr. Mulholland noted that they could not send this back to the applicant for changes as the original application had been advertised and it would have to be re-advertised.

Mr. McLaughlin said that he hopes that they would submit a more formal presentation with more detail.

Mr. Peck said that he wants to make sure that the applicant understands that they want to do something and that they encourage her to reapply.

Mr. Henderson and Ms. Byrnes agreed that this is an opportunity but that it needs to be better defined and more regulating needs to be done.

**Vote: 6 – 0 – 0. Motion passed.**

**4. Application of Theodore A. Harris to amend Section 12 of the zoning regulations to permit accessory residential use for golf courses.**

Mr. Nickerson asked if they wanted to table this until their next meeting pending a definition of the size of the golf course or discuss it.

Mr. McLaughlin said that they need a definition on an 18-hole golf course and what that is.

Mr. Nickerson said that they should make sure that it is PGA regulation size and a minimum of a 5500-yard fairway. This would eliminate miniature golf or short courses.

Mr. Mulholland said that it is very important that they define the golf course before making a decision.

Mr. Nickerson noted that they had agreed to table this until the next meeting.

Mr. Henderson said that he would like to hear from Planning.

Mr. Nickerson said that could not be done.

Mr. Henderson said that he is opposed to floating zones as he thinks that it goes against the master plan for the Town. He agrees with Planning that it is inconsistent with the master plan and that they are looking for an extension of our master plan from what it was supposed to be. He thinks that when we are taking 200-plus acres and making it private, and exclusive that there has to be public area.

Mr. Nickerson asked Mr. Henderson if he understood that this property is private now.

Mr. Henderson said he did however, they are asking for changes and expansion of that use and it has changed the whole development of this area and it will be exclusive to these people. He thinks that the public has to be allowed use. Planning has made this point and he feels that it is important. Also, the density calculation and the growth and we are talking about rural areas of the Town and we have to look at the Town as a whole. Walnut Hill Road is highly traveled now and we have to look at the impact on the whole Town and the future down the road and if he has to vote on this today, he would vote against it.

Mr. Nickerson cautioned Mr. Henderson that he is walking a very, very fine and delicate line in requiring public use of private land.

Mr. Henderson said that they should consider this in conjunction with public use of private areas for the Town.

Mr. Nickerson said that Mr. Henderson is requiring private landowners to give up their property rights and open themselves to liability by having the public on the property. There is not only a liability issue here, but a

private golf course is private by its nature and people pay a lot of money to join it and to be able to go to it for precisely the reason that it is private. When people pay \$15,000 to join a private golf club, then yes, they want it to be private and they have a right to expect it to be so.

Mr. Henderson said that some concessions should be made.

Ms. Byrnes said that she agrees with Mr. Henderson and that it is a fine line. She thinks that it is important that this discussion takes place in a public arena so that the proper decisions can be made. Maybe by being out on the table the lines get to be pushed a bit.

Mr. Nickerson said for the record that the proposed golf course does have public walking trails.

Ms. Byrnes said that personally she wants to see the golf course come first and that it does not mean to build three holes and then ten houses. Also, the 70 SU-E units that are already approved – if they will change the density calculation then this would change her decision on how to vote on this. And lastly, while they keep hearing that there are not many parcels of 200 or more acres, it seems that every week we are getting an application for something 200 and over acres.

Mr. Peck said that this is the third time that this applicant has come in with a proposal so it is the same parcel and acreage.

Mr. Henderson said that he read Mr. Katz's letter on the financial issues and he feels that it is not his concern regarding the finances of this, it is his concern how this affects the Town.

Mr. Peck said that he does not agree with that. It is our concern but it is not our charge to be concerned with where the finances come from. He asked that they make an effort to keep the golf course concept alive.

Mr. Henderson said that he stands corrected on concern and he should have said charge.

Mr. Mulholland asked Mr. Nickerson if he would like him to get a legal opinion concerning public access on private property to that they can make decision that are appropriate.

Mr. Nickerson directed Mr. Mulholland to obtain this information from Town Counsel.

**5. Application of Theodore A. Harris for a change of zone from RU-40 Residential to CA Commercial for portions of properties identified in the application as 53, 55-57 West Main Street, Niantic, CT. Property is further identified as Lots 9, 6 & 7 on East Lyme Tax Assessor's map 11.1.**

Mr. Nickerson said that this appears to be pretty straight forward and called for discussion on it.

Mr. Peck said that he agrees with the applicant that this is consistent with the POCD and that it is a deepening and widening of the already existing CA zone. The only thing that concerns him is the 25' buffer. This expansion would only affect one property owner on one side. We are looking forward to an elderly housing proposal if this passes and if their concerns are if this proposal will happen or not, he asked if there was a way that they could delay the acceptance of this to coincide with the approval of the housing project.

Mr. Mulholland said that he feels that it would be very difficult to have a guarantee that it will happen. Also, they would have to come before this Commission for the project and at that time they could modify the buffers or address other issues.

Mr. Peck offered that if it is a concern, that they could also change the zone back.

Mr. Mulholland concurred that they could do that.

Mr. Henderson said that he agrees with the intent of the Planning letter where they brought up that they are looking at this area in terms of a neighborhood business zone and that this would mean low-impact and not what is currently allowed there.

Mr. Peck said that the POCD clearly states from Huntley Court to Roxbury Road.

Mr. Henderson said he knows that but he can't believe that Planning did not understand this.

Mr. Nickerson said that they made a big mistake on their referral here.

Mr. Henderson said that the proper thing to do then is to send it back and ask them to look at it again.

Mr. Peck said that they do not have to do that as they approved this plan, this is their plan - the Plan of Development.

Mr. Henderson said that the Assessor's Map 11.1 would have to be looked at for Lots 6, 7 and 9. So, if there is a mistake, they have 65 days and he would like to table it to send it back to them.

Mr. Peck said that they do not have to do that as there is no mistaking the Plan of Development and they have clearly made a mistake here.

Ms. Byrnes said that she is not comfortable with making this area all commercial. She hopes that it does not become a Wendy's.

Ms. Hardy asked about the elderly housing not being allowed in a residential zone.

Mr. Mulholland said that it is allowed in the CA zone and by special permit and that it is in line with the Federal Government guidelines on this.

Ms. Hardy asked why it has to be changed to CA from Residential.

Mr. Mulholland said because it is multi-family.

Ms. Hardy asked if individual homes were put there if it would be okay.

Mr. Mulholland said yes, if they were on separate lots.

Mr. Nickerson said that as they know, he is in favor of keeping the residential areas residential. However in a case like this where many, many years ago someone just cut lines down property without regard for the actual property lines and separated it, he feels that this is a hardship as the property owner cannot realize the full potential of their property. He is in favor of this application as it brings order to these properties.

Mr. McLaughlin commented that he does not agree with some of the things that can be put on the property under the CA zone.

Mr. Peck said that he previously made two suggestions. The first about the effective date has to be checked into and the second is something that they can do – they can always change the zone back.

Mr. Nickerson said that the Planning letter is referring to some conceptual area that is being created and that it really does not apply here as this man paid his fee to have his application heard based upon the regulations. He is entitled to be heard and to have his application fairly considered.

Mr. Salerno asked Mr. Mulholland how many lots there were like this in the Town.

Mr. Mulholland said that there are quite a few scattered about as this was done in the 1950's. He added that as they had heard from the applicant Section 20 does allow a 30' extension of the CA zone into the RU-40 area.

Mr. Peck said that the lines in a lot of cases provide a buffer in the back. This case he sees as a hardship.

Mr. Salerno asked Mr. Mulholland if they have approved this type of change before.

Mr. Mulholland said yes and cited Chapman Woods as a recent one that they might recall. They extended the zone for Chapman Woods to be developed.

Mr. Peck asked what controls they have to address when an applicant comes before them applying for elderly housing.

Mr. Mulholland said that they have the 25' buffer and that they can condition a landscape buffer plus all of the controls found in Section 25.5.

Mr. Peck said that they did this for Chapman Woods and that he thinks that they can add more controls when the application for the elderly housing comes before them. He asked if they could make an effective date of September 1, 2004 for this.

Mr. Mulholland said that he was not aware of an approval being done that way. He would have to check.

Mr. Nickerson said that he does not see how it makes a difference.

Mr. Henderson said that he thinks that once the property is zoned that they have no recourse on what goes there without a proposal in front of them.

#### **\*\*MOTION (3)**

**Mr. Henderson moved to deny the Application of Theodore A. Harris for a change of zone from RU-40 Residential to CA Commercial for portions of properties identified in the application as 53, 55-57 West Main Street, Niantic, CT. Property is further identified as Lots 9, 6 & 7 on East Lyme Tax Assessor's Map 11.1.**

(There was no second to this motion, it died on the floor)

#### **\*\*MOTION (4)**

**Mr. Salerno moved to approve the Application of Theodore A. Harris for a change of zone from RU-40 Residential to CA Commercial for portions of properties identified in the application as 53, 55-57 West Main Street, Niantic, CT. Property is further identified as Lots 9, 6 & 7 on East Lyme Tax Assessor's Map 11.1.**

**Mr. Peck seconded the motion.**

Mr. Salerno cited as reasons for this approval that while some of these changes might be appropriate and others might not be appropriate, in this case there is no adverse impact. The change seems to be the appropriate way to go.

Ms. Byrnes said that she is not comfortable with the looseness of this change.

**Vote: 3 – 2 – 1. Motion failed.**

**For: Mr. Nickerson, Mr. Salerno and Mr. Peck**

**Against: Ms. Byrnes and Mr. Henderson**

**Abstained: Mr. McLaughlin**

Mr. McLaughlin said that if they changed it to CA then it seems that it would all be CA and there are a lot of things that they can put there.

Ms. Byrnes said that she is concerned that they could put a Wendy's there.

Mr. Peck said that the economics do not work for a Wendy's or that type of business – they need the traffic flow that is found on a Flanders Road such as where they are located next to a highway exit.

Ms. Byrnes said that she wants something on the table that makes her comfortable. She wants to know exactly what is going to happen to that parcel.

Mr. Peck asked if they could change the regulations to allow for a CA-Elderly.

Mr. Mulholland said that they could explore it but that this would take some time and not help them here.

Mr. Peck asked if they looked into a future effective date if they could table this for future discussion.

Mr. Nickerson asked to table this pending obtaining this information.

#### **OLD BUSINESS**

##### **1. Stormwater**

Mr. Mulholland reported that this is still being worked on.

##### **2. Aquifer Protection**

Mr. Mulholland reported that this is still being worked on.

#### **NEW BUSINESS**

##### **1. Application of Theodore A. Harris to amend Section 12A of the Zoning Regulations.**

Mr. Nickerson asked Mr. Mulholland to schedule this for a Public Hearing.

##### **2. Zoning Official – Staff recommendation to amend Section 13 Aquifer Protection.**

Mr. Mulholland said that they would like to reduce the size on this and that he would present this to them.

##### **3. Any business on the floor, if any by the majority vote of the Commission**

Mr. Mulholland asked that they make a motion to add Omnipoint Communications, T-Mobile to the agenda. A representative is here to request approval of a Wireless Communications facility at the Morton House.

#### **\*\*MOTION (5)**

**Mr. Henderson moved to add Item 3A. to the Agenda – Application of Omnipoint Communications Inc. for a Site Plan Review approval of a Wireless Communications facility at the Morton House, 215 Main Street, Niantic, CT.**

**Ms. Byrnes seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

##### **3A. Application of Omnipoint Communications Inc. for a Site Plan Review approval of a Wireless Communications facility at the Morton House, 215 Main Street, Niantic, CT.**

Mr. Mulholland explained that they have a very comprehensive Telecommunications Section in their regulations to control cell towers.

H. Karina Fournier of T-Mobile, the Applicant passed out a comprehensive presentation booklet for this project. She explained that they would have three panel antennas located in the cupola of the Morton House.

There would be three equipment cabinets behind the building that would be enclosed by a stockade fence. She explained her maps to the Commission and said that the facility will not interfere with public safety equipment.

Mr. Henderson asked if they would be selling to other users.

Ms. Fournier said no, as this is just in the cupola and there is not enough space there. She added that they would also be using existing power only and that what this is doing is eliminating the need to construct a new tower.

**\*\*MOTION (6)**

**Mr. Salerno moved to approve the Application of Omnipoint Communications Inc. for installation of a Wireless Communications facility (cell tower) to be located in the cupola at the Morton House, 215 Main Street, Niantic, CT.**

**Ms. Byrnes seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

**4. Zoning Official**

Mr. Mulholland reported that Stop & Shop has yet to finish constructing the retail portion of their building and that at the time that they come to him for a permit he will sit down and talk with them about the DOT issue and the riprap. He stressed that technically this is a DOT issue and that he has no legal authority or jurisdiction here. He is just trying to get them to work with us in this way.

**5. Comments from Ex-Officio.**

Ms. Hardy said that due to the lateness of the hour that she would defer her report.

**6. Comments from Zoning Board Liaison to Planning Commission**

There was no report.

**7. Comments from Chairman**

Mr. Nickerson said that he would like a schedule for the liaisons to the Planning meetings. He added that he would like information on floating zones and the power that this Commission has over them.

Mr. Mulholland said that he would get this as there are varying schools of thought on them.

Mr. Nickerson said that he would also like Mr. Mulholland to get information on the public use of private land and to keep him informed on if they would need to schedule a special meeting in August.

**8. Adjournment**

**\*\*MOTION (7)**

**Mr. Salerno moved to adjourn this Regular Meeting of the East Lyme Zoning Commission at 11:33 PM.**

**Mr. Peck seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary