

**East Lyme Zoning Commission
Regular Meeting
January 7, 1999
Minutes**

FILED IN EAST LYME TOWN
CLERK'S OFFICE

Jan 14, 19 99 at 1:50 AM
PM
Esther B. Willaw
EAST LYME TOWN CLERK

The East Lyme Zoning Commission held a Regular Meeting on January 7, 1999 at Town Hall, 108 Pennsylvania Avenue, Niantic, Connecticut 06357. Chairman Formica called the Meeting to order at 7:30 PM.

PRESENT: Paul Formica, Chairman, Athena Cone, Secretary, Norman Peck, Daniel Price, Shawn McLaughlin, and Alternates William Weber, Robert Bulmer, William Dwyer.
Also Present: William Mulholland, Zoning Officer. Alice Johnson, Planning Commission Liaison

Absent: Christopher Mullaney, Rose Ann Hardy, ex-officio.

I. Public Delegation

None

II Regular Meeting

Mr. Dwyer will sit on the panel in Mr. Mullaney's absence.

A. Approval of Minutes of December 3, 1998.

Motion (1): Mr. Price made a motion to accept the Minutes of the December 3, 1998 Regular Meeting and Public Hearing.
Mr. Peck seconded the motion.

Vote in favor: (6-0), Unanimous.

B Application of Robert D. Tobin to amend the East Lyme Zoning Regulations to modify the Elderly Housing age minimum from 62 years of age to 55 years of age.

Mr. Peck and Mrs. Cone stepped down on this agenda item.
Mr. Weber stated that he had familiarized himself with the public record and will sit for this agenda item. Mr. Price will act as secretary.

Mr. Formica read into the record Mr. Tobin's letter to Mr. Mulholland, dated September 30, 1998 requesting the regulation change.

East Lyme Zoning Commission
Regular Meeting
January 7, 1999
Minutes
Page 1 of 5

Mr. Mulholland provided members of the panel with a letter dated January 7, 1999 from Robert W. Marrion, Waller, Smith & Palmer, PC to the Zoning Commission in response to two questions.

1. How the proposed change would operate.
2. Whether or not the change would have any retroactive effect.

At this time (7:40 PM), Mr. Bulmer arrived and joined the panel as the 6th voting member.

Mr. Dwyer stated that he did not agree with the applicant's interpretation. After reviewing the correspondence from Town Attorney, and Fair Housing Act, Mr. Dwyer stated that it was his understanding that in order to be in compliance with FHA, the regulations would need to state either:

- (1). Intended for, and solely occupied by person age 62 or older, OR
- (2). Intended for and operated for occupancy by persons 55 years of age or older AND 80% of the occupied units are occupied by at least one person who is 55 years of age or older.

Mr. Formica stated that it was his understanding that the 80%/20% level triggered the exemption and that the 80% level was the minimum required. Mr. Price concurred that the 80% in the Federal regulation is a minimum and that the East Lyme regulation is more stringent at 100% of the occupied units.

Mr. Bulmer stated that to change the age to 55 years or age is a simplistic approach. He noted several scenarios in which school age children, including handicapped, could be living in Elderly Housing. He referred to specific language in the Farmington, Connecticut regulations, which limit the lower age to 21 years of age. He added that he did not believe allowing children in Elderly Housing was the intent of the applicant or the Town.

Mr. Bulmer recommended that the application be denied, and a subcommittee study this issue further and develop language for the East Lyme Zoning Regulations which would bring the Regulations into compliance with FHA, reflect the intent of and protect the Town and be in the best interests of Homeowner's Associations in Elderly Housing developments.

Mr. Price commented that if one person in an Elderly Housing unit must be 55 years of age or older, there is a possibility that some children may, at some point, reside there. There will, however, be far fewer children in this type of development than if the land were developed as residential housing. The vast majority of Elderly Housing developments will be comprised of people who will not be stressing the school system.

In response to Mr. Weber's questions, Mr. Formica stated that the Commission could form a subcommittee, as recommended by Mr. Bulmer, regardless of whether the Commission approves or denies this application.

Mr. Formica also stated that by complying with FHA by changing the age from 62 years to 55 years of age enables the Town to enforce its current 100% unit occupancy requirement.

Mr. McLaughlin indicated that his concern regarding the 80%/20% issue had been clarified. He added that it was the responsibility of the Homeowner's Association to establish and enforce their Policies and Procedures regarding verification of occupancy, number of persons per unit, etc.

Mr. Formica noted that it is not possible to approve zoning regulations such that the Homeowners' Associations are forced to comply and are also protected against future litigation.

Mr. Bulmer stated that if the minimum age is changed there is a possibility that children could be living in what is intended for Elderly Housing. He stated he would like to see the regulation stipulate a minimum age of a resident, such as 21 years of age.

Mr. Formica indicated his support of the application. He stated that it would bring the Town in compliance with the Fair Housing Act. He added he did not think requiring both occupants to be 62 years of age or older was the proper way to go. He supports changing the age to 55 years of age or older. He noted that the Commission has the opinion of the Town Attorney that by approving this application, the Town will be in compliance with FHA. By denying the application, the Town will still be non-compliant. He stated his is not averse to establishing a subcommittee.

Motion (2):

Mr. Price moved to approve the application of Robert D. Tobin, as submitted, to amend the East Lyme Zoning Regulations to modify the Elderly Housing age minimum from 62 years of age to 55 years of age.

Mr. Weber seconded the motion.

Vote in favor: (4-2). Mr. Dwyer and Mr. Bulmer opposed the motion.

Reasons: In keeping with the East Lyme Zoning Commission's legislative authority, as stated in Chapter 124 of the Connecticut General Statutes, to enact zoning regulation to protect the health, safety, and welfare of the public.

C. Year 1999/2000 Budget

Mr. Peck and Mrs. Cone returned to the Panel. Mr. Bulmer is sitting out.

Mr. Mulholland presented the Budget for the 1999/2000 Year. He noted the upgrade of the Administrative Clerk position from half-time to a full-time equivalent. This position represents a shared position with ZBA, Health, Building, and possibly Planning. Discussion ensued regarding the options available for the printing and binding of the Zoning Regulations, vehicle mileage, and legal advertising.

Mr. Mulholland noted that the projected revenues are \$6500. There is not capital expense budgeted.

Motion (3): Mr. Dwyer moved to approve the East Lyme Zoning Budget for the year 1999/2000.
Mrs. Cone seconded the motion.

Vote in favor: (6-0), Unanimous.

D. Correspondence

Mrs. Cone read a letter from Darcy Collins, P.E., Doane-Collins Engineering Co. dated 12.21.98 regarding her presentation to the Commission on behalf of her client on December 3, 1998. She complimented Commission members on their preparedness, knowledge, and efficient manner in dealing with her application.

E. New Business

Motion (4): Mr. Price made a motion to add to the agenda Subcommittee discussion.
Mrs. Cone seconded the motion.

Vote in favor: (6-0), Unanimous.

1. Mr. Formica inquired if Mr. Bulmer would be willing to head a subcommittee on Elderly Housing to review the East Lyme Zoning Regulations and make recommendations. Mr. Bulmer indicated he would. Mr. Formica also volunteered to serve as a member of the subcommittee.

2. Alice Johnson, Planning Commission Liaison addressed the Commission. She suggested that the Planning and Zoning Commissions make an attempt to meet together and improve communications. She informed the Commission

of the resignation of Chairman Harold Kaplan and Mr. Waterman. She stated that the Commission is in need of alternates.

Motion (5): Mr. Price made a motion to adjourn the meeting at 9:05 PM.
Mrs. Cone seconded the motion.

Vote in favor: (6-0), Unanimous.

Respectfully submitted,



Anita M. Bennett
Recording Secretary