

EAST LYME ZONING COMMISSION
PUBLIC HEARING I
Thursday, September 18th, 2003
MINUTES

The East Lyme Zoning Commission held the continued Theodore A. Harris Public Hearing to amend Section 25.5 (Multi-family SU-11) on September 18, 2003 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT.

Chairman Nickerson opened the continued Public Hearing and called it to order at 7:30 PM.

PRESENT: Mark Nickerson, Chairman, Shawn McLaughlin,
Ed Gada, Norman Peck, Bob Bulmer, Andrew
Manter, Alternate

FILED IN EAST LYME TOWN
CLERK'S OFFICE

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

Sept 22 20 03 at 2 (AM/PM)
Esther B Williams
EAST LYME TOWN CLERK

ABSENT: William Dwyer, Alternate, Marc Salerno, Alternate,
David Chamberlain

PANEL: Mark Nickerson, Chairman, Shawn McLaughlin,
Ed Gada, Norman Peck, Bob Bulmer, Andrew
Manter, Alternate

Pledge of Allegiance

The Pledge was observed.

Public Hearing I

- 1. Application of Theodore A. Harris to amend the East Lyme Zoning Regulations by adding new text to Section 25.5 (Multi-family SU-11). Section 25.5 #11 presently reads "Utilities: No Multi-family development shall be approved unless there is provided public sanitary sewers and clear evidence of safe and satisfactory means of providing water supply." Add after sewers, "or evidence from the applicant that the premises is capable of supporting a septic system in compliance with Department of Environmental Protection and/or The Department of Health Regulations."**

Mr. Nickerson stated for the record that he had seated Mr. Manter, Alternate. He then asked if Attorney Harris, the applicant if he wished to present more information on his application.

Attorney Theodore Harris, 351 Main Street, Niantic, the applicant, recapped that this was to allow the use of on-site septic systems for multi-family SU projects in compliance with DEP and/or Department of Health Regulations. Planning raised the concern that this would allow for higher density in outlying areas. He proposed language to keep the density the same as the area that it overlaid. He said he would be remiss in not reviewing the multi-family SU regulations as they have built in open space requirements that range from 10% to a high of 50%. This alone makes for less density.

This proposal was done for two reasons – 1) for the resort type of communities that cannot do the conventional subdivisions, this would allow for better use of the land and - 2) to be able to take unique parcels of land and use the good areas for homes and leave the not so good areas as open space and free of homes. This would allow them to be friendlier with the land and make for a better project. Also, these type of SU projects are designed as a whole and they have to be presented as an entire concept upfront unlike the conventional subdivisions where a plan is presented but you do not know what type of house is going to be built. The density is largely due to the genre of the parcel with the square being the most dense that you could find. He passed out **Exhibit 1 – Density Examples** (Attached at end of Minutes) and explained them to the

Commission. He noted that the 100' buffer is taken off the top of the usable space calculation. Under the SU, the parcel would not result in higher density due to the open space requirement and the buffer area. He said that this would also give the Commission more control and the developer the ability to make the best use of the land. This also is for parcels of 20 acres or more. Also, regarding the comment from the DEP about the Coastal Zone he proposed adding **Exhibit 2 – Coastal Zone language** which says: "Provided, however, no on-site septic systems shall be allowed if any of the premises lies within the coastal zone." (Attached at end of Minutes)

Mr. Mulholland requested that "with reference to the DEP map." be added to the end of that sentence. Attorney Harris said he would be happy to add that. He synopsisized that if you look at the SU projects that they require such large open space areas that this is the least dense multi-family regulation in Town. This just allows a better project and less dense concept to be utilized.

Mr. Mulholland asked if there was a limitation on the septic design on the property.

Attorney Harris said that less than 5,000 gallons the Dept. of Health has to review it and over 5,000 gallons the DEP does a rigorous review. Less than 5,000 gallons/day equates to 32 bedrooms.

Mr. Mulholland asked about the DEP review.

Attorney Harris said that it is a very rigorous and lengthy review and approval process.

Mr. Mulholland asked if you had 50 acres if you would be looking at basically the same equation as the example he showed in Exhibit 1.

Attorney Harris said yes.

Mr. Mulholland synopsisized that the zone would have to be changed and a special permit requested which would essentially mean that you have a community with private roads and only units/condos up to the capacity of the area but not designated SU-E.

Attorney Harris noted that the regulations have limited SU to 12 units.

Mr. Mulholland noted that the regulations already contain that and state sewers and they would be adding 'or septic' to it.

Mr. Gada asked if there would be one community septic or several.

Attorney Harris said that over 5,000 gallons would probably be a bigger system and possibly a community one.

Mr. Mulholland asked if this is relegating the density to what the underlying zone is so that there is no greater density.

Attorney Harris said that it shrinks it in two different ways – by the buffer amount and the open space.

Mr. Manter commented that as a way of comparison - the standard septic system for a general house is 1000-1500 gallons.

Mr. Gada asked if the septic system would have leaching fields.

Attorney Harris said yes for the on-site septic and that they would have to be approved by the Dept. of Health or the DEP.

Mr. Gada asked if they were going to have to be pumped everyday.

Attorney Harris said no.

Mr. Nickerson asked if the entire Town was being opened up to this regulation change.

Attorney Harris and Mr. Mulholland both said yes but added that it requires a minimum of 20 acres, a zone change, an application, a public hearing, a special permit and Dept. of Health or DEP approval.

Attorney Harris said that if the issue of concern is that you might end up with a 12-unit apartment in a residential area then he could add language that limits it to duplexes and single family homes in a resort community.

Mr. Mulholland asked what a resort community would be.

Attorney Harris said golf course, equestrian center etc.

Mr. Peck said that he was looking at some of the Plan of Conservation and Development recommendations which lends itself towards discouraging this except for one area that mentioned looking to combat housing sprawl in rural areas of the Town. He said that his main concern is that with the demand from developers to find land to build multi-family housing that to allow this would open a floodgate and the Town would be a target for developers.

Attorney Harris said that they have to be careful with 'multi-family' as it is misleading as this would result in less-dense building based upon the restrictions in the regulations. Multi-family brings to mind a lot in a small area and this is just the opposite. You cannot get CA zone density under the requirements for SU.

Mr. Peck said that right now we have several multi-family developments that are placed way back from the main roads where you can't see them. What is the setback that we are talking about here.

Mr. Mulholland said that it is 150' in SU Section 12 and 100' buffer in front and all around the property.

Attorney Harris said that the front buffer in Section 24.6e is 150' from any building.

Mr. Peck said that if this were to pass that he would recommend at least a 100' buffer in the front.

Attorney Harris said that he had no problem with that.

Mr. Manter said that he would like to point out to Attorney Harris that he was comparing an SU district to a RU district and in the RU there are single family homes and in this scenario we are talking about a larger structure. Attorney Harris said no – we are talking about single family homes similar to the SU-E. This is what he has been trying to show and why he is suggesting a further restriction to single family or duplex.

(Note: Mr. Bulmer arrived at this time – 8:14 PM and was seated at the table)

Mr. Manter said that his point is that this is creating a community that is separate from the community outside of it. As for density he commented that areas along the sewer lines in the Niantic area are very dense and people are used to looking into each others windows. The benefits are the proximity to the beach and the shops and the traffic is not really an issue as everyone moves slowly around here. Another development going in around the Walnut Hill area that is so massive that it will test our water ability and require monitoring of wells brings into question the carrying capacity of water. Further, he lives on Chesterfield Road and recent events there have changed his opinion on some of these developments that have been approved but haven't materialized yet. Traffic issues are a concern – two people were killed on this road recently. The Town employee was killed near his mailbox. There are traffic pile-ups and all of this is a concern. He thinks that in the spirit of this regulation that we will be opening ourselves up to denser development in outlying areas. Attorney Harris said that he understands what he is saying but the goal is not to increase the density but to reiterate – to have a better product in the end. It seems that it would be appropriate to change the use in the regulation to single family and duplex homes.

Mr. Nickerson noted that they had just approved the SU-E in the Walnut Hill Golf Course.

Mr. Mulholland recapped that they have several SU zones in the community (JC Penney, Aces High, Niantic Campground) and most have been so for many years. The exception is Chapman Farms which was the first SU-E that was adopted for and to designate the elderly.

Attorney Harris noted that the water monitoring that was mentioned is based on the diversion permit and is per the DEP to see if over 50,000 gallons per day is extracted so that they can prove that the extraction is not affecting the wells there. He looks at this as protection.

Mr. Mulholland asked that Attorney Harris please synopsise clearly what he is looking for so that everyone can understand the language.

Attorney Harris said that he was adding to Section 11. Utilities: *...or evidence from the Applicant that the premises are capable of supporting a septic system in compliance with DEP and/or the Department of Health Regulations, Provided, however, no on-site septic systems shall be allowed if any of the premises lies within the coastal zone with reference to the DEP map.*" (See Exhibit 2 attached) He also proposed adding to Section 25 Multi-family SU Item 2. Density: *.... "If the premises shall be served by on-site septic system(s), the average number of units per acre shall not exceed that which would be allowable based on the minimum lot size of the underlying zone which shall be the subject of an SU development."* (Attached at end of Minutes) Lastly he proposed adding language that would restrict any non-sewer project to single family or duplexes.

Mr. Nickerson asked if anyone from the public wished to speak on this application.

Joe Kwasniewski, 67 Walnut Hill Road, East Lyme asked through the Chairman if the applicant lives in East Lyme or pays taxes in East Lyme because he lives in East Lyme and pays good taxes to East Lyme.

Attorney Harris replied yes to both questions – he lives here and pays taxes here.

Mr. Kwasniewski said that to put it bluntly, someone on the Zoning Commission goofed because now someone wants Section 25 Item 11. changed. Is Attorney Harris going to benefit from this or 'someone else'? Who is going to benefit from this change.

Mr. Nickerson said that the landowners that own property over 20 acres would benefit from this if they want to develop their property.

Mr. Kwasniewski asked again whom this is for and who will benefit and if he will benefit from this and if his taxes will go down. All of a sudden someone wants this changed, he would like to know what will be done with this change.

Mr. Nickerson asked if anyone else wished to speak.

Rose Ann Hardy, Board of Selectmen Ex-Officio asked for clarification. She said that if you own a piece of property not served by sewers and if you meet the other regulations then you are allowed to put something – say a duplex, on it with a septic system. So – if you allow this in areas of Town without sewers then why is a change necessary if you already allow individual people to have their own septic on their property?

Mr. Mulholland said that it is because this Commission has received an application, the applicant has paid the fee and is allowed to be heard. Why – you should ask the applicant.

Ms. Hardy asked what is different from what people are already allowed to do.

Attorney Harris said that the difference is that it allows it to be in a recreational area and allows for a better use level of the land with more flexibility. The nature of the SU regulations are much more rigorous and can produce something that a regular subdivision cannot produce.

Ms. Hardy presented a scenario – there are five homeowners who buy five one-acre lots from a 20-acre parcel. Ordinarily they would have five septic systems – now will they have one septic system and share it?

Mr. Mulholland said not necessarily as they would have common ownership of the area like a condominium and the roads can be narrow.

Ms. Hardy asked if he was talking about community home ownership.

Mr. Mulholland and Attorney Harris said yes.

Mr. Kwasniewski said that suppose this passes and they allow the septic and five years down the road it overflows and filters down to him. Who does he sue – the Commission, the Town or the homeowner because before this was changed his property was all right.

Mr. Nickerson asked if there were any other comments or questions.

Mr. Bulmer said that he sees some nuances in this and wants to understand if this is really a change here. He summed that the SU is a floating zone and can go anywhere.

Mr. Mulholland said yes, it could land anywhere.

Mr. Bulmer said that as he looked through all the sections the only permitted use is single family dwellings – if passed - does this allow multi-family dwellings to be anywhere in any district in Town.

Mr. Mulholland said yes adding that they could be entertained before with public sewers. This proposal is for septic with 20 or more acres.

Mr. Bulmer asked if passed doesn't this allow multi-family dwellings potentially anywhere in Town?

Mr. Mulholland said yes.

Attorney Harris commented that this could be restricted by adding verbiage of single family or two family duplex to exclude large multi-family development. He said he understands the concerns of the Commission and that his intent is not to make for denser development.

Mr. Bulmer said that his question/concern is more on where this could be put as people have housing in lovely areas and could be subject to this near them.

Attorney Harris suggested it be limited so that only single family or duplex units could be built in non-sewered SU projects.

Mr. Gada asked Attorney Harris to read the draft verbiage that he had for this.

Attorney Harris said that outside the coastal boundary that single family and two family units could be constructed on evidence from the applicant that the premises can support this septic system as deemed by DEP or the Department of Health.

Mr. Gada said that if that were passed that it would eliminate apartment complexes and condos.

Attorney Harris said that it would be a new section.

Mr. Nickerson said that if you had two-acre zoning and a 20-acre parcel why would you want to do this.

Attorney Harris said that it allows for better placement on the land, as rural areas are sometimes tough pieces of land to work with. He added that he would come back with specific examples showing these issues.

Mr. Mulholland commented that they only have 35 days to complete the hearing.

Attorney Harris said that, that actually does not apply to this type of application but he would certainly be glad to grant an extension if they want one. He would be more than happy to present other examples to them.

Mr. Mulholland said that October 2, 2003 is their next meeting.

Ms. Hardy asked if they were different and if so - how a duplex is different from a multi-family.

Mr. Mulholland cited the legal Zoning definitions of each from the Zoning Regulations.

Ms. Hardy commented that there normally are not a lot of plantings on top of the septic areas due to the roots. She asked if that area could be considered as part of the open space. Attorney Harris said yes it could be part of the open space. He said that he would present examples so they could see how this would work within the regulations.

Mr. Bulmer said that the issue with him is not whether it is a duplex or single family home. He is very concerned with having a floating zone that can go anywhere. There currently are beautiful homes and what impact would this have on other zones.

Attorney Harris said that he understands his concerns and his response would be to limit it to single family homes.

Mr. Bulmer said that if that is the only issue can't they do that now?

Attorney Harris said no because of the nature of the subdivision regulations. He said that you couldn't have roads running through the middle of golf courses. This change allows for flexibility – you can move the septic to better utilize the parcel.

Mr. Bulmer said that he would recommend that he came back with single family only.

Attorney Harris said that he has no problem with that. He will come back with the language, as his intent is not to make large areas of multi-family housing.

Mr. Bulmer asked Mr. Mulholland if this would properly come under the SU zone.

Mr. Mulholland said yes, that it could be placed there. He added that this is a lot of information for the Commission to absorb.

Mr. Nickerson said that he thinks that making the zoning regulations more flexible in this Town goes against the interest of most of the people in this Town - by taking land and saying that you can cram houses on property that is not developable normally by putting open space elsewhere.

Mr. Peck said that he thinks that flexibility is wonderful and this allows a developer to take a 20-acre piece and make private condos or whatever instead of having to make cookie cutter homes. They are making the Chapman Farms type of housing without the elderly – they are not limiting it to 55 and older. This allows them to put the houses closer together rather than the 1950's checkerboard style.

Mr. Nickerson said that he thinks that the SU-E is fine but that this allows a developer to develop land that would not otherwise be developed. He hears from people all over the Town about all the building that is going on in Town and how they want it slowed down. Planning has the opportunity to slow down the subdivisions.

Attorney Harris suggested that the developers would still build but just not as well without this change.

Mr. Peck said that their job is to manage the land the best that they can for the Town and he thinks that this does that. He would add the requirement that the front line buffer is 100' instead of 50'.

Mr. Bulmer said that he does not see anything in the language that suggests that the density will go down – it just says that it won't go up. They can still build as many as is permitted by the underlying zone.

Attorney Harris said yes – but added that it is not as simple as it seems as under the SU zone it is the area of the parcel minus the buffer so you are automatically reducing the calculation and end up with less space.

Mr. Manter asked Mr. Mulholland if someone came to request this and we did not change the regulations – could they apply for a variance in this particular circumstance and get it so we would not have to change the regulations.

Mr. Mulholland said that it is possible however the ZBA may or may not grant the variance as it is based on a hardship with the land, which is not easy to grant.

Attorney Harris said that the variance is not likely to be granted by the ZBA. Also, the standards for the zone would apply and this could provide for an undesirable number and you could potentially end up with something that you did not want.

Mr. Mulholland said to Attorney Harris that some comments he had were that he wants to change the Zoning regulations because this would provide for a more attractive and desirable development and less cookie cutter, less roads and better design. He asked if there was another vehicle to accomplish his goal – say a new design standard under the subdivision regulations?

Attorney Harris said that the subdivision regulations don't solve the problem. The easy route is to go to a subdivision but it is not as nice. What he is proposing is a designed and better use of the land for an overall better product.

Mr. Peck suggested that it would help if Attorney Harris came back with a couple scenarios of different zoning to show the differences.

Mr. Nickerson said that he knows there is a good use for this and that someone wants to use it, the problem is that there is also a bad use for it and it is the job of this Commission to examine this.

Mr. Nickerson asked the Commission members if they were in favor of continuing this public hearing and seeing other examples.

The Commission members were all in favor of continuing the public hearing.

Mr. Nickerson adjourned this Public Hearing at 9:10 PM and continued it until October 2, 2003 at 7:30 PM.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

DENSITY EXAMPLES

EXAMPLE 1:

Lot Size:	22.64 acres
Area Density	8.13 acres
RU-40	RU-80
Allowed Units: 8	Allowed Units: 4
Acres/Unit: 2.83	Acres/Unit: 5.66

EXAMPLE 2:

Lot Size:	22.47 acres
Area Density:	13.84 acres
RU-40	RU-80
Allowed Units: 15	Allowed Units: 7
Acres/Unit: 1.5	Acres/Unit 3.24

EXAMPLE 3: (Standard Subdivision RU-40) →

Parcel Size:	20.00 acres
Number of Lots:	18
Acres/lot:	1.11

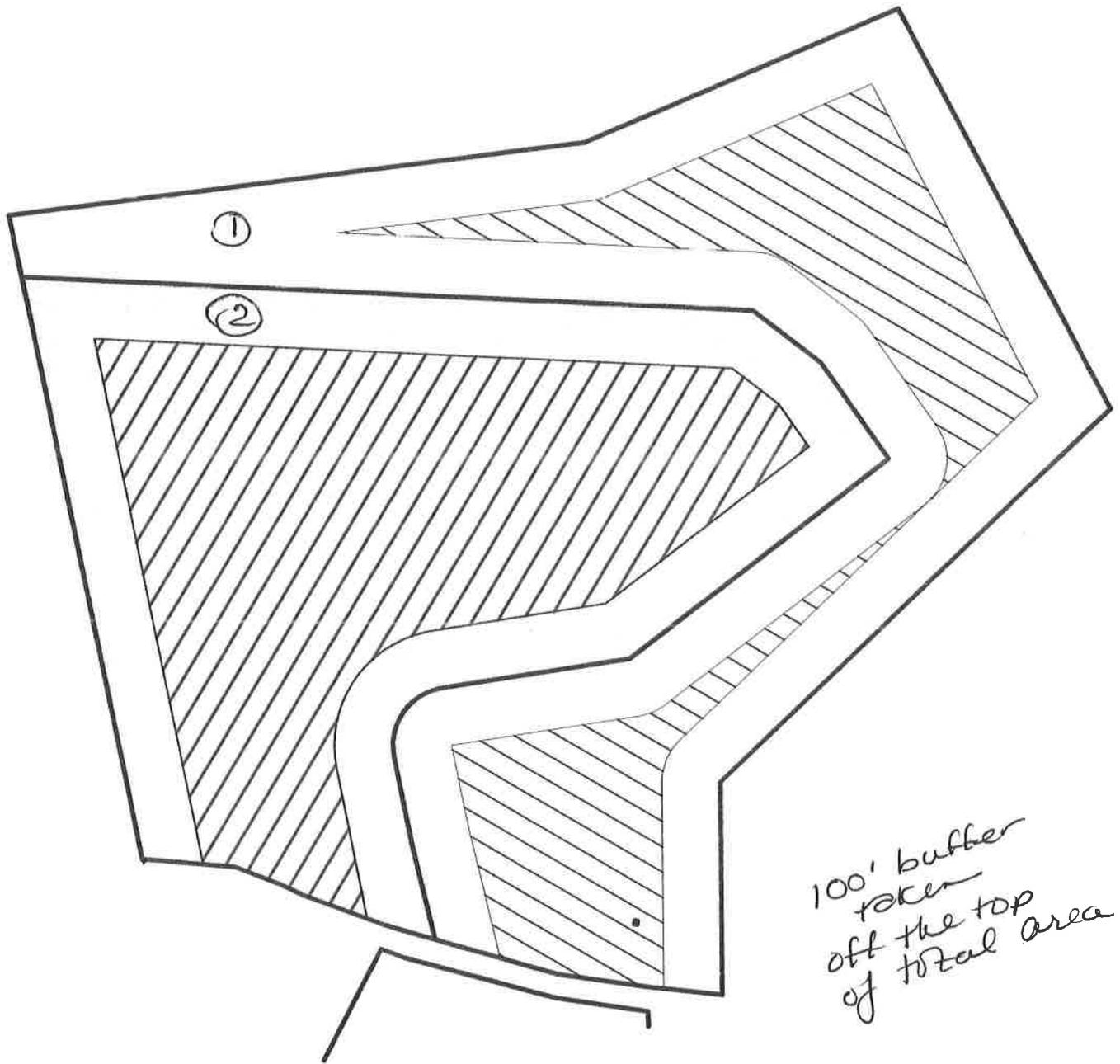
100% open space required means 2 acres open space

EXAMPLE 4:

Lot Size: 20.00 acres
Area Density: 12.25 acres

RU-40 RU-80

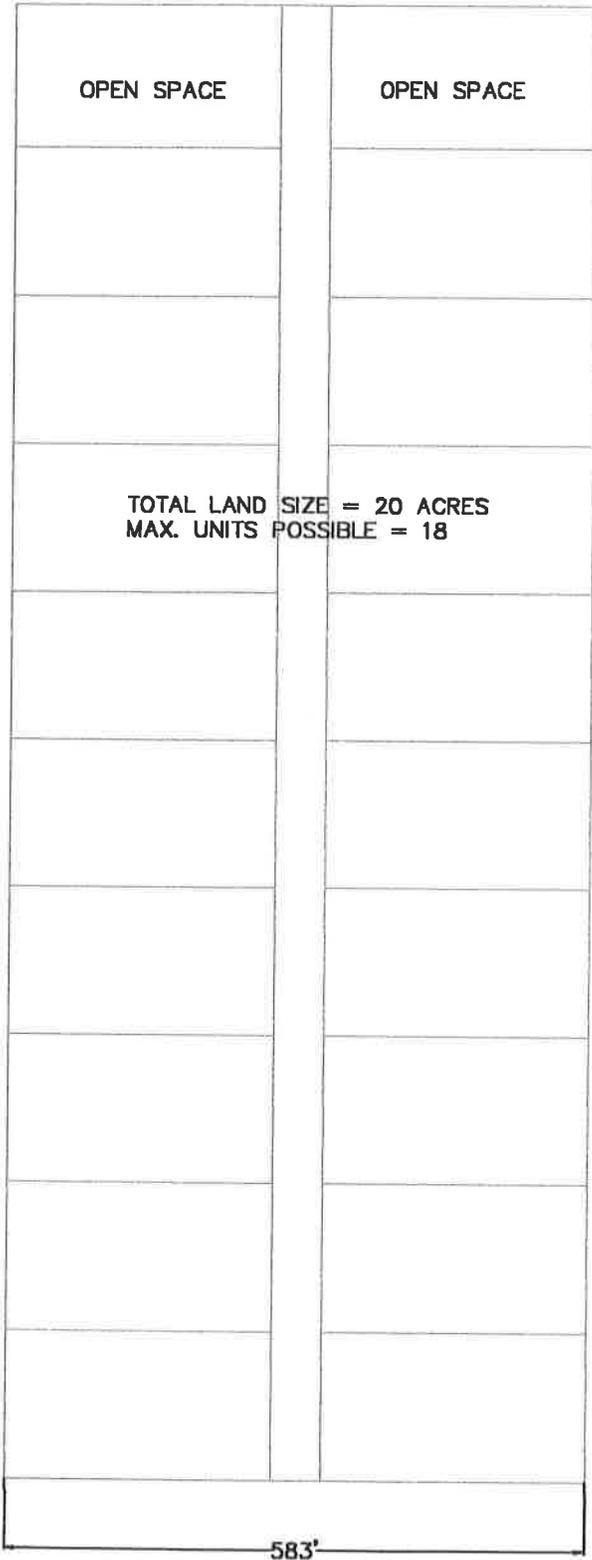
Allowed units: 13 Allowed Units: 6
Acres/Unit: 1.53 Acres/Unit: 3.37



LOT	AREA PARCEL	AREA DENSITY
1	22.64 Ac.	8.13 Ac. usable area
2	22.47 Ac.	13.84 Ac

usable area is lined

EXAMPLE 3



EXAMPLE 4

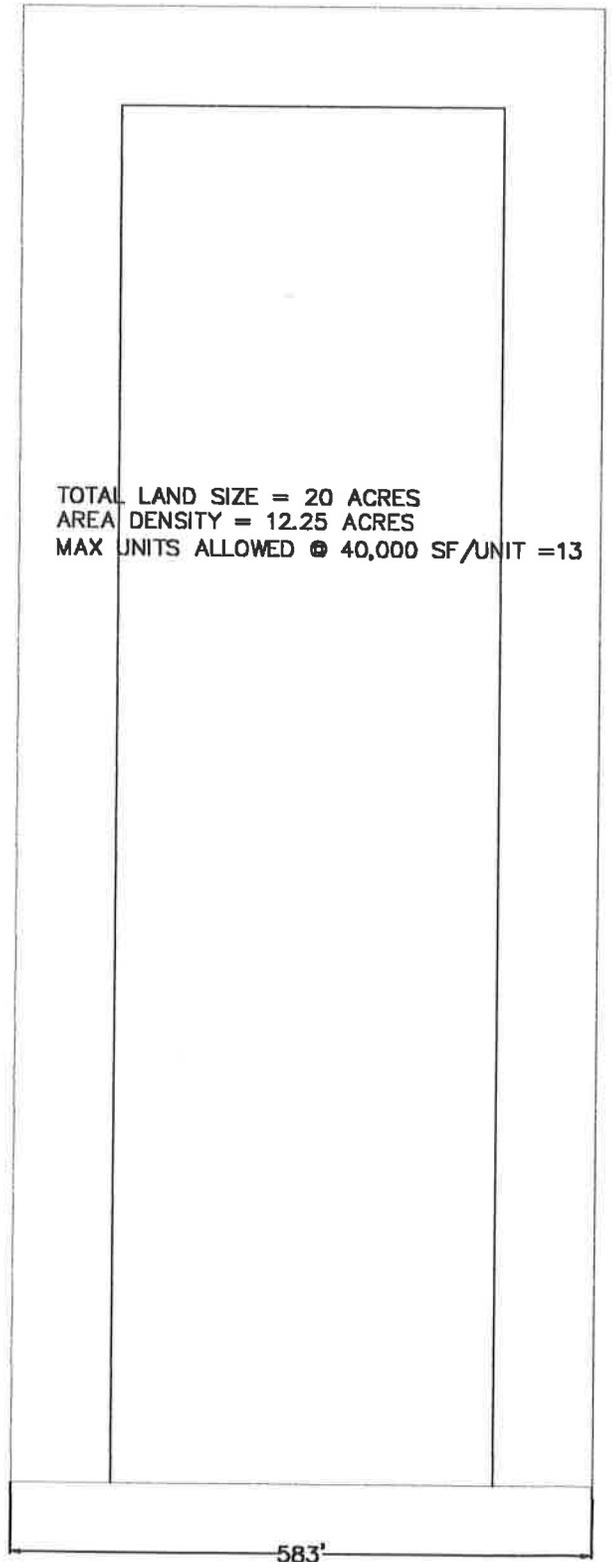


Exhibit 1
Pg. 4

11. Utilities: No multi-family development shall be approved unless there is provided public sanitary sewers ^① or evidence from the Applicant that the premises are capable of supporting a septic system in compliance with DEP and/or the Department of Health Regulations, and clear evidence of safe and satisfactory means of providing water supply. ^② Provided, however, no on-site septic systems shall be allowed if any of the premises lies within the coastal zone. ← With reference to the DEP map

Bm - asked to add
With reference to the DEP map

Language additions 1+2
to Section 11

RTB

PROPOSED MODIFICATION TO REGULATION CHANGE,
MULTI FAMILY SU (SECTION 25.5)

The following should be added to Section 25 "Multi Family SU" item 2 entitled "Density" (bold face added):

The average number of dwelling units per acre in a development shall not exceed two. **If the premises shall be served by on-site septic system(s), the average number of units per acre shall not exceed that which would be allowable based on the minimum lot size of the underlying zone which shall be the subject of an SU development.** In computing the number of acres in the parcel of land proposed for development for the purposes of this paragraph, the number of square feet in the buffer area pursuant to subparagraph (7) following, shall be excluded.

Zoning Commission RHI - Attachment 9/18/03
1P8.