

**EAST LYME ZONING COMMISSION  
PUBLIC HEARING I  
Thursday, JULY 8th, 2004  
MINUTES**

The East Lyme Zoning Commission held the Application of Theodore A. Harris to amend Section 12 of the Zoning Regulations Public Hearing on July 8, 2004 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson opened the Public Hearing and called it to order at 7:35 PM.

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

FILED IN EAST LYME  
7/14, 2004 AT 10:09A M

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

Esther O'Neil  
EAST LYME TOWN CLERK

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

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

**Pledge of Allegiance**  
The Pledge was observed.

**Public Hearing I**

**1. Application of Theodore A. Harris to amend Section 12 of the Zoning Regulations to permit accessory residential use for golf courses.**

Mr. Nickerson noted that he had seated Alternates Marc Salerno and William Henderson at the table.

Mr. Nickerson read the following correspondence into the record:

- ◆ Letter dated 7/8/04 to East Lyme Zoning Commission from William Mulholland, Zoning Official – Re: Proposed Zoning Regulation Amendment, Section 12 – noting that this proposal is essentially specific to 18 hole golf courses and would allow by special permit residential uses on 200 acres as an accessory to 18 hole golf courses.
- ◆ Letter dated 5/19/04 to Ed Gada, Secretary EL Zoning Commission from Gene Lohrs, Chairman Reference Committee SECCOG – Re: Proposed Amendment to Zoning Regulations regarding Section 12 to permit accessory residential use for golf courses - finding that there is the potential for adverse inter-municipal impact if the final density is inconsistent with the allowed density of an abutting municipality.
- ◆ Letter dated 7/8/04 to Chairman Nickerson, East Lyme Zoning Commission from Francine Schwartz, Chairman Planning Commission – Re: Application of Theodore Harris to amend Section 12 of the Zoning Regulations – finding accessory residential use for golf courses INCONSISTENT with the Plan of Conservation and Development for the same reasons outlined in a previous referral to the Zoning Commission dated March 4, 2004.
- ◆ Letter dated 7/8/04 to the Zoning Commission from Jonathan Katz, Principal of Walnut Hill Properties, LLC – Re: Golf Course Residences – citing the history of approvals for the property and noting that this property has been in his family since 1951 and the dream for a golf course there; outlining the perception on the part of financial institutions and the need for incremental housing on this property to be able to do the golf course and citing that the proposed amendment eliminates the possibility of abuse by other developers or other properties as well as restricting the number of units on the parcel and has been designed with the public concerns in mind.

Mr. Mulholland stated that the Legal Ad ran in the New London Day on 6/26/04 and 7/5/04.

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

Attorney Theodore Harris, place of business, 351 Main Street, Niantic passed out copies of the proposed amendment to the Commission (Attached at end of Minutes) and said that there were a few changes made from what they may have received. He noted that they have seen variations on this before and that this covers the concerns that were raised and requires that a substantial golf course is built before any other development and also applies solely to the Walnut Hill property. As noted in the letter from Mr. Katz, the golf course has not been built due to economics. He said that there are a lot of controls provided here and that two different special permits (one for the golf course and one for the residential use) would be needed to do this. This is designed as an accessory use to an 18-hole golf course and requires a substantial golf course prior to any residential development. Due to the economic realities of this, it is unlikely that they would see another of these built in Town. There is a symbiotic relationship between a golf course and a residential component. This can be seen all across the country. He then explained the proposed Section 12 amendment criteria. (See attached) He also said that he will explain density as he feels that the people who have looked at this have become hung up on the numbers rather than what the regulations provide for. He also knows that Planning has a different opinion however, steep slopes and wetlands are allowed on lots, so to say that they have to be completely deducted does not make sense. The underlying zone clearly limits the density. The density calculation also contemplates 50% SU-E. They have a mixture of usage here with the SU-E and regular housing and overall it becomes one ninth of what actually could be allowed.

Attorney Harris next reviewed the criteria necessary for their decision. He noted that the Planning letter, which he received at 3 PM today, found the request to amend Section 12 inconsistent with the Plan of Development. He noted that he disagrees with their citing that this proposal may not comply with Section 8-2 of the CGS on multi-family housing. He assures them that in his 30 years practicing law that this does not violate Section 8-2 of the CGS.

- ◆ Next, the issue of an Overlay District instead of a Floating Zone; in case law, there is a theoretical difference but they are really the same. There is no conceptual difference between the two, it is just a matter of semantics. The floating zone is a new zone and the overlay adopts the underlying area but can also go anywhere.
- ◆ Also, the density calculation does not induce growth – in substance this proposal makes no substantial difference and does not induce growth. The mixture of the housing types makes for far less housing. This proposal makes no real difference in the overall density.
- ◆ Next they state that they want restrictions on land reserved for recreational use to prevent future re-development – the golf course is the ancillary use and in this way restricts re-development and there is no other need to address this as it is already built into the fabric of the regulation.
- ◆ Lastly, they state that they want provisions for public access Open Space in combination or separate from private recreational use – this is private property and a private community and it becomes difficult and there is liability inherent in this when opening it to the public. Mr. Katz has already worked in conjunction with adjoining landowners and Planning Staff on the trail system and trying to tie it into the Nehantic Forest.

So, it seems to him that they are not inconsistent with the Plan of Development and that they are providing for a better development and are actually consistent with the Plan of Development. They will have fewer roads, less impervious surfaces, no roads for the Town to maintain and create a far lower impact situation than a standard subdivision.

Attorney Harris also noted that he disagrees with the letter from SECCOG as he feels that they are somehow stuck on this density issue and not looking at the fact that they will get a far better development with no internal maintenance by the Town. Also, he has shown them before different types of site plans and what happens to density. Here, he doubts that they will see the golf course if the residential is not there. Mr. Gada mentioned at the last meeting that he might like to try one of these and see what it is like, this is presenting the opportunity to do just that. He also feels that it is highly unlikely that someone else would want to do this. This symbiotic relationship and this concept is a good one for this Town. He asked if they had any questions.

Mr. Nickerson said that he knows that they are looking at Walnut Hill for this and asked how big, how many acres Walnut Hill is.

Attorney Harris said that it is roughly 300 acres with about 50 acres of wetlands and approximately 14 acres of steep slopes which is roughly 22% of the whole site. This drops the 300 acres by 45 acres to about 255 acres.

Mr. Nickerson asked how this would work as they have already approved the SU-E for this site. What happens to this calculation.

Attorney Harris said that it would not include the separate SU-E that was approved already. That acreage has been deducted.

Mr. Nickerson asked how many more units they would be looking at as they are already approved for 70 units. Would they be looking at another 120.

Attorney Harris said that he did not know. The calculation brings the acreage down to about 225 acres.

Mr. Nickerson commented that the Planning Commission mentioned overlay zones in their letter and asked if we use overlay zones now?

Attorney Harris said yes and explained that it is used in the downtown area for parking.

Mr. Nickerson asked if there was any use in residential.

Attorney Harris and Mr. Mulholland said no, not to their knowledge.

Attorney Harris went on to explain that an overlay zone is actually a feature preferred by Zoning as it allows for special situations and because it is a flexible vehicle for large-scale development (not for three or four acre lots).

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

Mr. Nickerson called for anyone from the public who wished to speak against this application –

Joe Kwasniewski, 67 Walnut Hill Road, East Lyme said that with the application as presented, what is preventing the golf course on Rte. 161 from going by this amendment or any other golf course just because this person wants it in the hills. You can't deny them if someone would want to put some houses on the Rte. 161 golf course. Also, the water supply up there is going to affect a lot of people. He lives up there and he knows what happens if it rains hard and if it doesn't rain. He wants to know what is to prevent other golf courses from doing the same thing. And the people should know this and it should be put in the paper. He is not against advancement but be careful.

Mr. Nickerson asked about Cedar Ridge, which is 18 holes, a small par 3. He said that he was not sure that it was 200 acres and asked about the acreage.

Mr. Mulholland said that he was not sure on the acreage there but he would check on it.

Mr. Nickerson asked Attorney Harris about the order of development and what happens if the houses are built and no golf course?

Attorney Harris said that there are vehicles such as bonding and conditions such as - no houses can be sold until nine holes of the golf course are done. However, the basis is that if the golf course is not done, then the accessory also goes.

Mr. Mulholland said that it should be viewed that the primary use would have to be built first, outside of the 70 units, before any other can be built. They would have to have the golf course, as there can be no 'accessory' without it. They could talk about conditions for Certificates of Occupancy during different stages, plus there are two growing seasons before the golf course would be ready to use.

Attorney Harris updated that many wells have been dug and that any water source would have to be approved by the DEP. Based upon current information there does not seem to be any problem there.

Mr. Nickerson asked if there were any other comments from the public.

Randy White, 41 West Main Street, Niantic asked if there is going to be a minimum size for the golf course – so that there would not be 200 houses with a miniature golf course.

Attorney Harris agreed and said that he is not a golfer so he could not speak to the size however the intent is not to get around this but to have a regulation size golf course.

Mr. Nickerson and Mr. Mulholland said that they might want to add 'yardage' language, such as 5500 yards in length to clarify.

Mr. Peck noted that the regulations say that not less than 40% would be dedicated to open space or a golf course so you would have 80 acres which is not a miniature size golf course.

Attorney Harris asked if putting a standard golf course or 18 holes would specify a full size course.

Mr. Mulholland said that they could add the 18-hole requirement in the opening statements and it would take care of this. He also noted that it is still by special permit so they would have to opportunity to do that during that process also. He suggested that they might also want to boost the acreage to higher than 200.

Attorney Harris said that he had no objection to wording it as a full size golf course or of increasing the acreage to a minimum of 250 acres. He added that he would not want to go higher than that as he recalled to them that they also have the intent to do an equestrian facility on a separate area of this property due to the topography.

Mr. Nickerson asked if there were any other comments.

Joe Kwasniewski, 67 Walnut Hill Road, East Lyme said that he was confused. He asked how big is a golf course? What size is it? Tell me by the foot what the size is. What are they going to do up there? What are they going to build up there first? Are they going to open up a golf course first or build houses? He is confused and he thinks that the people are confused. He will tell the people what he knows once he gets the answers.

Mr. Nickerson reviewed what they have discussed to this point that they are going to define the length of the golf course with specific language in the regulations. It will be a full size golf course. He then asked if there were any other public comments.

Hearing none –

He asked if the Commission members had any other questions.

Mr. Salerno asked if the 50 acres of wetlands and 14 acres of slopes have been deducted from the overall acreage.

Attorney Harris said no, they took 15% and this is an R-80 zone and if they deduct this, they are pre-supposing that it is not usable and that is not the case. Also, part of the golf course is going to be lined ponds and not necessarily wetlands. The golf course will be looking to have the ponds and slopes to make the course what it should be. He said that he does not find deducting that acreage to be relevant criteria as it is not directly related to the lots themselves.

Mr. Nickerson said that they have already approved 70 SU-E units and asked if this goes through if the 70 units would be counted in with the 125 more.

Mr. Mulholland said that the operative word is 'if' – 'if' you have the acreage then the 70 is cut out and if not then no.

Ms. Hardy said that she has heard age and non-age restricted and asked if she was correct that they are not talking about totally age-restricted here?

Attorney Harris said that is correct.

Ms. Byrnes commented that No. 7 of the proposal says that not less than 50% shall be age-restricted so it is a minimum threshold.

Mr. Nickerson asked if there were any other comments – hearing none he called for a motion to close the public hearing.

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

**Ms. Byrnes moved that this Public Hearing be closed.**

**Mr. Salerno seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

Mr. Nickerson closed this Public Hearing at 9:00 PM.

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary

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

I. Add new Section 12.1.4A: With respect to an 18 hole golf course, only, approved under Section 12.1.1A of the Zoning Regulations, a residential accessory use, by Special Permit, subject to the standards as outlined in Section 25.5.

II. Modify Section 12.3.2 as follows, (add bold face item)

*18 hole golf course language of no less than 5500 yds. in length*

For multi-family and **golf course residential accessory** use development, the following plans and information shall be included in addition to the information required to be submitted under Section 25..."

III. Section 25.5. Add a new item to Section 25.5 as follows:

Residential accessory use (golf course SU)

*no objection to 250 acres*

1. Such use shall only be available on a parcel of 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 or golf course use.

*As defined by the zoning Regs.*

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

*It is suspected that these units might be reasonably used.*

4. Density: The average number of residential accessory dwelling units per acre within the parcel shall not exceed that which would be allowable based upon the minimum lot size of the underlying residential zone. This density calculation shall be based on eighty-five (85%) percent of the gross land area of the parcel.

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 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.

*(Elevations + traffic reports necessary)*

*Some flexibility needed*

*Attachment PHI - Zoning Comm. 7/8/04*

7. Use Restrictions: Not less than fifty (50%) percent of the residential units (each portion of a duplex or triplex being a residential unit) shall be occupied by senior citizens, age fifty-five (55) or older as follows:

*Provides a balance*

- 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 ~~ended~~ <sup>entered</sup> 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.

8. 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.

*Use for over 50 units or can be waived -*

9. 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 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.

10. 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.

11. No such development may be constructed on a parcel if any portion of it lies within 2000

feet of a 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.