

# Town of East Lyme

FILED IN EAST LYME TOWN

CLERK'S OFFICE

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NIANTIC, CONNECTICUT 06349

at

10:35

AM  
PM

*Esther B. Willaw*

Zoning Commission

ZONING COMMISSION MINUTES

EAST LYME TOWN CLERK

February 3, 1993

PRESENT: Wayne Fraser, Chmn.; Paul Formica, Secy.; Sharon Baroni, Athena Cone, William Dwyer (later).  
Alternates: Chris Mullaney and Shawn McLaughlin.  
ABSENT: Paul Smith, Alternate

Called to order at 7:31 p.m. by Wayne Fraser, Chairman.

PUBLIC DELEGATIONS: None

Chris Mullaney was asked to sit in for Mr. Dwyer, who was absent at this time.

## MINUTES OF JAN. 20th, 1994

The Minutes of Jan. 20, 1994 were accepted with one correction: Mr. Chris Mullaney, Alternate, was present at the meeting.

### 3. TOWN ATTORNEY/DISCUSSION

Town Counsel, Robert Marrion, was present to discuss procedures, FOI and Conflict of Interest, and Intervenor Status.

Atty. Marrion reminded the members that they can amend the bylaws anytime they wish. He thought that if they were to be changed, then it should be done through a public hearing.

In reply to a question from Paul Formica, Atty. Marrion said they should be sure that all parties involved in a public hearing should be heard. He said the person applying should be heard first, and then the opposition.

On the matter of cross examination- when the Commission is acting in a quasi-judicial mode, then the interested parties should have the right to cross examine. He said it is better to let people go on and on.

He said certain facts might be stated in a petition. People do not have the right to cross examine this letter. He warned about being careful about accepting a letter which contains allegations of fact, when the people are not present who petitioned. He said if it is controversial and cannot be substantiated, then perhaps it should not be accepted.

He said a zoning change is a general matter that applies to the whole town. He said you can hear anything you want to in a case like that. He said the court is usually very reluctant to over-rule a commission on a matter like this.

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FOI:

Atty. Marrion stated that if a matter is not on the agenda, the Commission does not have the right to consider that matter. If some one brings up the matter that is not on the agenda, don't discuss it, just go on to the next item, he said.

Mr. Fraser asked about ruling some one out of order. Atty. Marrion said the chairman does have the right to rule on that. Mr. Fraser spoke about the Zoning Board having set a time limit in the past, and then putting it on to the next meeting.

Atty. Marrion suggested that if a person is ruled out of order, and then does not quiet down, the Board should take a recess. Maybe they could speak to the person then. If necessary, you can have a person evicted by a constable, said Atty. Marrion.

Mr. Fraser asked what if we find more information is needed, is it better to go on to a later meeting.

Atty. Marrion suggested the members ask questions and see if they can get the information from them. He said if there is an appeal, you will be judged on the record of sufficient evidence.

Mr. Formica asked if a list could be put at the door for people wishing to speak, or do we have to pick names out of the crowd.

Atty. Marrion said you probably can't limit it to people who sign up. Others should have a chance to speak also, but you could encourage them to limit themselves to 10-12 minutes.

Mr. Fraser spoke of encouraging people to come in with matters that need looking at. He said he was thinking of putting some information on the back of the agenda as to procedures. He asked if people could be encouraged to put the matter in writing. Atty. Marrion agreed.

He said that after Public Delegations, a motion could be made to add the item to the agenda, but it would be for discussion only (not for action). He said the vote could be by a simple majority, but if it was at a SPECIAL Meeting, then it would have to be by a 2/3 vote.

Mr. Fraser asked about a person wanting something in our records. Atty. Marrion said you have a reasonable time to produce the Minutes, or whatever.

Athena Cone asked if a person could look at any of the letters etc. Atty. Marrion said YES, but not at personal notes or at personnel records. He said personal notes are exempt.

Mr. Fraser asked about Subcommittees meeting. Atty. Marrion said they should follow FOI rules as to Notice of Meeting. He was asked if it mattered how many members.

Atty. Marrion thought the meeting should be posted, and they should meet in a public forum. He was asked if the people could interact with the subcommittee. Not necessarily, he said. They could be made a part of the subcommittee. The meeting should probably be at the Town Hall, or a Town facility. A committee would be limited to making a report or a recommendation.

Conflict of Interest:

Atty. Marrion referred to General Statutes Sections 8-11 - Disqualification of Members. He said no member shall appear for or represent any person appearing before ZBA, Planning etc.

\*Bill Dwyer appeared at the meeting at this time. Mr. Mullaney left, and Mr. Dwyer resumed his place.

Atty. Marrion pointed out it could get sticky if a matter concerns property that is, say, next door to you. He also said the role of anyone in a liaison role (like representative from another board) is to gather information-- not to pass on any information. It should be one way information principally. This is to avoid any misinformation.

As to participation on a matter before the Board, if directly or indirectly interested in a personal or financial sense, should be avoided.

Atty. Marrion stated that if a person is treated with hostility, it could be a basis for disqualification. If you have a direct interest in a piece of property, you should disqualify yourself, he said. Just step down. He said the appearance of a conflict is enough to cause a conflict. No matter how clear the law is, if there is conflict by you, then you should step down by disqualifying yourself.

Wayne Fraser asked if the chair should bring this up at a public hearing. Atty. Marrion said you do not have to state why you are disqualifying yourself.

He said the members of the Commission should call him if any one of the Board has a personal problem with agency matters.

Mr. Fraser asked Atty. Marrion if he would attend if we expect to go into litigation. He also asked if he could ask the Town Counsel a question during the hearing.

Atty. Marrion answered in the affirmative, and that you could also ask Bill Mulholland (Zoning Officer), the Town Engineer, and experts during the hearing - or you could postpone it to another hearing and get the information.

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Atty. Marrion was asked if one could call a five minute recess and then ask the attorney about a technical matter or something. He answered he would give them the best answers he could, but he cannot give any substantive advice after the hearing is over. He said all information should flow through the chair. He said Planning members, Zoning Board of Appeals members etc. cannot comment at a meeting.

He thought an alternate to the Zoning Commission should be able to ask questions like any other member, but he cannot voice his opinion during the hearing and should not participate in any decision.

Mr. Woodrow Scott asked Atty. Marrion about the law firm having to disqualify itself. Atty. Marrion said if a client was involved, then another counsel would have to be appointed.

#### INTERVENOR STATUS

Atty. Marrion said that under the State Law re: environmental matters any person or corporation can intervene as a party if they file a paper stating that it would pollute air, water etc. Then they can become a party to the action. Their role is limited to environmental matters only. They can call witnesses also. He said the Board should let the intervenor in and let him participate. There should be a verified (sworn to) application to appear as an intervenor.

Athena Cone asked if members of the Commission can be sued by individuals. Atty. Marrion spoke of individual members being sued in the State, -they got a judgment in trial court, but it was overturned on appeal. Atty. Marrion said the courts are sympathetic to a Board of lay people who are acting in good faith and with fairness.

Sharon Baroni asked who represents us if we get sued. Atty. Marrion said it would depend on the situation. He said that the Town Counsel would probably represent everyone, but if it was a conspiracy or some one who should have disqualified himself, then it would be different.

Atty. Marrion was thanked for coming (8:45 p.m.)

#### OLD BUSINESS:

##### SUBCOMMITTEES:

a. Light Industrial Zones. Paul Formica and Norman Peck have been working on this - Heavy and Light Industry. Mr. Formica said we have to decide if we want to add heavy industry to our regulations. It was suggested that 120,000 sq. ft. should be the minimum size for heavy industry with 50 ft. from the sidelines and street, and lot coverage not to exceed 40%. He asked what was the Board's feeling on this. The commission will be studying this. Questions can be directed to the Zoning Officer. This could be considered next meeting also. Mr. Mulholland said he will try to get some definitions of Heavy and Light Industry.

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b) Sign Boards

Athena Cone said one matter under consideration is sandwich signs, and both public and private matters on signs will be considered.

It was pointed out that the State has said that farm produce can be advertised on State roads.

c) Trailers

Mr. Dwyer said he would like to continue this to next week, as he has some film being developed. He doesn't think we need regulations. There are only two areas under consideration, one is a machine shop.

d) Shared Parking:

Sharon Baroni said that information is being gathered. She asked if this is going to require talking to individual merchants in town to get cooperation, and it was thought probable.

NEW BUSINESS - None

3. Business on the floor, by a majority vote:

MOTION by Paul Formica to put the budget on the agenda for discussion; duly seconded by Athena Cone, and so voted (6-0).

Mr. Mulholland said it is essentially the same budget as last year's. He said there is a new law - State Mandated Fees- which have to be in the budget. Every time a Zoning permit is issued a fee must be collected.

The total budget amount is \$55,528. It is up \$175 for secretary, and \$1800 for the State. He said about \$4100 revenue is expected.

Mr. Peck asked if there should be consultants' fees in the budget for a special item coming up. It was explained that the Chairman would have to request this of the First Selectman.

MOTION by Paul Formica: moved to accept the proposed budget with an additional \$1000 in consulting fees, and to send the budget on to the Selectmen for approval of the budget for the year ending 6/30/95. Seconded by Mr. Dwyer, and so voted unanimously.

Comments from Ex-Officio:

Mr. Donn Jourdan was present and stated he thought there was a lump sum item which can take care of employees who are not union members. He said if the Selectmen do not recommend the consulting fees, then it can be put back in and go before the Board of Finance. He said the Board of Finance has the right to revise the figures.

Mrs. Cone moved to adjourn at 9:33 p.m.; seconded by Mrs. Baroni, and so voted unanimously.

Attest:

*Elizabeth J. Taylor*