

**EAST LYME ZONING COMMISSION  
PUBLIC HEARING I  
Monday, NOVEMBER 8th, 2004  
MINUTES**

FILED IN EAST LYME TOWN  
CLERK'S OFFICE

Nov 24 20 04 at 11:30 AM  
PM

The East Lyme Zoning Commission held the Application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC Public Hearing on November 8, 2004 at Town Hall, 108 Pennsylvania Avenue, North. Clerk  
Chairman Nickerson opened the continued Public Hearing and called it to order at 7:35 PM.

**PRESENT:** Mark Nickerson, Chairman, Ed Gada, Secretary, Norm Peck,  
Shawn McLaughlin, Rosanna Carabelas, William Henderson,  
Alternate

**ALSO PRESENT:** Attorney Michael Zizka, Representing the Applicant  
Glenn Russo, Applicant & Manager Landmark Development  
Jason Sarojak, ASW Consulting, Engineering & Surveyors  
Wade Thomas, Hydrologist w/Nathan L. Jacobson & Assoc.  
Attorney Edward O'Connell, Town Counsel  
Attorney Paul Geraghty, Representing the Intervenors  
Court Stenographer, retained by the EL Zoning Commission  
Michael Giannattasio, PE, Director of Public Works  
William Mulholland, Zoning Official  
Rose Ann Hardy, Ex-Officio, Board of Selectmen  
Marc Salerno, Alternate

**ABSENT:** Pamela Byrnes, William Dwyer, Alternate

**PANEL:** Mark Nickerson, Chairman, Ed Gada, Secretary,  
Norm Peck, Shawn McLaughlin, Rosanna Carabelas,  
William Henderson, Alternate

**Pledge of Allegiance**

The Pledge was observed.

**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 stated for the record that he had seated Mr. Henderson, Alternate at the table and that Ms. Carabelas who was not seated at the previous meeting was seated this evening.

Ms. Carabelas said that she was familiar with the proceedings from the previous meeting.

Mr. Henderson said that he was seated for the previous meeting and has been in attendance for all of the parts of this public hearing and is familiar with it.

Mr. Nickerson said that they did not have any correspondence to read into the record this evening and called for the applicant or their representative to give a presentation.

Glenn Russo, applicant and Manager Landmark Development Group LLC said that they have a lot of ground to cover this evening. As they know, the Town did not agree to meet with them other than at the October 27,

2004 meeting where they received many comments three days prior to this meeting. He said that they also heard at the last meeting from the attorney for the intervenors that they sued people and so that is why the Town won't meet with them. Mr. Giannattasio was not sued so he could have met with them but he chose not to. He asked that they please bear in mind that the presentation that he is doing this evening is usually something that is done by and with staff first. The first issue has to do with the sewers. He submitted minutes from the Water & Sewer Commission Meeting dated July 27, 2004 stating the amount of sewage being used by the Town. They have a 1.5M gallon capacity and are at 67% of it so the Town has about a half million gallons that are not used. The point is that there is sewage capacity available.

Mr. Nickerson entered this into the record as **Exhibit 55** – June 2004 Sewer Department Monthly Report.

Mr. Russo then presented a transcript from a prior hearing regarding the sewer shed area where a Commission member states that four different people (Director of Public Works, Chairman of the Sewer Commission, Director of Planning and an OLISP member) have stated that the property falls outside of the sewer shed.

Mr. Nickerson entered this into the record as **Exhibit 56**.

Mr. Russo then referred to a memo dated March 7, 2002 from Dennis Greci who said that he contacted Fred Thumm and then offered that Oswegatchie Hills is not in the sewer shed. Mr. Greci then passes that information to Marcy Balint and, this is important because it was a basis for the denial of the application.

Mr. Nickerson entered this letter into the record as **Exhibit 57** (DEP Water Management Memo 3/7/02).

Mr. Russo then said that he would go through a series of maps.

Mr. Nickerson entered into the record as **Exhibit 58** – the Map entitled - Sewer Contract Areas 1989 – Town of East Lyme.

Mr. Russo pointed out the sewer shed area GS-1 – he said that they would notice Latimer Brook and that directly to the left of Latimer Brook is also the sewer shed area.

Mr. Nickerson asked what the star meant.

Mr. Russo said that it means GS-1 and that Mr. Thumm had explained that to him. He pointed out the area on the map and indicated that the property to the left of Latimer Brook is their property and that they can clearly see that a portion of his property does in fact fall within the sewer shed. Mr. Thumm originally wrote a memo saying that it does not fall within the sewer shed and then he subsequently wrote a memo that said that a portion of it does fall within the sewer shed. He submitted this letter for the record.

Mr. Nickerson entered into the record this letter from Mr. Thumm dated August 5, 2004 as **Exhibit 59**.

Mr. Russo said that Mr. Greci also wrote a letter to Meg Parulis dated September 29, 2004 saying that a portion of the property does fall within the sewer shed. He submitted this for the record.

Mr. Nickerson entered this letter from Mr. Greci to Meg Parulis dated 9/29/04 into the record as **Exhibit 60**.

Mr. Russo said that in the letter from Mr. Greci, he also said that he had met with him (Mr. Russo) and they had gone over a series of maps. These are the maps that they went over. He next presented a referral letter from Wayne Fraser, Chairman of the Water & Sewer Commission to Ed Gada, Secretary of Zoning dated July 29, 2004 where he says that the property does not fall within the sewer shed. This is very important because it is one of the reasons that the judge at the last trial believed this rather than the fact that a portion of their property does fall within the sewer shed.

Mr. Nickerson entered this letter into the record as **Exhibit 61**.

Mr. Russo then presented and submitted the Sewer Use and Sewage Disposal Ordinance for the Town of East Lyme. He read from this and noted that it said that if their property is situated on such a street with sewers that they may attach to such structure.

Mr. Nickerson entered this into the record as **Exhibit 62**.

Mr. Russo then presented a map Plan and Profile of Access Road E-1. He pointed out the property and how it abuts the ROW and how the ROW contains city water and sewer.

Mr. Nickerson entered this Plan and Profile of Access Road E-1 into the record as **Exhibit 63**.

Mr. Peck asked whom the ROW is in favor of.

Mr. Russo presented an Easement Map of Deerfield showing an existing utility and ROW Easement.

Mr. Nickerson entered this into the record as **Exhibit 64**.

Mr. Russo explained and pointed out that the utility easement runs from King Arthur Drive all the way to their Sergeant's Realty property and that it is their contention that it was put there for them to connect to and to have the use of.

Mr. Russo next presented Minutes from a Water & Sewer Meeting dated 9/30/04 regarding the Spinnaker Development and Indian Woods Road stating that they would be expanding as they bought some adjacent property and that they would be allowed to get their water through the existing Spinnaker site.

Mr. Nickerson entered these Minutes into the record as **Exhibit 65**.

Mr. Russo continued that the Town of East Lyme has expanded their sewer-shed area six times since 1985. He said that he went over the map with Mr. Thumm before Mr. Thumm retired. He cited the Orchards of East Lyme as one expansion that was done within months of his application. They chose to expand the sewer shed by 8,543 linear feet for hundreds of acres to a predominantly high-end subdivision of \$500,000 homes.

Mr. Nickerson entered this letter dated March 15, 1999 from Fred Thumm to the EL Planning Commission as **Exhibit 66**.

Mr. Russo continued that the Town has extended the sewer shed many times. Deerfield has sewers and his property abuts Deerfield however, they tell him that he cannot have city sewer. He wants to do affordable housing and he is still denied sewer. They have proposed connecting to this and this is exactly what Spinnaker also proposed and was granted. The alternative sewer plan that they had was going down Boston Post Road. He presented Map C-501-505 – Konover Investments LuLu Site. He said this was approved and that they can see the Waterford/East Lyme line. As they go left they will see a second bridge – they have property that starts 54' to the right of the second bridge so their property fronts on Boston Post Road and on a previously approved sewer and water line. There is a second alternate sewer route that goes down Calkins Road as there is a stub there. So, they could go to that stub and then to the Waterford Town Line. This Saturn dealership has been approved although it has not been built yet.

Mr. Nickerson entered this map into the record as **Exhibit 67**.

Mr. Russo presented the September 28, 1999 Water & Sewer Minutes approving this Saturn dealership tie in.

Mr. Nickerson entered these Minutes into the record as **Exhibit 68**.

Mr. Russo next said that they had asked Fuss & O'Neill to do a stormwater quality analysis for them. They started to do their analysis and contacted the DEP and then they received a phone call from Meg Parulis. She told them that they could not work for him, as it is a conflict of interest as they are working for the Town on a sewer shed study project. Fuss & O'Neill had been working for him for two years – he recalled to the Commission that they heard from a Traffic Engineer from Fuss & O'Neill for the traffic report. He then received a call from Fuss & O'Neill saying that they had to terminate the contract with him due to a conflict of interest. Fuss & O'Neill has not finished their study however they were told that they couldn't represent him, as they would be sued. They are in the process of reducing the size of the sewer shed even though it was expanded for the Orchards and others. He has been told that the sewer shed is too big and he would not be surprised if the next tactic would be to adjust the sewer shed and to adjust him out of the sewer shed area. He said that he wanted this on the record as his opinion of what is on the way.

Mr. Mulholland asked if he was putting this on the record without anyone here from Fuss & O'Neill.

Mr. Russo said correct. He also said that they had heard that they had not received an application for sewer. He said that he spoke with Mr. Thumm on August 30, 2004 and was told by him that there is no application for sewer and that when he files with Zoning that it is taken care of with that. He presented a copy of his 8/30/04 letter to Mr. Thumm regarding contacting him if a special sewer application was necessary. He did not hear anything back from Mr. Thumm regarding any special sewer application.

Mr. Nickerson entered this letter into the record as **Exhibit 69**.

Mr. Russo said that there was a follow up memo from Mr. Greci regarding their alternate route. The letter was addressed to Mr. Mulholland and it said that the Golden Spur area he thinks is 150 acres. Due to the lateness of the memos he could not meet with anyone to discuss this. The problem is that it is a false assumption on acreage and that is not the way that the Town allocates its' sewer. If they did do it this way, then this would be the first time that they have done so. Mr. Greci continues to say that the sewer has to be in the ROW. Mr. Greci is mistaken in that he does not think that the ROW that they abut has a sewer in it. He has already gone over the map with the Commission about the sewer in the ROW. He presented a Map of Deerfield Village dated 1/23/87 revised to 2/12/90 showing a utility easement. He pointed out that inside of the ROW is an

existing sewer and water main. So, regarding the city water and sewer they feel that they are entitled to it per the ordinance as they abut a property that has sewer and this is identical to the Spinnaker development. If the DEP requires the map, then it is in the purview of the Town to send it to them. Mr. Nickerson entered this letter into the record as **Exhibit 70**. He entered the Map of Deerfield Village into the record as **Exhibit 71**.

Mr. Gada asked if they have access as he recalled that those arrangements had not been made yet. Mr. Russo said that like many other things that are false and misleading, he will go through this and will clarify issues. He said that typically he would sit with the engineer and go over these types of comments and that they would be clarified and cleared up along the way. However, without staff cooperation he will be clarifying issues tonight. He said that it is a good question and one that he would want clarified if he were sitting there also.

Mr. Peck asked if he would read the ordinance over again.

Mr. Russo read the Town Ordinance again as Mr. Peck requested.

Mr. Henderson asked if he could respond to the letter that said that New London cannot take anymore capacity.

Mr. Russo said that the engineer will respond to this however it is his understanding that they can send it all the way down Boston Post Road to Waterford but a pump station might need to be rebuilt. He recalled also that their preferred route is to go down through Deerfield.

(A short break was taken here)

Mr. Russo said that there was a letter to Mr. Mulholland from Mike Giannattasio dated 11/5/04 referring to a map. They learned about this when it was read into the record and his engineer has worked on this around the clock trying to address the 61 items that were listed in this letter. He is saying that GS-1 is a portion of the sewer shed (June 1985) and is for sewage to flow via Boston Post Road. He contends that is not an accurate statement. The reality is that if they look at that map and go to GS-1 on that map that Deerfield Condominiums falls within GS-1. They are on city sewer and they do not flow via Boston Post Road to Waterford so the sewer that falls within GS-1 does not flow as Mr. Giannattasio says that it does. This is from what they can tell. Typically this is something that would have been discussed with staff long before this time.

Mr. Nickerson entered this memo dated 11/5/04 into the record as **Exhibit 72**.

Mr. Russo presented a Sewer Capacity Study Map dated 7/1/04 prepared by Fuss & O'Neill for a workshop.

Mr. Nickerson entered this into the record as **Exhibit 73**.

Mr. Russo said that this analyzes the 1986 facilities plan sewer shed. Fuss & O'Neill super imposed the sewer shed boundary on this as part of their workshop. It shows that the entire Howard parcel falls within the sewer shed. The sewer shed actually cuts his property in half. It also shows that Deerfield falls within GS-1. This is GS-1 and Deerfield does not flow to Boston Post Road or follow the facilities plan. That is a clarification. So, the limitations kick in with flowing down Boston Post Road. The original premise that they are following is wrong. Deerfield does not flow down Boston Post Road so the Town is not even following its' own plan.

Mr. Russo then said that in the Calkins letter they made references on soil types. They have been looking at soil conservation maps and are trying to determine if property can be developed or not and that is not a correct use of those maps. He submitted soil-testing results dated 11/2/88 supplemented. Since 1988 the Town has known that soil tests were done on this site and they have known that soil maps out there do not accurately reflect the soils that are out there.

Mr. Nickerson entered this into the record as **Exhibit 74**.

Mr. Russo said that when he FOI'd the Calkins records he found that the data that they had shows what he is saying. He noted that on a board that they have indicated the test pits. The ones in red have a depth to rock of greater than 17". Out of 50 test pits – only one was less than 17" and most are much greater – 120", 64" and 72". The 2003 test data shows that 43 out of 45 were greater than 17". This shows that the soil types that this Commission based a previous denial on were not accurate. They actually dug every soil type, the test pit data is there and they can look at it. The soil types are not uncommon for pretty much any part of East Lyme except for sand at the shore area. It is not accurate to portray this as one big rock with 17" of cover.

Mr. Russo next said that he wanted to address the community septic systems. They would like to go to King Arthur or Boston Post Road. He understands that sewer is not within the jurisdiction of this Commission. He said that they did all the test data for a community septic system and that the DEP is in the process of reviewing the application. He presented a letter from Landmark to Joe Wetteman dated 10/19/04 regarding an

on-site subsurface system and his answer that he felt that it could be done with some modifications. The letter also states that Mr. Wetteman said that he has never approved a set of plans the first time that he got them and that they have to undergo modifications such as pre-treatment.  
Mr. Nickerson entered this letter into the record as **Exhibit 75**.

Mr. Russo said that he did not want statements by Mr. Calkins taken out of context. He then presented transcripts from Attorney Sarra's testimony confirming that Mr. Wetteman did speak with him and did say that there was no reason why this community septic system could not be approved. This is found on Page 151 of the transcript starting at line 23.

Mr. Nickerson entered Attorney Sarra's testimony dated 9/29/04 into the record as **Exhibit 76**.

Mr. Russo also noted for the record that it is not a requirement of this Commission to submit for a community septic system prior to approval of the application. He then presented a formal response to Mr. Calkins letter dated 8/3/04. He said this was a point by point response to Mr. Calkins who was suggesting that no permit had been issued by the DEP for this development and that it was somehow required when it was not.

Mr. Nickerson entered this letter into the record as **Exhibit 77**.

Mr. Russo next addressed comments made by Meg Parulis regarding his property. At the first public hearing during his speech he had said that the Town had misstated some facts. The Town had said at the prior application that his property was designated as open space according to the POD. That is not accurate as only a portion of his property falls within open space according to the POD. So it is disturbing to find that when a portion of his property falls within the sewer shed that the Town interprets the map as saying that none of it does - and when a portion of his property has open space in it, the Town interprets the map as saying that all of it does. He then used **Exhibit 15** to show how only a portion of his property falls within the proposed open space area of the POD. He noted that had he been able to sit down with staff that this could have been cleared up beforehand.

Mr. Gada asked if the proposed open space abuts the ROW.

Mr. Russo said no. He continued that at that public hearing that he was making the argument that there was a misstatement of fact regarding the open space. Then Meg came up and said that what they really meant to say was that they were going to use the 'future land use' map of the POD, a very different part of the POD showing all of Oswegatchie as open space. However, they went back to the prior application and in a transcript from that, and in fact the judge ruled against them because she believed that testimony that all of his land fell within open space. In Meg's testimony on page 21 she presented map component figure 11-2 (Open space plan) and stated that it shows the land clearly within the open space. When she was testifying she was not testifying that it was the future land use figure 2-1, she was trying to do a bait and switch with the maps. Map Figure 11-2 shows that his land clearly does not fall within the open space area but rather as future proposed open space. So, she then tries to say that was not the map that she meant however, the transcripts show what she said. He presented this for the record.

Mr. Nickerson entered this transcript page 21 from the prior application in 2002 as **Exhibit 78**.

Mr. Russo also submitted a letter from Landmark to Meg Parulis dated August 5, 2004 that was a response to her statements.

Mr. Nickerson entered this letter into the record as **Exhibit 79**.

Mr. Russo submitted more of the transcript from the prior application where Meg Parulis spoke again after he had spoken to try to clear up the confusion. She tried in this transcript to reinterpret the open space map.

Mr. Nickerson entered this into the record as **Exhibit 79**.

Mr. Russo then presented a history of the land – first a letter from Constance Kislak of DEP Land Acquisition to David Koszak dated December 1989. This land was offered to the State to purchase under the 3-acre zoning and the State said that they were going to wait and see what the Town does. If the Town will re-zone the property then they will be able to drive down the price. Guess who blessed the zone change and who was involved with it - OLISP and the DEP, the very people who were hiring the appraisers to appraise our property as it would drive away developers and drive down the price. In effect they also would not have to buy the property. He noted that now they could see why landowners get ticked off.

Mr. Nickerson entered this letter into the record as **Exhibit 80**.

Mr. Nickerson then said to Mr. Russo that he had originally offered the property for sale to the Town – he asked if there was a price given.

Mr. Russo said that they had told him before and correctly that they were not the party responsible for that so they sent letters to all of the Board of Selectmen members. They offered to sell to the Town that portion of the property that was designated as open space as seen in figure 11-2 which was not contained in Phase I. They would use a TIF (Tax Increment Financing using future tax revenue) to finance the property so that it would not be a drain on the Town. There has been no response from the Town on this to date.

Mr. Russo continued that they were also asked as a favor, by the Town to take this plan off the path for a year while the Town tries to get the DEP to buy it. They did this, the Town changed the zoning and nothing happened. He asked that they please understand that a project of this magnitude cost a lot to halt for a period of a year. He submitted a letter that was written to Wm. Conrad from David Leff of the State DEP dated 12/18/1997 stating that the DEP decided not to pursue acquisition because it offered limited recreation, was not contiguous to other acquisition land and the cost was just too high. So, the change of zone tried to change that and it did not work, as the cost was still too high.

Mr. Nickerson entered this letter into the record as **Exhibit 81**.

Mr. Russo also presented a letter from the State Forestry Department dated 8/12/1998 stating that they had no interest in purchasing this property from the Forestry viewpoint, as there was no inherent value.

Mr. Nickerson entered this letter into the record as **Exhibit 82**.

Mr. Russo also presented a memo dated 9/1/98 from the DEP Wildlife Division (to Beth from Peter Bogel?, Vogel? – Mr. Russo said that it was difficult to make out) stating that they had no interest in the acquisition of this land due to the intensive development in the surrounding area.

Mr. Nickerson entered this memo into the record as **Exhibit 83**.

Mr. Russo next said that he would give a few examples on how the Town does not require prior DEP approval on community septic systems prior to zoning approval of the application. He presented the approval for Deerfield stating that they approved 100 units and DEP had not yet approved a septic system.

Mr. Nickerson entered this application of Deerfield for 100 units dated October 23, 1980 into the record as **Exhibit 84**.

Mr. Russo then presented Zoning Minutes dated 6/17/04 regarding an application of 80 units of SU-E housing on 16 Mostow Road in East Lyme. There is a discussion regarding DEP approval for on-site septic. Attorney Harris speaks and states that they will submit to the DEP for approval and that would be a six-month to one-year project. Mr. Pfanner explained the process and stated that once the permits are in place, they submit to DEP and it will take about a year, as it is an involved process. This Commission approved this application knowing that they still had to go to the DEP for septic approval. He said that they are asking for the same consideration and treatment if that ends up being the fall back plan to the other fall back plan of theirs. He noted that the burden of proof here would fall upon the Town whereas the burden of proof with that application would have fallen upon the applicant.

Mr. Nickerson entered these minutes dated 6/17/04 into the record as **Exhibit 85**.

Mr. Nickerson also noted here that there is a clock ticking and that he thinks that they have to close at midnight. He asked that they be mindful of that in their presentation. (A very short break was taken here)

Mr. Russo said that he has said the bulk of what he had to say and would now circle back and cover some loose ends. He said that he would first start with the DEP interest in purchasing the property as open space. The DEP made an offer to purchase the property through the realtor to the owners on May 27, 1999. That was after he had signed a contract to purchase the property from the landowners. While they had their contract to purchase, the DEP was attempting to purchase the property. There was a memo in the DEP file from Connie to the realtor asking what their back-up contingency plans are as the property is under contract. Consequently the zone change happened and the fighting of the zone change occurred and it appears that the DEP was trying to regulate no use of the property. There are also many letters in the DEP file from and to Mr. Dunn. Mr. Dunn is encouraging the DEP to continue to try to pursue the landowners. Mr. David Leff writes to Mr. Dunn 'stating that because Mr. Russo has approached the DEP directly and has options to purchase directly from the owners, they are not in a position to directly contact the owners. To do so would give the appearance that the DEP has little regard for legal agreements, which is incorrect and would ultimately damage our program.' That was written in March of 2000 – a year after they had already contacted the owners and after it was already under contract to him.

Mr. Russo said that another memo that they found in the DEP file was to the attention of Marcy Balint. It was a soil suitability analysis sent by Meg to the DEP analyst and of course the soils report came back not suitable for development. Here, the Town and Meg are sending the DEP soil suitability on this project and the test data had proved that it was not accurate. Also, the accurate information was sitting in Mr. Calkins files the whole time.

Mr. Russo said that in a previous application before this Commission that they had a letter stating that CHFA would have no objection to granting egress to the property. This exists in a letter written on 4/26/2004. He said that he met with Mr. Wilder and made arrangements. The easement exists and their ability to use the easement exists. Also, this is just like the Spinnaker development, they are getting their utilities through a joint venture project which they have allowed.

Mr. Nickerson asked if they have this approval in place. He said that he was asking because they are putting a third of the development up on the hill and he could just give them the luxury condos and take the housing.

Mr. Russo said that he is not sure that it is relevant who owns what. He said that he would ask his attorney.

Attorney Zizka said that he was not sure what the question is.

Mr. Nickerson said that he is asking if the joint partnership with the affordable units extends to the luxury condos.

Attorney Zizka said 'respectfully, Mr. Chairman, that is not relevant here.'

Mr. Henderson said that they have heard on a number of occasions this evening 'us' and that taking this project off-line for a year was very costly to 'us'. Who is the 'us'?

Mr. Russo said that Jarvis of Cheshire owns one piece, Sergeants owns another and Landmark is the management arm of which he is the manager. He refers to the Company as 'us'.

Mr. Gada asked if they have a signed agreement on the ROW.

Mr. Russo said that they have an agreement as to what will occur. He said that you get an easement for something that is approved. They are granted when they know exactly what is approved and where the sewer is going to go. It is an onerous process and they want to know what is going to happen upfront.

Mr. Gada summed that he is saying that he is not going to go for a signed agreement until he knows what is approved.

Mr. Russo said that they have started the process with CHFA however, they need to know what gets approved. The CHFA stands to benefit from this as they would get a pool and fitness center that the AH (Affordable Housing) would have and that they do not have but would have the use of. CHFA has tried to get that package built for some time however they have not had the finances to do so.

Mr. Nickerson said that it seemed that the AH units would be closest to Deerfield and with the sharing of amenities, it seems that they would become part of the Deerfield development.

Mr. Russo said that was not so. One of the thoughts was to share the amenities with Deerfield. Deerfield is CHFA financed and the two cannot be merged together.

Mr. Nickerson asked if the luxury condos would have access to the amenities and would go up the hill to utilize them.

Mr. Russo said that the 'for markets' do not have access to these amenities. This is Phase I the AH is all rentals and the 'for market' is all condos. The other phases will have fitness centers and other amenities.

Mr. Nickerson asked if this was not including the land that they have offered to the Town.

Mr. Russo said that he does not know who will go first on that as he has not heard from the Town and he may not hear from anyone. If Phases II to IV do not get built, they would modify Phase I for a clubhouse and pool as they certainly have the area to do so. The area is not designated as open space per se such as in a subdivision open space designation.

Mr. Mulholland asked if there would be any public access to the open space.

Mr. Russo replied that in the CAM application they proposed allowing public access along the entire frontage of Phase I. There would be a public access walkway along the water.

Mr. Russo continued that he had a letter written to him from Priscilla Bailey dated 10/14/04. In it she states that she has reviewed the E & S plans that she received and that she found them to be well thought out and thorough and any issues she may have had appear to be resolved in these plans.

Mr. Nickerson entered this letter into the record as **Exhibit 86**.

Mr. Russo also presented a letter dated 10/22/04 to him from Dr. Harvey Luce PhD, a soil scientist stating that he has reviewed the S & E plans and had made some suggestions and that these have been made so that there are no vegetative slopes greater than 3:1. He summed that the E & S controls for this site are as stringent as any that he has ever seen.

Mr. Nickerson entered this letter into the record as **Exhibit 87**.

Mr. Russo said that as an intro to the Engineer, he wished to present transcripts from testimony of Marcy Balint dated 2002 where she stated that degrading of streams and water begins at 12-15% of impervious coverage. Below that, they do not have it and above, they have to address it. He gave as an example the Saturn dealership that has 85% so that goes to show that it does not mean that you can't develop property. Marcy made a generic statement on impervious coverage and degradation.

Mr. Nickerson entered this testimony from Marcy Balint in 2002 into the record as **Exhibit 88**.

Mr. Russo presented a DEP Coastal Resources Map of 1958 - photo revised to 1970. He said that the purpose of this map is to inventory the resources along the coastline of East Lyme. If you go up the Niantic River to their property, it shows that there are no resources inventoried along the frontage of Phase I. For 800 to 1000 feet the only resource is the river itself. Also, Dr. Bailey found no endangered or threatened species on the site. If you take all of this and the DEP wildlife memo about the dense development, he said that they could then present that this is not pristine property as has been presented by others. Even the Forestry Division has no interest in it. In fact, the property is not old forest and has probably been completely cleared some 85-100 years ago.

Mr. McLaughlin asked for a larger scale map suggesting that it might show more resources.

Mr. Henderson said that on one of the maps it was indicated that there is a wildlife area in Deerfield Village. He asked if this would also extend to his property.

Mr. Russo said that he believes that it meant a conservation easement area and that stops at the boundary line. If this were purported to be an actual wildlife area then it would not stop at the boundary line. The DEP referred to this area as one of dense development so it is a misinterpretation to think of it as a wildlife area.

Mr. Nickerson entered this DEP Coastal Resources Map into the record as **Exhibit 89**.

Mr. Nickerson then noted that they promised the public a chance to speak and that he would like to change gears and allow the public to speak.

Attorney Zizka said that with all due respect that they need to have the time to respond to all of the comments that were received at the last hearing. He recalled that they received 61 comments from a brand new engineering firm that they brought to the Town staff and their engineer is here now to respond to them and they must be given the opportunity to respond to those comments.

Mr. Nickerson said that they are already three hours into this and they received 34 exhibits that they could have received before last Thursday. The public has been here and maybe we can move through this.

Attorney Zizka said that by the same token the public could have spoken the last time also.

Mr. Nickerson said that he understands that and he would limit them also.

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

Mr. Nickerson called for anyone from the public who wished to speak in opposition to the application –

Karen Kari, 6 Boston Post Road, East Lyme said that she was reading a letter dated 9/29/04 written to Mr. Nickerson from Debra Mosher-Dunn stating that she was submitting 41 more signatures to her petition of 78 previous signatures for a total of 119 signatures. This petition requested the officials to do all they could to preserve this area. She also reminded them to be stewards of the land for all to enjoy. She submitted this for the record.

Mr. Nickerson entered this letter dated 9/29/04 into the record as **Exhibit 90**.

Michael Dunn, 7 Plant Drive, Waterford said that he was speaking on behalf of the Friends of Oswegatchie Hill Nature Preserve Inc. He is the Vice-President of the Oswegatchie Hill Nature Preserve. He said that this site has been identified for decades as an area that the Town would like to see preserved. It has been found unsuitable before and under their new strategy they are proposing about eight times that density. He said that the developer wants them to ignore the steep slopes and soil types and the sentiment of the people who want

to preserve this area. Attached he asked that they find 1,717 signatures from people who want this area saved. He said that those signatures also appear on the banner behind them. He continued that they are not opposed to Affordable Housing but they are opposed to a developer bullying the Town to destroy property that is destined for preservation. He requested that they deny this application on environmental grounds. He submitted the letter, photo and signatures for the record.

Mr. Nickerson entered these three items into the record as **Exhibit 91**.

Paul Geraghty, Attorney on behalf of the Intervenors said that they could spend another 65 days going over all of this point by point. He said that instead he asks them to decide this application on the integrity of the people themselves. This is just Mr. Russo's opinion on things and he will touch on just a few of these things now. One is the agreement on the ROW as he does not think that there is anything out there that exists and that is why they won't answer it. He suggests that they ask Attorney Zizka about it. He said that he thinks that this falls under the Statute of Frauds and that there is nothing out there and that is why they are telling you that it is not relevant. They don't want to answer the question because the answer is not pleasant from their side. It gets him to a point where he felt that what he heard was Mr. Russo debating himself and saying that they have all sorts of options but have nothing. Where this application is going, is the decision that they have to make. The applicant has sought to go after everyone as being a grand conspiracy, the Town, DEP, etc. He said that what he has chosen is to present another case on his (Mr. Russo's) credibility – this is Landmark Development vs. TMK Associates a Superior Court decision dated 3/5/02 as this shows the credibility of Mr. Russo. (Mr. Nickerson entered this into the record as **Exhibit 92**) They will have to decide if he is pulling a spin on this. They also heard the comment tonight about him that he (Geraghty) is just an Attorney. Well, Attorney Zizka falls in this class also, however, we can look at the maps and determine where the test pits are and that they do not encompass the whole area. He said that he thinks that the letter from Mr. Greci that was read that clarifies his previous letter is referring to the ROW not as a utility easement but as a public ROW. They do not have to accept what Mr. Russo said as counsel can advise them later. He said that he wanted to point out a letter from Fred Thumm dated April 25, 2002 where he said (Page 96 of the testimony) that they have allocated 35,000 gallons per day out of the 1.5M. Judge Quinn decided that part of it certainly wasn't in the sewer shed however the infrastructure is not and will not be there for the foreseeable future. This is the evidence in the record and nothing has changed with regard to that circumstance. He said that he submitted to them that they have nothing to prove that situation has changed. (Mr. Nickerson entered this decision of Judge Quinn into the record as **Exhibit 93**). He said that they have no agreements for anything and while they refer to Spinnaker – the staff can advise better on that as he thinks that it is on the sewer line.

Mr. Nickerson asked if anyone else from the public would like to address the Commission –  
Hearing no one –

He asked that the applicant address the Commission as they had exactly 60 minutes and five seconds to go. Mr. Russo said that they would need as much time as possible to go through the comments. If the Town had met with them before they would not have to go through this and would only have to respond to minor comments. He added that they have the right to defend and respond to them.

Mr. Nickerson said that as he said before that some of this could have been entered before. The information that was presented earlier could have been entered months ago.

Mr. Russo said that he understood what he is saying however to be fair, they were attempting to work this out at the staff level. The reason why it got down to this is because after they sent 16 letters requesting to meet with staff to no avail, they knew that none of this was going to be resolved. It is the reason why they have had to present all of this information now. They had no choice as they had thought that they would meet with the Town previously and when it came up to these last 30 days, it did not happen.

Mr. Russo said that he wished to address some comments from the Intervenor Attorney. They did have expert testimony. They had testimony from a PhD in Environmental Science, a PhD in Soil Science, a Traffic Engineer and a Professional Engineer. His statements are blatantly wrong. He also said that they should not believe what he said. All they have to do is to read the documents as they will tell you what you need to know and professionals prepared those documents.

Mr. Mulholland asked if the October 12, 2004 plans including the drainage report were the plans that they wanted as a part of the record.

Attorney Zizka said yes.

Mr. Nickerson entered into the record the October 12, 2004 (Landmark Development River View Heights – a residential community) site plans including the drainage report that staff reviewed as **Exhibit 94**.

Jason Sarojak of ASW Consulting Group, the Engineers for Landmark said that he would discuss the November 1, 2004 letter containing 61 comments as prepared by Wade Thomas of Nathan L. Jacobson and Associates that was entered as **Exhibit 52** on November 4, 2004. He noted that they had just received it and that he had just returned from vacation over this weekend. He gave the Commission members copies so that they could read along with the comments starting with number one. (See Exhibit 52 attached at end of these Minutes with quick notes on the comments).

Mr. Sarojak said that he is a Licensed Professional Engineer in the State of Connecticut and is also a Licensed Environmental Professional in the State of Connecticut. He noted that over 115 test pits were performed on this property and that they are noted on the plans. Mr. Wetteman of the DEP witnessed about 40 of them and Mr. Calkins witnessed about 20 of them. With regard to blasting, while he agrees that some will be done, he does not agree with the amount of it. No blasting is proposed in the community septic areas or down gradient from them. Mr. Thomas in his comments is also assuming that the community septic would be the preferred choice and that is not so. Fuss & O'Neill, the Towns' consultants' assessment of the sewer shed area agrees with their own assessment of it. They follow the same boundary map and Mr. Thomas states that it does not however he can find no evidence of that from the Fuss & O'Neill map. He submitted Figure 2.2 – Impacts of Impervious Surfaces from the CT Stormwater Manual. This was entered into the record as **Exhibit 95**. He said that only 11.86% of the site is considered impervious. The Saturn dealership development is 85% impervious surface as a comparison and the Town had no trouble approving that. Mr. Nickerson noted for the record that area is already paved and they are not adding to it.

Mr. Sarojak said that due to the size of the site that an application to the DEP for a permit as part of the approval of the E & S would be required. With this, the DEP as a minimum will do a weekly inspection and will have to inspect for rain events of one-tenth of an inch or more. He said that he could not stress this enough as it relates to a great number of the comments made by Mr. Thomas. He added that they also have the written testimony of Dr. Bailey and Dr. Luce saying that the E & S plans and controls are more than adequate for this project site. He also pointed out the overland flow design in the upland area noting that the grass swales will treat the run-off. It will flow down to a culvert and concrete level spreader and eventually to the wetlands in a natural state.

Mr. Sarojak noted that no other professionals have gone out on the property to do what he has done and that it is bothersome to him that these professionals are arguing against each other and to have another so-called professional regurgitate the same 'so-called' comments on this. It is not professional and he said that this is not something typical of professionals in his field.

Mr. Nickerson said (with Mr. Sarojak at comment number 23 out of 61 comments) that they could submit this as testimony if he had it all written down.  
(Note – A two minute break was taken here)

Attorney Zizka said that they would have to submit the rest of the comments for the record but that they would indicate that these are draft comments.

Attorney O'Connell, Town Counsel said that they should let him (Mr. Sarojak) finish his reply in the manner that he started it and not stop it in the middle of his presentation.  
Attorney Zizka thanked Attorney O'Connell.

Mr. Sarojak continued with comment number 24 and addressed them through to comment number 61. He noted that with regard to the sewage that this project would use about 100,000 gpd (gallons per day) and that would still leave 500,000 gpd for the Town. They discussed various plans on how to get it there. With respect to the open space plan - figure 11-2 he stated for the record as a PE that he was certifying that this does not designate the subject parcel as open space but only a portion of it as future proposed open space.

Mr. Nickerson asked Mr. Sarojak to stick to some new information here.

Mr. Sarojak said that he would also certify that the property lies east of the Deerfield site and that the 50' ROW exists from their property line into the Deerfield site.

Mr. Nickerson asked if he has a written letter on this.

Mr. Sarojak said that they have it indicated on the plans. He also noted that in the November 4, 2004 memo from Mr. Giannattasio to Mr. Mulholland regarding discussion on the sewer shed portion and if it lies in GS-1 – it is their testimony that the Deerfield Condos are in GS-1. This should clear up the discussion on that.

(Note: Mr. Nickerson called for a five-minute break here.)

Attorney Zizka submitted a copy of Mr. Sarojak's response to the 61 comments made by Wade Thomas from Jacobson & Associates. This was entered into the record as **Exhibit 96**.

Wade Thomas of Nathan L. Jacobson & Associates, Inc. said that he is not an Engineer, he is a Hydrologist. The firm he works for is an engineering firm and they work with about 10 Towns in the State. He said that based upon his site walk there is a lot of bedrock. He got information on permeability from Fuss & O'Neill and used the geometric mean, which shows that this is on the lower end. Also, he said that he does not agree with a lot of the stormwater management issues and out-letting to the wetlands. He said that this is the densest development that he has seen for the site and it is a 'recipe for disaster'.

Mr. Henderson asked what he meant when he said 'recipe for disaster'.

Mr. Thomas said that what this means is that he thinks that the stormwater management practices are inadequate for the site.

Mr. Henderson asked in his opinion, if Mr. Thomas felt that it could be engineered.

Mr. Thomas said yes and that he has played around with some of these types of things and has designed many of the systems himself.

Mr. Gada asked if Priscilla Bailey was the person who walked the property.

Mr. Mulholland replied yes.

Mr. Thomas said that based on his review of the Fuss & O'Neill sewer shed map that it seemed to be topographically arrived at.

Attorney Zizka said that he would not normally do this but because Paul (Geraghty) decided to throw in a couple of cases about Glenn he said that he would give them another one. It is called *Georgestreet of Middletown LLC vs. Middletown PZC* dated 3/26/04. This is a case where Mr. Russo's application was denied and that decision was overturned by the Judge and in that context the Judge cited a couple of statements from the Commission members regarding Mr. Russo. One of the Commission members said that 'every time this proposal comes back that everything that they have asked for at the previous meeting is done by the developer as requested just as he said it would be.' So, if they want to have a war about Mr. Russo's credibility with cases – he submitted this one for the record.

Mr. Nickerson entered this into the record as **Exhibit 97**.

Attorney Zizka also submitted a series of letters from the DEP on the purchase of this property dated 1/25/89, 3/24/93, 8/5/96 and 7/6/99.

Mr. Nickerson entered these into the record as **Exhibit 98**.

Mr. Sarojak said that as Mr. Thomas has said that he is not a professional engineer, he said that he is a professional engineer and he certifies that this design is adequate for this site. He may not be happy with our design however the S & E and design will work.

Mr. Thomas noted that Nate Jacobson who is a professional engineer also reviewed his letter and comments and agreed with them. Also, he thinks that the 11.86% imperviousness is amazingly low and that he calculated it at closer to 18% or 19%.

Mr. Nickerson called for any other comments –  
Hearing none –

Mr. Nickerson said that he would take a motion to close this Public Hearing.

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

**Mr. Henderson moved that this Public Hearing be closed.**

**Mr. Gada seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

Mr. Nickerson closed this Public Hearing at 12:55 AM on Tuesday November 9, 2004.

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary



Jacobson

SEE Exhibit 96  
for The Engineers  
notes

Exhibit  
52

November 1, 2004

Mr. Michael Giannattasio, P.E.  
Director of Public Works  
Town of East Lyme  
P.O. Box 519  
Niantic, CT 06357

See guide, (very)  
noted inside

Re: Riverview Commons  
A Residential Community  
River & Calkins Road  
Zoning Commission  
Affordable Housing and CAM Application  
Engineering Review  
NLJ #0922-0002

Dear Mr. Giannattasio:

As requested, we have reviewed information for the subject project, date stamped at East Lyme Town Hall on October 12, 2004, and received by our office on October 18, 2004.

Item 1: Set of forty-six (46) drawings, entitled "Riverview Commons (A Residential Community), River & Calkins Road, East Lyme, Connecticut", various drawing dates and revision dates, prepared by ASW Consulting Group, LLC and Mark H. Sullivan, P.E., C.P.S.S., further entitled as follows:

Drawing No.	Title Sheet
I-1	Index Sheet Dated 03/14/04, Last Rev. 08/28/04
O-1	Overall Site Plan Dated 03/14/04, Last Rev. 09/23/04
O-2	Overall Site Plan with Sewer District Boundary Dated 09/23/04, No Rev. Date
O-3	Sewer Shed/Sewer District Feasibility Plan Dated 09/23/04, No Rev. Date
R-1	Overall Resource Plan Dated 09/09/04, No Rev. Date

Nathan L. Jacobson & Associates, Inc.  
Nathan L. Jacobson & Associates, P.C. (NY)  
86 Main Street P.O. Box 337 Chester, Connecticut 06412-0337  
☎ (880) 526-9591 Fax: (880) 526-5418  
Consulting Civil and Environmental Engineers Since 1872

Submitted with  
Nov. 8, 2004 Public  
Hearing - for Jason  
Varajak comments

of response to this letter received on Nov. 4, 2004.



**Jacobson**

Mr. Michael Giannattasio, P.E.

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- B-1 to B-3 Property/Boundary Survey  
 Dated 11/17/00, No Rev. Date
- SD-1 Site Development Plan - Area 1  
 Dated 03/14/04, Last Rev. 09/27/04
- SD-2 Site Development Plan - Area 2  
 Dated 03/14/04, Last Rev. 09/27/04
- SE-3 Sedimentation & Erosion Control Plan  
 Dated 08/16/04, Last Rev. 09/27/04  
 (Site Development Plan - Area 3 was not included with the drawing set)
- SD-4 Site Development Plan - Area 4  
 Dated 03/14/04, Last Rev. 09/27/04
- SD-5 Site Development Plan - Area 5  
 Dated 03/14/04, Last Rev. 09/27/04
- SD-6 Site Development Plan - Area 6  
 Dated 03/14/04, Last Rev. 07/01/04
- SD-7 Site Development Plan - Area 7  
 Dated 07/01/04, Last Rev. 09/27/04
- SE-1 Sedimentation & Erosion Control Plan - Area 1  
 Dated 08/16/04, Last Rev. 09/27/04
- SE-2 Sedimentation & Erosion Control Plan - Area 2
- SE-3 Sedimentation & Erosion Control Plan - Area 3
- SE-4 Sedimentation & Erosion Control Plan - Area 4
- SE-5 Sedimentation & Erosion Control Plan - Area 5
- SE-6 Sedimentation & Erosion Control Plan - Area 6
- SE-7 Drawings SE-1 to SE-6 were Dated 08/16/04, Last Rev. 09/27/04  
 Sedimentation & Erosion Control Plan - Area 7  
 Dated 08/01/04, Last Rev. 09/27/04
- UT-1 Sanitary Sewer & Water Line Layout - Area 1 (Gravity System)  
 Dated 07/01/04, No Rev. Date
- UT-A1 Sanitary Sewer & Water Line Layout - Area 1 (Pump System)
- UT-A2 Sanitary Sewer & Water Line Layout - Area 2 (Pump System)

**Jacobson**

Mr. Michael Giannattasio, P.E.

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UT-A3 Sanitary Sewer & Water Line Layout - Area 3 (Pump System)  
UT-A4 Sanitary Sewer & Water Line Layout - Area 4 (Pump System)  
UT-A5 Sanitary Sewer & Water Line Layout - Area 5 (Pump System)  
UT-A6 Sanitary Sewer & Water Line Layout - Area 6 (Pump System Layout)  
UT-A7 Sanitary Sewer & Water Line Layout - Area 7 (Pump System Layout)  
Drawings UT-A1 to UT-A7 were Dated 07/01/04, No Rev. Date

UT-B1 Sanitary Sewer & Water Line Layout - Area 1 (Leaching System)  
07/01/04, Last Rev. 09/14/04

UT-B2 Sanitary Sewer & Water Line Layout - Area 2 (Leaching System)  
UT-B3 Sanitary Sewer & Water Line Layout - Area 3 (Leaching System)  
UT-B4 Sanitary Sewer & Water Line Layout - Area 4 (Leaching System)  
UT-B5 Sanitary Sewer & Water Line Layout - Area 5 (Leaching System)  
UT-B6 Sanitary Sewer & Water Line Layout - Area 6 (Leaching System)  
UT-B7 Sanitary Sewer & Water Line Layout - Area 7 (Leaching System)  
Drawings UT-B2 to UT-B7 were Dated 07/01/04, No Rev. Date

PP-1 Cross-Section (Lower Septic Area)  
Dated 07/01/04, Last Rev. 09/17/04

PP-2 Cross-Section (Upper Septic Area)  
Dated 07/01/04, Last Rev. 09/17/04

D-1 Detail Sheet #1  
D-2 Detail Sheet #2  
Drawings D-1 and D-2 were Dated 03/14/04, Last Rev. 09/27/04

D-3 Detail Sheet #3  
Dated 07/01/04, Last Rev. 09/14/04

D-4 Detail Sheet #4  
Dated 03/14/04, Last Rev. 09/01/04

D-5 Detail Sheet #5  
Dated 06/14/04, No Rev. Date

E-1 Plan & Profile of Proposed Access Road  
Dated 04/01/04, No Rev. Date



**Jacobson**

Mr. Michael Giannattasio, P.E.  
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- Item 2: Stormwater Drainage Report entitled "Drainage Calculations Report for Riverview Commons at River Road & Calkins Road, East Lyme, Connecticut, Prepared for Landmark Development Group, dated May 20, 2004, prepared by ASW Consulting Group, LLC.
- Item 3: Stormwater Drainage Report entitled "Drainage Calculations Report #2 for Riverview Commons at River Road & Calkins Road, East Lyme, Connecticut, Prepared for Landmark Development Group, dated May 20, 2004, prepared by ASW Consulting Group, LLC.

We have contacted the CTDEP to determine the status of the land application of sewage. We were informed by Joseph Wettemann that the site has limited hydraulic capacity to accept, transmit and renovate wastewater.

We also conducted a site investigation on October 24, 2004 and we met with the Applicant on October 27, 2004 to review our draft comments.

We have the following observations, recommendations and comments:

1. The site contains many areas of exposed bedrock and shallow to bedrock conditions that are not shown on the plans and there appear to be many discrepancies in the topography evidenced during the site walk compared to the topography shown on the plans. A bedrock outcrop approximately 30 feet high was noted along the lower easterly path that is not shown topographically. Large exposed bedrock outcrops were noted in the central portion of the site. An existing 24-inch diameter culvert is located on the lower easterly path that is not shown on the plans. In this regard, we question the topographic classification. We would request that the Project Surveyor, Mark Sullivan, L.S., C.P.S.S., provide certification as to the topographic classification. The location of bedrock outcrops is essential in determining if the proposed infiltration stormwater management practices are consistent with soil conditions. Information contained in the 2004 Connecticut Stormwater Quality Manual indicated that the bottom of the infiltration facility should be located at least 3 feet above the seasonal high water table or

*Sara J. G. - direct to Sealey & Swenkin as they did not accompany him on his site walk*

*DEP manual recs. that infiltrator systems not be located there*



Jacobson

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bedrock, should not be located over fill materials, and are not recommended in areas with natural slopes greater than 15 percent and should be located at least 50 feet from slopes greater than 15 percent.

2. Based on comparison of the sewer shed map prepared by Fuss & O'Neill, the sewer shed limits shown on the plans do not in any way shape or form resemble those shown on the sewer shed map prepared by Fuss & O'Neill. *Sewer shed match those of Fuss & O'Neill. Sewer shed map*
3. The proposed conceptual sanitary sewer crosses two inland wetlands and is located within the 100' upland review zone of two other inland wetlands. We were informed by the Applicant that the sanitary sewer was for demonstration purposes only and would not actually be constructed. We recommended that a note stating "FOR DEMONSTRATION PURPOSES ONLY - NOT TO BE CONSTRUCTED" be added to the plan. *Note was because they had to put it on the map. No problem*
4. Storm drainage discharge points above inland wetlands without pretreatment clearly have potential, or will affect the physical characteristics of the receiving wetlands, both inland and tidal. It is highly recommended that the Zoning Commission refer the application back to the East Lyme Conservation Commission for a permit. In this regard, the wetlands should be added to Drawing No. 0-3 to get the correct overview of the proposed site development with respect to the site inland wetlands, tidal wetlands and watercourses. *Is outlined on every other sheet of plans -*
5. Based on our site visit the site work will require significant blasting for road and building pad construction. In that the site most likely contains large areas of unsaturated bedrock conditions and the bedrock contains almost vertical bedding and foliation, potential exists for groundwater contamination from the subsurface sewage disposal system and/or the stormwater management facilities.
6. It is not clear if bedrock crushing and processing is proposed as part of the application. If in fact it is proposed, then the commission will want to require a sound and air sampling study to determine if the CTDEP requirements for particulates and noise be met at the property line, or other point of concern. *This is normal practice*

*If comm. septic - is solely approved by DEP + they rec. series of maintenance only 11.86% of site is crushed*



Jacobson

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Conservation Service Hydrology Technical Note No. N4 recommends a maximum sheet flow length of 300 feet, with a most likely length of 100', be utilized in the overland flow computations for unpaved areas. Given the site topography a maximum sheet flow length of 100' would appear to be appropriate. The shorter sheet flow component will serve to decrease the Time of Concentration and would therefore increase the peak discharge for all design storms. We could therefore not verify the utilized Times of Concentration (Tc).  
*Handwritten: piping is min. 15" diameter*  
*Handwritten: pipes through flow*  
*Handwritten: this property*

14. The Applicant's Engineer did not include computations to substantiate the computed curve number. The computations could not therefore be checked. The backup should be supplied when the TR-55, TR-20, HEC 1, PondPack®, or equal model is rerun.  
*Handwritten: can be checked by running model's values*

*Mr. Thomas said SE-1 + SET*

The site has potential to significantly impact the inland wetlands and tidal wetlands during road and building construction due to steep topography and soil erosion. Detailed Soil Erosion and Sediment Control Plans need to be prepared and added to the set of drawings. Detailed Soil Erosion and Sediment Control notes need to be added to the plans.  
*Handwritten: Detailed see SE1-SET - were discussed in detail*

16. Section 3.7 - Stormwater Quantity Control of the 2004 Connecticut Stormwater Quality Manual, intended as a planning tool and design guidance document, recommends protecting wetland and watercourses from stormwater discharges without adequate stormwater treatment. In this regard, no pretreatment of paved runoff is proposed. It is also important to note that runoff from storm events in the existing condition is conveyed to existing inland wetlands, watercourses and tidal waters in a dispersed manner. The proposed development, without detention facilities, will concentrate the increased stormwater runoff volume onto steep slopes in a very intense manner.  
*Handwritten: 2004 Stormwater Quality Manual was used*  
*Handwritten: pointed out on plans - items per the 2004 manual in plans -*

17. In that greater than 1 acre will be disturbed, the project will have to comply with EPA NPDES Phase II program administered by the CTDEP via the General Permit for the Discharge of Stormwater and Dewatering Wastewaters Associated with Construction Activities. The General Permit for the Discharge of Stormwater and Dewatering Wastewaters Associated with Construction Activities for post-construction stormwater management for sites located less than 500 feet from a tidal wetlands requires retention of the volume of stormwater  
*Handwritten: Agree that the General Permit will be needed upon approval*



Jacobson

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11. Nitrogen computations should be prepared and submitted for the on site subsurface sewage disposal systems to confirm that the concentration is below 10 mg/l at the property line or point of concern. Raw domestic sewage typically has a nitrogen concentration of 40 mg/l into the tank. Treatment in the septic tank typically removes 40 percent of the nitrogen. Therefore the nitrogen concentration of the septic tank effluent to the leaching system would be 24 mg/l. CTDEP criteria requires demonstration that the nitrogen concentration of the commingled wastewater/groundwater be 10 mg/l at the property line, or the downgradient point of concern (receiving wetlands, or watercourses).

*These have been submitted to DEP + will be this + will be monitored Type O system*

12. The Stormwater Drainage Report utilized a computer model and assumptions that are not consistent with standard engineering practice as the model appears to be a form of the Rational Hydrograph which typically underestimates the volume of stormwater runoff. Given the project location proximal to tidal wetlands, it is recommended that the stormwater management plan provide detention of post-development peak discharges to pre-development peak discharges for the 2-year, 10-year, 25-year, 50-year and 100-year design storms. TR-55, or equal, should be utilized for all non-routed watersheds, and TR-20, HEC 1, PondPack®, or equal should be utilized for all routed watersheds. A 24-hour duration, Type III rainfall distribution should be utilized. The Applicant's Engineer utilized a 30-minute duration storm with an intensity of 6.6 inches per hour which yields a runoff volume of 3.3 inches. As a basis for comparison, information contained in the 2000 Connecticut Department of Transportation indicates a Rainfall - Duration - Frequency for a 10-year return frequency of 5.0 inches for New London County. The proper method would result in 50 percent more runoff volume than the method utilized and runoff volumes computed by the Applicant's Engineer. We make the recommendation based on observed erosion proximal to the lower path culvert stream crossing which has totally exposed the pipe in what would appear to have been an initially buried culvert installation. Computing the stormwater peak discharges with the TR-55 methodology would greatly reduce engineering judgment compared to Rational Method curve number

*does not agree with these calcs - the presented are re agreement w/ Mike's previous comments*

13. The Applicant's Engineer did not include computations to substantiate the computed Time of Concentration (Tc) utilized, nor is the method of determination discussed. The USDA Soil



Jacobson

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- 7. Due to the nature of the project and the high quality of the inland wetlands and tidal wetlands, we would recommend that a Wetland and Biological Evaluation Report be conducted to assess the natural resources that currently exist on the property, and suggest modifications to reduce, or minimize, potential wetland impacts. In this regard several small isolated inland wetlands should be reviewed to determine if they are vernal pools. *marked + certified by Sullivan + Mrs. Bailey ne: they disagree w/ DEP resources map of D. River*
- 8. Due to the steep topography and the amount of bedrock blasting required for site construction and installation of utilities, the commission should require that the Applicant's Engineer compute cut and fill volumes to determine if the project is a balanced earthwork project, an excess earthwork project, or an import earthwork project to determine the potential impact on the town roads. *Upon approval would be happy to compute this*
- 9. It is not clear if the Natural Diversity Data Base has been contacted regarding rare or endangered species occurrence or probability of occurrence. *was reviewed by them + Mrs. Bailey - are no endangered species on site*
- 10. Based on information contained in the Soil Survey of New London County, Connecticut, and our site investigation, the site soils have areas of exposed bedrock and shallow to bedrock conditions. Information contained in the Bedrock Geological Map of the Niantic Quadrangle, New London County, Connecticut (Goldsmith, 1967) indicated the site is located on the westerly flank of the Hunts Brook Syncline. The strike and dip of bedding and mineral foliation strikes north-northwest and dips to the east-northeast at 65-80 degrees. Information contained in the Surficial Geologic Map of the Niantic Quadrangle, New London County, Connecticut (Goldsmith, 1964) indicates the site is generally located within an area of glacial till with bedrock exposures and areas of abundant bedrock outcrops. Glacial stream deposits identified as Qgl<sub>2</sub> consist largely of interbedded pebble-gravel, sand and subordinate cobble gravel. Utilization of site glacial till soils on the westerly portion of the property for wastewater disposal in combination with on site water supply wells located on the easterly portion of the property has potential to contaminate the water supply wells. Utilization of the Latimer Brook glacial stream deposits for wastewater disposal will most likely not meet the 21-day travel time required for the CTDEP due to high permeability.

*W. Brennan  
that this is  
not*

*while agree w/ Mr. Thomas on data  
disagree w/ them on depth as a  
whole -*

*only 5 test pits match soils of New London County  
Also test pits done in 4 areas of  
prop. - bedrock does not  
adequately reflect this prop.*



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generated by 1 inch of rainfall on the site. Computations should be prepared and submitted for review to confirm the retention infiltration sizing relative to the runoff generated by 1 inch of rainfall for the entire developed site. None were submitted for review.

- 18. The General Permit for the Discharge of Stormwater and Dewatering Wastewaters Associated with Construction Activities for post-construction stormwater management reference a goal of 80% total suspended solids removal. Computations should be prepared and submitted to compute the anticipated TSS removal efficiency. In this regard, stormwater treatment units recommended by the CTDEP should be incorporated in the storm drainage design. *will be done + submitted to DEP for approval*

- 19. Based on published information, and our site visit, it would appear that the majority of the site consists of Hydrologic Soil Group C/D soils. These soils are not typically considered well suited to stormwater infiltration practices due to low soil permeability. Most of the site soils (when present) have a surface layer, subsoil and substratum permeability range from 1.2 feet per day to 12 feet per day. Therefore infiltration capacity of native soils would be expected to be minimal. All infiltration facilities should drain between 48 hours and 72 hours after the storm event. Also, as previously noted, seasonal unsaturated bedrock conditions most likely exist over a significant portion of the site the potential exists for contamination of the groundwater by stormwater impacts. In that the bedrock bedding and foliation strikes north/south, the project has the potential to impact the northerly residential groundwater supply wells by stormwater contamination. *Statements are accurate + is misleading*  
*no stormwater run-off towards residential units etc.*  
*have decreased some flow to problem area*

*Manuals are valid however they cannot replace the physical data done on the site by professional. Cont stress this enough about taking testimony from professional.*

- 20. Alternate B has onsite subsurface sewage disposal systems proposed and nine proposed drilled bedrock water supply wells. The wells should be drilled and 72-hour pump test should be conducted on the wells intended for use as water supply. It should first be determined if the bedrock water supply wells have sufficient yield to supply the required volume of water prior to pump testing. Prior to pump testing, piezometers should be installed in all inland wetlands to determine the effect of well pumping on the inland wetlands and piezometers and bedrock monitoring wells should be installed in the proposed subsurface sewage disposal areas to determine if the subsurface sewage disposal system is within the zone of influence of the proposed bedrock water supply wells. This alternate will require approval from the *they are free w/ this that if exceeds 50,000 gal they need person permit + are not this Comm. decision*

*Only professionals you see disagreeing are those who have not gone out to see what is going on - is also totally unprofessional - Cont stress it enough to this Commission*



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*Adequate public water exists from water line or town of Wtd.*

Connecticut Department of Public Health and the CTDEP Bureau of Water Management Permitting Enforcement & Remediation Division. Hydraulic analyses will be required for the proposed subsurface sewage disposal system both from a hydraulic capacity standpoint and a seepage analysis standpoint. This alternate will also require water treatment, storage and pump facilities that will require vehicular access. The CTDEP requires a 21-day travel time/distance demonstration for common pathogenic bacteria. The 21-day travel time/distance would apply to the downgradient end of the downgradient Living Filter. In the instance of Profile A-A' of the Lower Septic Area a hydraulic gradient of 0.1167 ft/ft was computed based on the invert elevations of the last three downgradient Living Filters. Using the imported soil permeability of 24 ft/d and a porosity of 0.30 yields an average linear velocity of 9.34 ft/d and a 21-day travel time/distance of approximately 196 feet which would appear to impact Latimer Brook. It should be noted that land surface slope gets steeper proximal to Latimer Brook which would cause the average linear velocity to increase which would serve to increase the 21-day travel/distance. The Applicant's Engineer must also demonstrate a 21-day travel time/distance to unsaturated bedrock or provide a geocomposite clay liner, or other liner, to prevent contamination of the groundwater. The steep slopes will complicate liner design and will require design by a Geotechnical Engineer. It should also be noted that lateral sand filter designs that we have prepared require a range of permeability for ease of construction due to variability of grain size, grain size distribution, and compaction. The lower end of the permeability range is used for the hydraulic capacity demonstration and the higher end of the permeability range is used for the 21-day travel time/distance demonstration. I am also not aware of how the CTDEP will treat the Living Filters with regard to Long Term Acceptance Rate (LTAR).

21. No information is provided by the Applicant regarding the total bedroom count on the project. Assuming 352 two-bedroom units at 150 gallons per day/bedroom yields a wastewater design flow of 105,600 gallons per day. *D-3 details lots BR's for side etc.*
22. A "Community Sewerage System", as defined by Section 7-245 of the Connecticut General Statutes, is proposed to serve all of the residential units (although a sanitary sewer system is not shown on Drawing UT-B1), as well as the clubhouse. A State Discharge Permit will be

*is an alternate design of the site*



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required from the Connecticut Department of Environmental Protection (CTDEP) because a community sewerage system is proposed and the total wastewater discharge to the property will exceed 5,000 gallons per day. We are not aware that a CTDEP Tentative Determination has been provided. *It nec. - will be applied for*

23. Connecticut General Statutes require that a municipal water pollution control authority (WPCA) either own and operate any proposed community sewerage system, or ensure its effective management. If the WPCA chooses not to own and operate the community system, it is common practice for the WPCA to enter into an agreement with the developer/association, whereby system management is detailed and funds are established for both normal operation and maintenance costs, as well as for emergency contingencies and future capital improvement costs. The status of any discussions between the developer and the ELWPCA should be provided to the Zoning Commission as part of the required report from the ELWPCA. *This is premature at this time - as cost see what -> Type system would be used -*

24. Wastewater pump stations are proposed as part of the wastewater collection system. All pump stations will require routine inspections and maintenance service by a licensed wastewater collection system operator, so vehicular access to each pump station will be required. Grading and driveways will be required at each pump station to permit reasonable access for service vehicles, including pumper trucks. Since the water supply system will most likely be provided with backup electrical power, each of the wastewater pump stations will also require an electrical generator for backup electrical power. Since some of the pump stations are near wetlands or stormwater structures, information should be provided on the type of fuel proposed for the generators and measures proposed for fuel spill containment, as applicable. *is indicated on the plans* *# LTE-3 shows access driveway for proper maintenance* *Anything needed will be added prior to construction*

25. The gravity sewer system design should provide a tabulation of cumulative wastewater flows at various points in the collection system, taking into account the total number of contributing units/bedrooms and pump station flows. Design flow capacity of the sewer segments should be shown to exceed the cumulative flows (i.e. all pipe runs from sanitary manhole to sanitary manhole should evidence adequate hydraulic capacity to convey the estimated wastewater flows).

*All nec. calcs for gravity systems - Wallingford, CT were performed by professional + will be submitted (indicated on the plans)*

*Pointed out on plans -*



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- As stated before - This is correct + will get permit as nec. -*
26. The project with on-site water supply wells will require a Diversion Permit from the CTDEP if the wells are capable of withdrawing greater than 50,000 gallons of water per day. It is not clear if the Applicant has initiated discussion with the CTDEP. If the project is approved in the Alternate B Design, it is recommended that the water supply wells be drilled and pump tested prior to other on-site construction to determine if the bedrock water supply wells are feasible. In this regard, the three well locations shown on Drawing No. UT-B5 would appear to be susceptible to induced infiltration from the Niantic River which may, or will most likely, result in saltwater or brackish water intrusion. *- this is misleading information - can not know w/o performing pump test*
  27. Minutes of the September 29, 2004 Public Hearing include reference to impervious area as a percentage relative to the total project area. This is misleading in that the topography on the property essentially slopes easterly and northerly to Latimer Brook and the Niantic River. It should also be noted that the interconnectivity of the impervious area in this proposal will increase impacts on the receiving waters. Given the site bedrock and topographic constraints and interconnectivity of the proposed development, the project clearly has potential to adversely impact the receiving waterbodies due to the lack of adequate effective stormwater Best Management Practices (BMPs) proposed. *Misleading everything has been re-directed away from Latimer Brook*
  28. Construction of the project will result in creation of thousands of linear feet of edge habitat which will encourage establishment of exotic invasive species. An Exotic Invasive Species Management Plan should be developed for review and approval. *100' side of 100' from wetlands + 200' from River*
  29. The stormwater management practices will result in an increase of freshwater fluxes to the inland wetlands, tidal wetlands and tidal waters which will most likely result in establishment of Phragmites. A Phragmites Management Plan should be developed for review and approval. *which maximizes this*
  30. The Calkins Road emergency access drive turning radius should be checked for passage of SU Design Vehicles. In this regard, the proposed 10 percent approach and ascending or descending slopes, with no flat landing, may be difficult to negotiate. This drive should be redesigned or reconfigured to allow for easier drive negotiation by responding emergency vehicles. *not required or rec. as part of proj. - N. River - salt water not fresh water*

*It's shown on plans - 20' wide - Town approved*

*Wells can also be moved on Prop. Phase 2004a*

*Niantic River influenced tides will have neg. impact*

*This is 28. based on assumption - not fact*

*Again 29. based on assumption - not fact*



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- 31. We would recommend provision of curbing on all roads with a longitudinal slope of greater than three percent to preclude shoulder erosion. *Pointed out small Area on plans that has no curbing for recharge of storm water. Rest has curbs*
- 32. The vertical curve geometry of the proposed access road should be added. In that regard, it is recommended that a tangent section not exceeding 3% at least 50 feet in length be provided at the intersection of the existing road. In this regard, the proposed entrance curb returns to the existing road should be increased due to the proposed 20 foot wide access drive. The commission may want to request a copy of the proposed grading easement which is to be obtained. *Access rd. designed to standards by professional. Any changes could be made cond. of approval*
- 33. Guide rails are recommended for all fill slopes exceeding four feet in height and proximal to proposed retaining walls. *They are proposed for areas as necessary*
- 34. We would recommend a normal crown road or a superelevated road section in lieu of the proposed flat pavement section that is proposed over much of the project to preclude sheeting ice conditions. *Roadway is to be constructed as normal crown rd. - It's typical practice*
- 35. For the Alternate B scenario, underground fire water supply tanks should be added to the Site Development Plans. The design and locations of all underground fire water supply tanks should be in accordance with the recommendations of the Fire Chief and the Director of Public Works. *Could be made condition of approval*
- 36. Foundation drain invert elevations should be added to the Site Development Plans. *Although not necessary - will add them*
- 37. Given the proximity of receiving wetlands and waterbodies, a temporary concrete construction equipment fueling pad with containment berms to capture fuel spills should be utilized. *As condition of general DEP permit will be specified then - is part of stormwater mgmt. plan*
- 38. Given the site soils, and shallow to bedrock conditions, underdrains will be required for some of the road cut sections. *not known at this time if necessary - did out during construction can be installed*



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- 39. Site lighting appears to be lacking from the plans. Adequate site lighting is required for public safety. *Can be added - but no comments from PS people so far*
- 40. Traffic control signage and stop bars need to be added for public safety. *will be added - no problem*
- 41. While a Stormwater Management Operation and Maintenance Plan was submitted as part of the Stormwater Drainage Report, it is not stated who the responsible entity will be who will operate and maintain the stormwater facilities. We would recommend that the Homeowner's Association be the responsible entity. *Responsible entity will be added to plans once determined - to Town's satisfaction*
- 42. Fire protection for all designs needs to be added to the plans. *will be added to the plans -*

**Soil Erosion and Sediment Control Comments**

- 43. Construction staging plans should be prepared for each phase and an earthwork/rock analysis should be prepared for each phase to determine if each phase is balanced. If in fact rock crushing is proposed as part of this project, the pad associated with the crushing/processing activities should be added to the plan. *upon S&E plan approval - will be done subject to DEP permit -*
- 44. We would recommend that temporary sediment traps and/or basins be provided conforming to all design criteria contained in the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control be added to the Soil Erosion and Sediment Control Plans. All temporary sediment traps and/or basins should be located outside of buildable areas to the maximum extent practicable. Computations should be prepared and submitted for review for all temporary sediment traps and/or basins. *Any S&E will be detailed on plans per DEP permit re - stormwater mgmt.*
- 45. We note proposed level spreaders which outlet onto steep slopes. The 2002 Connecticut Guidelines for Soil Erosion and Sediment Control recommends that level spreaders should not be utilized where slopes exceed 10 percent. *Have been constructed in such a manner as to handle flows -*



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46. Computations should be prepared and submitted for review to demonstrate that the level spreader exit velocities are below the recommended velocities contained in the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control. The level spreaders should be sized for the 10-year storm event using the SCS hydrograph which will most likely result in longer level spreaders due to the increase in runoff volume. Design criteria for level spreaders contained in the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control states that level spreaders are applicable where the area below the level spreader lip has a slope of 5% or flatter and is stabilized by vegetation. Natural slopes located downgradient of all of the level spreaders and roof drain/foundation drain outlets exceeded 5%, with maximum slopes (computed from the level spreader lip to 50' downgradient of the lip) approaching 40%. Please refer to comments 12 and 14 which recommend a method of computing stormwater runoff peak discharge and runoff volumes which are more consistent with standard engineering practice and would result in considerably greater runoff volumes. *Have been designed to meet this*

47. We would recommend that level spreaders be located along convex slopes, or planar slopes in lieu of concave slopes which will serve to reconcentrate flow and possibly result in erosion. In this regard, we would also recommend utilization of Turf Reinforcement Mat along the level spreader outlet. *All level spreaders were located to best reconcentrate flow*

48. We note that a number of outlet pipes and level spreaders are located upgradient of steep slopes that will result in high exit velocities, scouring and soil erosion and sedimentation problems to the receiving inland wetlands, watercourses, or tidal wetlands. Drop manholes and pipes at minimum grades should be provided for these conditions to dissipate velocity, proximal to inland wetlands in areas of minimum grade. *Mats can be made and this approval*

*Agree w/ Mr. Thomas on these suggestions*

49. It is recommended that detention basins, or a detention basin, be designed in the easterly portion of the site to meet the TSS removal criteria and to provide for maximum stormwater treatment. It is recommended that a created wetland, or wet detention basin lined with a geocomposite clay liner, or other liner, be provided for stormwater renovation while precluding groundwater contamination. It is also recommended that the outlet be directed to an existing watercourse if the receiving watercourse does not evidence streambank erosion.

*Disagree w/ Mr. Thomas on this - has more than adequate (80%) removal*



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We would recommend that a detail, with all design elements contained in the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control, be added to the earth embankment portion of the detention basin (i.e. embankment materials and compaction requirements, embankment slopes, erosion control blankets, top of embankment width, cutoff trench width depth and side slopes, anti-seep collars or seepage diaphragm, etc.). Stage/storage, stage/discharge and routing should be conducted utilizing TR-20, HEC 1, PondPack®, or equal.

- 50. While reverse slope benches are being utilized in areas of large cut, there is no longitudinal slope to convey runoff. Given the site soils and the compaction effect of heavy construction equipment over the site soils, the saturated condition may result in slope failure unless longitudinal slope is added to the reverse slope bench. Grading should be revised to provide at least a 2 percent longitudinal reverse slope bench slope for drainage. *Disagree with this*
- 51. Topsoil stockpiles need to be added to the plan. We would recommend that all topsoil stockpiles be located on the flattest topographical areas. Where stockpiling of topsoil in steeper areas is required and the stockpile is located in a topographic low we would recommend stone check dams downgradient of the geotextile silt fence. *Disagree should be added - will be identified as part of SMP submitted to DEP*
- 52. An Infiltration Trench is proposed (Drawings SE-3 and SE-5) in an area of fill approaching 15 feet. The 2004 Connecticut Stormwater Quality Manual generally discourages infiltration practices in fill materials and also suggests that infiltration practices should be located at least 50 feet from slopes greater than 15 percent. The proposed Infiltration Trench is located generally less than 20 feet from a 24-28 foot high 2 horizontal : 1 vertical fill slope. It is not clear if the fill will consist of common fill or imported granular fill. *These can be changed to water quality scales*
- 53. We would recommend that wherever geotextile silt fence is placed in an area other than parallel with the topographic contours, that silt fence wings located upslope of the silt fence approximately 10 feet in length at intervals of 50 feet. *This will be detailed + approved as part of SMP/DEP*

SMP = Stormwater mgmt. Plan



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Sincerely,

NATHAN L. JACOBSON & ASSOCIATES, INC.



Wade M. Thomas, Associate

WMT:wmt

c: William Mulholland  
George Calkins  
Marcy Balint  
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