

**EAST LYME ZONING COMMISSION
PUBLIC HEARING I
Thursday, NOVEMBER 4th, 2004
MINUTES**

Nov 8 20 04 at 3:15 (AM/PM)
Esther 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 November 4, 2004 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson opened the continued Public Hearing and called it to order at 6:12 PM.

PRESENT: Mark Nickerson, Chairman, Ed Gada, Secretary, Norm Peck,
Shawn McLaughlin, Pamela Byrnes, William Henderson,
Alternate

ALSO PRESENT: Attorney Michael Zizka, Representing the Applicant
Glenn Russo, Applicant & Manager Landmark Development
Attorney Edward O'Connell, Town Counsel
Attorney Paul Geraghty, Representing the Intervenors
Court Stenographer, retained by the EL Zoning Commission
Michael Giannattasio, Director of Public Works
Wade Thomas, Hydrologist w/N L Jacobson & Assoc.
George Calkins, Town Sanitarian
William Mulholland, Zoning Official
Rose Ann Hardy, Ex-Officio, Board of Selectmen
Rosanna Carabelas

ABSENT: William Dwyer, Alternate, Marc Salerno, Alternate

PANEL: Mark Nickerson, Chairman, Ed Gada, Secretary,
Norm Peck, Shawn McLaughlin, Pamela Byrnes,
William Henderson, Alternate

Pledge of Allegiance

The Pledge was observed.

(Note: This meeting is considered a Special Meeting from 6 PM until 7:30 PM. At 7:30 PM it becomes a Regular Meeting, as that is when the regularly scheduled Regular Meetings begin.)

Public Hearing I

1. Application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC for approval of the proposed development of the residential community as shown in plans entitled "River View Heights, (a residential community)" as an affordable housing development as defined in Connecticut General Statutes 8-30g(a)(1).

Mr. Nickerson explained that this Public Hearing had been continued and that they were calling it back to order. He also said that he had seated Alternate, William Henderson at the table.

Mr. Henderson stated for the record that he has been present and has sat through all of the previous parts of this Public Hearing and is familiar with the application of Mr. Russo and the events to date.

Mr. Nickerson said that they had some new correspondence to read into the record before they continued.

Mr. Nickerson read the following correspondence into the record:

- ♦ Letter dated and faxed 11/3/04 to Mark Nickerson, Chairman EL Zoning Commission from Marcy Balint, Sr. Coastal Planner, OLISP – Re: Possible Zone Change Application and Amendment Proposal, Coastal

Site Plan Review Application for an Affordable Housing Conservation District Regulation (AHCD) by Landmark Development Group LLC – noting the finding of inconsistent with comments and noting what they had received and reviewed since September 29, 2004. Letter of five pages with memo attachments from Joseph Wettemann and Dennis Greci.

(Note: Attorney O'Connell arrived at this time – approximately 6:30 PM – exact time not noted)

Mr. Nickerson read the following correspondence into the record:

- ◆ Letter dated and faxed 11/02/04 to Wm. Mulholland, Zoning Official from Dennis Greci, DEP Supervising Sanitary Engineer – Re: Riverview Heights (proposed) Oswegatchie Hills area, East Lyme – noting that this is in response to the inquiry regarding the projected sewage flows from the engineering report entitled “Water Pollution Control Facilities Plan” dated June 1985, prepared for the Town by Consulting Environmental Engineers, Inc.

Mr. Gada, Secretary read the following correspondence into the record:

- ◆ Letter dated 11/03/04 to Mark Nickerson, Chairman EL Zoning Commission from Richard Waterman, President EL Historical Society, Inc. – Re: Latest Landmark Application for Affordable Housing – noting that a thorough archaeological survey of the project area should be performed prior to any construction activity.
- ◆ Letter dated 11/04/04 to File from Wm. Mulholland – Re: Landmark Development Group, LLC – Riverview Heights Affordable Housing Application, Oswegatchie Hills Area, East Lyme, CT – noting conversations with Mr. Bruce Perry and Mr. Robert H. Wilder regarding access (not signed off on to date) through the Deerfield project to Landmark's property.

Mr. Giannattasio, PE, Director of Public Works read the following into the record:

- ◆ Letter dated 11/04/04 to Wm. Mulholland, Zoning Official from M. Giannattasio, PE, Director of Public Works – Re: Riverview Heights – A Residential Community (Water & Sewer Comments) – noting that in the June 1985 EL Water Pollution Control Facilities Plan that the area is not part of the designed or projected sewer flow through the EL infrastructure in Rte. 161 connecting at Rte. 156 to Waterford and that there is no water available to supply the site.

Mr. Giannattasio submitted a 2" thick stack of documents that he identified in the end of his letter as: **a)** Town of East Lyme Facilities Plan by Consulting Environmental Engineers (CEE) dated June 1985 including Proposed Sewer Service, Area, Plate 1 and System Design Criteria, Plate 2 maps; **b)** Sewer Shed Map by CEE dated November 27, 1990 revision; **c)** Sewer Service and Sewer Contract Area Map prepared by Town of East Lyme Engineering Department dated May 1999 scale 1" = 1200'; **d)** Sewer Service and Sewer Contract Area Map prepared by Town of East Lyme Engineering Department dated May 1999 scale 1" = 1200' corrected January 28, 2003; **e)** State of Connecticut vs. Town of East Lyme, Consent Order DIV-97-1008V - for the record.

Mr. Nickerson entered these documents into the record as **Exhibit 50**.

(Note: 6:52 PM – Ms. Carabelas, Regular Commission Member arrived at this time and joined the audience)

Mr. Giannattasio read the following correspondence into the record:

- ◆ Letter dated 11/01/04 to Wm. Mulholland, Zoning Official from M. Giannattasio, PE, Director of Public Works – Re: Riverview Heights – A Residential Community (General Engineering Comments) – noting that he sent a memo on 8/5/04 with comments that have either been addressed by the applicant or incorporated into a report by Nathan L. Jacobson & Assoc. (NLJ) who have been retained by the Town Engineering Department to help with engineering reviews of project proposals.

Mr. Giannattasio submitted a statement of qualifications and resume of Nathan L. Jacobson & Associates (NLJ) for the record.

Mr. Nickerson entered this into the record as **Exhibit 51**.

Wade Thomas, NLJ, Chester, CT said that he has reviewed the information for the subject project and prepared a 19-page report which he submitted for the record. He gave a brief synopsis of some of the observations, recommendations and comments. These included: the site contains many areas of exposed bedrock and shallow to bedrock conditions that are not shown on the plans, the site will require significant blasting and has limited transit and the potential exists for groundwater contamination from the subsurface sewage disposal system and/or the stormwater management facilities.

Mr. Mulholland asked Mr. Thomas if he is a Consulting Engineer to our own Engineering Department. Mr. Thomas said that he is a Hydrologist.

Mr. Nickerson entered the NLJ report into the record as **Exhibit 52**.

Mr. Henderson and Ms. Byrnes asked Mr. Thomas to explain the cross-contamination of the wells. Mr. Thomas said that bedrock foliation with fractures could cause crossover through the fissures.

Mr. Nickerson asked Attorney Geraghty if he had anything at this time. Attorney Geraghty said that he would reserve comment until later.

George Calkins, Town of East Lyme Sanitarian read the following into the record:

- ◆ Letter dated 11/04/04 to Wm. Mulholland, ZEO from George Calkins, Sanitarian – Re: Riverview Heights Affordable Housing Development/Residential Community – noting that his office has reviewed a 46-page set of plans dated received 10/12/04 for Riverview Commons and commenting on water and wastewater disposal for the site based on these plans.

Mr. Calkins submitted his letter for the record.

Mr. Nickerson entered Mr. Calkins letter into the record as **Exhibit 53**.

Mr. Nickerson then called upon the applicant for any comments.

Attorney Michael Zizka, representing the applicant said that the purpose of leaving this hearing open was so that they would have the time to respond to the comments. Here, once again this evening, they have received quite a bit of new information and again will need the additional week that they left open to review it and come back. They anticipated that this would happen as it has been happening for the past six (6) months. He said that he felt that he should state that without having the information upfront that it is impossible to respond to it. He took a moment to explain his background to them. He said that for the past 20 years he has dealt with land use and that he represents mostly municipalities – about 40 of them in this State. With this he has had the opportunity to see the procedures and how staff works with the applicants and the processes with the application and he can honestly say that in other Towns, it never happens like this where repeatedly staff comes in with comments the night of the hearing. Instead, staff will sit down with the applicant and they will go back and forth with the plans and get everything straightened out via dialogue so that they do not have to come to the hearing without information. He continued that he understands why this is happening – it is because they are presenting them with a proposal that is inconsistent with their zoning regulations – that is an Affordable Housing application. The reason why Affordable Housing was developed in CT was because the Towns were using their density regulations in a manner that allowed them to preclude housing for many people including those within the Town itself. So, he understands that they are reluctant to do this. He was hoping that they would put their thoughts on this aside. He was asking for fair treatment from staff and this has not been done.

Also, the last time they met, they asked that the hearing be held this evening as he and some of their consultants would be on vacation in the end of October. After the September 29, 2004 hearing, Mr. Russo requested a meeting with Mr. Mulholland and did not get a response, another request was made and again he did not get a response. Then Attorney O'Connell sent him a letter explaining why there would be no meeting. So, instead of staff responding directly to Mr. Russo, it becomes a situation of letters back and forth between attorneys. He noted that Attorney O'Connell had stated in his letter of 10/8/04 that it would be a good idea to schedule a meeting well in advance of this hearing – which is what Mr. Russo tried to do. They finally heard from Mr. Mulholland that there would be a meeting on October 27, 2004 and they could take or leave that date. He was away on vacation as were some of their engineers and everyone knew that they would be gone. On 10/22/04 Mr. Russo sent a letter to Mr. Mulholland indicating that he would come on 10/27/04 however no one else was available to come. He asked who would be at the meeting, but he did not get a response. When Mr. Russo went to the meeting he found that Jacobson Engineering was present. Mr. Russo had met with an Engineer from Jacobson prior to the Town hiring them and he was told at this meeting that Jacobson could not work with him because they are working for the Town. Because of this, he said that he objects to the testimony that Jacobson presented because Mr. Russo discussed his case with Jacobson before the Town hired them and did not tell Mr. Russo that they were in discussion with the Town so Jacobson used Mr. Russo's information against him. Also, There was a 10-page draft that was circulated at this meeting and Mr. Thomas made reference to having been on site. While, they have no problem with people going on the site, they do

take offense to not being notified, as they would want to be there to make sure that they are in the proper area and that they are looking at the same thing. He noted that he did not think that they would be happy with this if the roles were reversed. Also, at this meeting on 10/27/04 neither Mr. Giannattasio or Mr. Calkins had any comments however, tonight they do. He asked that they continue this until next week and they will try to comment as best that they can then.

Mr. Nickerson called for a brief break to discuss a meeting date for the coming week. The hearing reconvened at 7:37 PM.

Attorney Zizka said that he had a few more comments.

Mr. Nickerson asked what the date was on the latest set of plans that were submitted.

Attorney Zizka said that the latest set of plans was dated 10/12/04. He continued that in the letter dated 10/22/04 from Mr. Russo asking who will be attending the 10/27/04 meeting and what will be needed that Mr. Russo heard nothing. That was also where the conflict of interest occurred and Mr. Russo found out that Jacobson Engineering, whom he thought was working for him, was actually working for the Town. He then listed items that were mentioned in the Jacobson report that should have been requested in May 2004 when the application was first submitted. He cited as an example, how the Town of Glastonbury handles the applications that they get. Their staff sits down with the applicant before anything starts and they go back and forth and usually end up with one hearing because they have taken care of the issues beforehand. It does not happen like here where for six months, they are getting comments the night of the hearing. He said that he does anticipate that this will probably end up in court. He thinks that some of the Commission members have already made their minds up but it would be nice to think that some of them are trying to be objective and see what they are going through here.

Mr. Nickerson said for the record that he hopes that the entire Commission is being objective as it is their duty to be just so.

Mr. Giannattasio said that he would like to respond, as staff, to some of Attorney Zizkas' comments. He said that they received the last set of plans and drainage computations on 10/12/04. Mr. Russo asked for a meeting to review them. That is not the way that they work, they ask for the plans so that they can review them first and then have something to go over with the applicant and give them comments. He said that there are two sides to every story. With regard to Nate Jacobson, based on the fact that they had so much work from the 10/12/04 plans, they went out and hired Nate Jacobson, not just for this application but to provide review for other applications made to the Town and to do Town reviews. Jacobson said that they would like to enter into that contract also and that they would immediately notify Mr. Russo that there was a conflict. From this, he believed that Mr. Russo was aware of Nate Jacobson working for the Town. Also, he will take responsibility for Jacobson walking the site as he authorized them to do so knowing that an application requires a site walk to confirm testimony. He said that he felt that they had the inherent right to walk the site and he apologized to Mr. Russo if that was not the agreement as he authorized them to walk the site thinking that it was okay to do so.

Mr. Nickerson asked Attorney O'Connell about the inherent right to inspect property when an applicant submits an application to the Town.

Attorney O'Connell said that the land use application forms that he has reviewed have a provision in the form that authorizes the Town employees, agents and Commissions to perform investigations. Whether such an application was submitted in this case, he is not certain and they will have to check the record.

Glenn Russo, Manager, Landmark Development LLC said for the record that he does not believe such an application was submitted that gave the Town the authority to go out on the property. However, they had the same problem the last time with the zone change where the Town felt that they had the inherent right to go on the property and people went on the property without asking permission. At that time, they agreed that the Town would notify them 48-hours in advance of them going out on the property. This was the agreement and here they are with government officials going out on private property after they have agreed not to go on private property without giving notice. He said that he thought that they had a gentleman's agreement on this and to do the same thing with the same piece of property when he thought that they had an agreement is disingenuous. As for the plans, they were left at the last meeting on September 29, 2004. He was assuming

that they would review them as they had them since that meeting. However, on May 7, 2004 they left plans for the Town staff review and expected to hear from them shortly after. The first time they heard about them was three (3) months later at the first public hearing on August 5, 2004. Also, the comments that they received then were not specific. Now, Mr. Giannattasio has had the most recent set of plans to review since 10/12/04. At the meeting on 10/27/04 he said that he asked Mr. Giannattasio if he had any other comments and he was told that he did not at that time and that he would get back to him. Well, at 2 PM on November 1, 2004 he faxed 19 pages, containing 61 comments to them - less than three (3) days before this public hearing. However, at the 10/27/04 meeting he had no comments and no update from his August 5, 2004 letter. He also asked Mr. Calkins if he had other comments and he said that he had none. But here he is tonight with pages of comments. This is so blatantly unfair especially when considering that this past month has been grueling with memo after memo begging for a meeting. If this is the way that the Town is going to treat this application with their smoke and mirrors way, then it is not fair.

Attorney Geraghty said that he wanted to address the Commission briefly, in part because the press is present as he felt that they are being treated unfairly. He said that he does not exclusively deal in land use however, with an application of this nature he can say that what is happening is not unusual. An application of this magnitude does take time in trying to get information back and forth from the State and other agencies. Also, the Town and staff are acting under threat of another lawsuit as they have been sued previously over the denial of a prior application. So, they do not want to put themselves in the position of being sued again. He believes that Mr. Russo has taken this approach with his application, as he knows how to put a proper application together. With respect to the Town of Glastonbury that Mr. Zizka cited, that type of handling of an application is nice but this is not that type of application. A lot of what they are hearing tonight he feels is the strategy of the applicant to say that they are being wronged by the Town of East Lyme. He said that Mr. Russo's credibility is further shown in a court case in Middletown, CT - Georgetown LLC vrs. Woodgate Condominiums where the judge said that Mr. Russo is not a credible witness and that he gave exaggerated testimony on the drainage. He said that he thinks that the Town did the right thing in hiring outside people to review the plans and that there was nothing wrong with both of them looking to hire the best people. Lastly, he said that he takes offense to Attorney Zizka saying, twice now, that some members are predisposed on this application and he does not name who they are so that they can defend themselves.

Attorney Geraghty submitted a copy of the Middletown court case for the record.

Mr. Nickerson entered this into the record as **Exhibit 54** – Court Decision Docket No. 204WL202982 Georgestreet of Middletown LLC vrs. Woodgate Condominium Association of Middletown, CT.

Mr. Nickerson said that he would like to end testimony this evening however, they will have to continue this hearing until next week, Wednesday, November 10, 2004 at 7:30 PM. Because some people may not be able to attend the next meeting, he said that he would allow them to speak now.

Attorney Zizka said that he could not attend a meeting on Wednesday, November 10, 2004 as he has another appointment.

Mr. Nickerson said that he thinks that the drop-dead date on this application is November 11, 2004, which is a Federal Holiday, and they will not be meeting on that date.

(A brief break was taken to discuss a meeting date)

Mr. Nickerson said that the applicant is granting an extension of this public hearing until Monday, November 8, 2004 at 7:30 PM.

Mr. Nickerson noted that he did not see anyone from the public who wished to speak this evening -
He called for other comments -
Hearing none -

Mr. Nickerson then called for a motion to adjourn and continue this Public Hearing.

****MOTION (1)**

Ms. Byrnes moved that this Public Hearing be adjourned and continued to Monday, November 8, 2004 at 7:30 PM.

Mr. McLaughlin seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Nickerson adjourned this Public Hearing at 8:08 PM and continued it until Monday, November 8, 2004 commencing at 7:30 PM.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

(Note: A brief break was taken prior to commencement of the next public hearing)

**EAST LYME ZONING COMMISSION
PUBLIC HEARING II & III
Thursday, NOVEMBER 4th, 2004
MINUTES**

Nov 8 20 04 at 3:15 AM
ESTHER B. WILLIAMS
EAST LYME TOWN CLERK

The East Lyme Zoning Commission held the Application of Ralph and Rose Marie Whiting for a zone change from RU-40 to SU-E and a Special Permit Public Hearing on November 4, 2004 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson opened the Public Hearing and called it to order at 8:15 PM after the previously scheduled Public Hearing.

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

ALSO PRESENT: William Mulholland, Zoning Official
Rose Ann Hardy, Ex-Officio, Board of Selectmen
William Henderson, Alternate

ABSENT: William Dwyer, Alternate, Marc Salerno, Alternate

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

Public Hearing II & III

1. Application of Ralph and Rose Marie Whiting for a change of zone from RU-40 to Special Use Elderly (SU-E) for property identified in the application as 40 Roxbury Road, Niantic, Connecticut – and –
2. Application of Ralph and Rose Marie Whiting for a Special Permit to construct 27 units of elderly housing at property identified in the application as 40 Roxbury Road, Niantic, Connecticut.

Mr. Nickerson noted for the record that Ms. Carabelas, regular Commission member was now seated and that Mr. Henderson, Alternate was seated in the audience. He explained that Ms. Carabelas had been caught in traffic trying to get here in time for the earlier start of the meeting.

Mr. Mulholland said that he had a letter from the applicant requesting them to open and continue this public hearing until their next regular meeting as they anticipated that the previous public hearing this evening would take considerable time. He asked that they continue it until the November 18, 2004 meeting of the Commission.

Mr. Nickerson called for a motion to adjourn and continue this Public Hearing.

****MOTION (1)**

Ms. Byrnes moved that this Public Hearing be adjourned and continued to Thursday, November 18, 2004 at 7:30 PM.

Mr. McLaughlin seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Nickerson adjourned this Public Hearing at 8:19 PM and continued it until Thursday, November 18, 2004 commencing at 7:30 PM.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary