

EASTLYME ZONING COMMISSION

Regular Meeting, June 15, 2023. 7:30 PM

East Lyme Town Hall, main room

Members Present: Chairman Anne Thurlow, Debbie Jett-Harris, Norm Peck, Dave Schmitt, John Manning (7:35) Jay Ginsberg, Alt, Denise Markovitz, Alt

Members Absent: Terry Granatek,

Also Present: William Mulholland, Zoning Official, Sue Spang, Recording Secretary

Call to Order: Chairman Thurlow called the meeting to order at 7:30

D. Markovitz was seated. J. Ginsberg was seated until Manning arrived.

RECEIVED FOR RECORD
EAST LYME, CT
2023 JUN 22 P 2:30
William Mulholland
TOWN CLERK

I. PLEDGE OF ALLEGIANCE-recited

A. Thurlow announced that two members resigned.

II. PUBLIC DELEGATION:

Nancy Kalal, 80 Grassy Hill Road, discussed the easements for fire access to subdivisions. She went to Darrows Ridge and said the area where a fire access should be is now occupied by a house. She could not find in the regulations where it talks about easements. She did find the fire access on Kensington and you have to cross the Goodwin Trail. The road is not adequate for fire apparatus. She asked who is liable for the access? The access is not maintained. She said easements are a gift to the developer as it allows them to build on land that they otherwise would not be able to build on. She provided pictures

II. PUBLIC HEARINGS: none

IV. REGULAR MEETING

1. Approval of Minutes of June 1, 2023

MOTION: (Schmitt/Markovitz) to approve the June 1, 2023, minutes as presented. (typos noted)

Vote: APPROVED unanimously.

2. Application #2023-CAM-01 of Marker Seven Marina, 111-109 Main Street, Niantic, for a municipal Coastal Site plan Review.

Attorney Tom Londregan for the applicant, gave an extensive history of three lawsuits. He noted a letter to B. Mulholland, titled, "For Settlement Purposes Only, Application for Coastal Area Management & Site Plan Review", received May 16, 2023, which has been entered into the record and which he requested it be part of the form application for East Lyme.

An amendment to the application for the CAM and site plan review was also submitted as part of the application.

Tom Londregan described the three lawsuits and thanked the Town for finding a way to resolve the lawsuits by having the applicant file a coastal site plan. He said the applicant, Tim Londregan did not plan on ignoring the regulations but the lawsuits came from a disagreement with how the regulations were interpreted.

Tom Londregan relayed the history of the shellfish operation and business:

Lawsuit 1

- 2015 started an oyster business
- Approval from DEEP for cages in Niantic Bay

- Commercial vessel tied up to pilings on the Niantic river which included a tumbler which the applicant considers farm equipment
- 2019 obtained a long term lease for marina
- 2019 the town issued a Cease and Desist for processing by a tumbler
- ZBA voted 3-2 on an appeal of the Cease and Desist and lost as a result of not having 4 votes in favor of the appeal.

Lawsuit 2

- Tim Londregan receive DEEP permission to repair the bulkhead on the property
- Dredge materials to be used on his property
- DEEP permitted the existing dock on the east side of the property to be expanded from 3 to 5
- An injunction was issued by the town

Lawsuit 3

- While defending lawsuit #2 they discover similar DEEP approved projects that did not receive the same unequal treatment as Tim Londregan, list provided.

Tom Londregan submitted an extensive history, timeline and justifications for the shellfish operations. The submitted package contained:

- legal notices,
- communications with the town,
- zoning commission minutes,
- site plan requirements, exemptions,
- DEEP advisory opinion pertaining to permitted activities conducted by Niantic Bay Shellfish Farm LLC
- CT § 22a-105 Coastal Site plan Review
- CT § 1-1 Words and Phrases
- CT § Title 19A, Chapter 268m,
- East Lyme Section 14 CAM plan review exceptions
- Photos of boats
- List of similar work performed at sites in East Lyme
- CT § 22a-109 Coastal site plans. Review

He discussed the Cease and Desist and gave 6 arguments on why there should not have been a Cease and Desist issued:

1. The birthing of the shell plex is a permitted use under zoning regs, (10.9), tumbler does not constitute a processing plant and the commercial operation was existing before the zoning regulations, it is preexisting non-conforming operation
2. Shell plex is exempt under site plan regulations 24.1,1 of the East Lyme zoning regulations, the operation is not an increase or intensification of the operation
3. Tumbler is a tool for harvesting crops, CT § 1-1, words and phrases. Includes tools and equipment for harvesting oysters. No need for CAM review because regulations say harvesting of crops is exempt.
4. Tumbler is water ward of mean high tide and the town has no jurisdiction beyond mean high tide.
5. Commissioner of Agriculture informed ZBA that standard shell fishing practices are considered farming.
6. Noise complaints CT § 19a- 341 state noise from farm equipment used in a normal farming procedure are exempt. Tom Londregan said Tim Londregan wants to be a good neighbor and sat down with his neighbor and let him know that if there was a special event planned to let him (Londregan) know and he would not operate the tumbler.

Tim Londregan talked with the East Lyme Agriculture Chairman and was told that no farm has

limitations on hours of operations. Tom Londregan does not see any reason for conditions for hours of operations or noise issues.

Injunction

2. Applicant received permission from DEEP to repair bulkhead, dredge, and distribute/dewater materials on site. 2011 CAM approved dredging of basin area. Minutes of meeting approving dredging show no site plan was ever filed. Tom Londregan believes CAM approval runs with the land.
3. CAM site plan is not required for repair of existing bulkheads pursuant of certificate of permission granted by Connecticut.
4. Dewatering and dredging materials storage does not require CAM review. All materials spread on site
5. Town has not required site plan review or issued an injunction for the repair of a previously approved flood control measures. Lists areas previously approved dredging, dewatering on site with no injunction

The site plan includes a marina used for boat slips (approximately 198) and winter storage, boat repair, retail marine store, hauling of boats, bait and tackle marine supplies, sale of oysters. The crane on site is used for construction and dredging and is a pre-existing non-conforming use. Business registration is now up to date. The shell plex/tumbler is moved as far as possible east from neighboring marinas and businesses.

Town Attorney Timothy Bleasdale agrees that the site plan is the result of negotiations between the town and the applicant to settle the lawsuits. He said the application protects coastal resources and water dependent activities. The plan has no adverse effects, and the regulations allow shell fishing. Negotiations have taken place over the last ten months and the plan is a retroactive application.

T. Bleasdale said everything in the application has been discussed with B. Mulholland. He said the Commission is receiving the application because in the zoning regulations section 10.1, permitted uses in the CM district for commercial berths require a site plan to be submitted.

T. Bleasdale said regarding shellfish processing the regulation 10.1.19 is not clearly defined. The section excludes shellfish processing plants but because it is unclear according to the regulations the town is going with the State Department of Agriculture determination on the issue which the tumbler is a piece of agriculture equipment. The town recommends the Commission follow that recommendation. The town has proposed options for motions with/without conditions. If the Commission chooses to add the condition concerning the noise ordinance which is a police function it would also be a zoning issue subject to enforcement if the noise levels were to go over the acceptable levels during certain hours.

T. Bleasdale says the CAM Act 22a-105e allows conditions to be added/modify approval if it related to adverse impact on water dependent activities. He stated there were numerous complaints from surrounding neighbors concerning noise but no formal written complaints were received.

Tom Londregan said presently the tumbler is used during business hours. He is opposed to the noise condition to the motion. Tom Londregan refused to commit to specifying any hours of operations.

N. Peck cited the zoning regulations charging the commission with stabilizing and conserving the value of land and buildings. He is in favor of marine operations but it is his understanding that the surrounding marinas and boat owners threatening to leave due to the noise have been impacted by the shell fish operations

Tom Londregan demanded to know for the record who has informally contacted the town about noise. N. Peck said he indirectly was informed that Boats Inc. has issues with the noise coming from the shell plex.

D. Schmitt said he previously had a boat slip close to the shell plex. and he heard numerous complaints about the noise and smell coming from the shell plex, many people found it difficult to sleep at night due to the operation of the shell plex.

MOTION: (Peck/Markovitz) In regards to Application #2023-CAM-01 of Marker Seven Marina, 111-109 Main Street, Niantic, for a Municipal Coastal Site Plan Review, move that the Commission finds that: 1) The application is for a use permitted, subject to coastal site plan approval pursuant to Section 10

and Section 14 of the East Lyme Zoning Regulations, 2) the application conforms to the requirements of the East Lyme Zoning Regulations, 3)The application is consistent with the Coastal Management Act and Section 14 of the East Lyme Zoning Regulations, 4) The application, as conditioned, incorporates all reasonable measures which would mitigate any adverse impacts on both coastal resources and future water-dependent developments; and that the Commission approve with modifications the application with the following condition:

1) That noise emitted by the marina comply with the East Lyme Noise Control Ordinance.

Vote: APPROVED unanimously

V. OLD BUSINESS-none

VI. NEW BUSINESS

1. Election of alternate vacancy

Mark Peterson, 3 Red Fox is interested in serving on the Commission, he has been in East Lyme his whole life, he is a mortgage lender.

Chris Herman, 26 Main Street, has lived in town for 32 years and has a small construction company.

Jett-Harris/Peck nominated C. Herman for the alternate position. Vote: in favor-Jett Harris, Peck, Markovitz. Opposed Thurlow, Manning, Schmitt. Vote: FAILED

Schmitt/Manning to nominate Mark Peterson for the alternate position. In favor-Manning, Thurlow, Schmitt. Opposed-Peck, Jett-Harris, Markovitz. Vote: FAILED

Jett-Harris/Peck nominated C. Herman for the alternate position. Vote: in favor-Jett Harris, Peck, Markovitz. Opposed Thurlow, Manning, Schmitt. Vote: FAILED

Schmitt/Manning nominated Peterson. Vote: in favor-Peck, Manning Schmitt, Thurlow. Opposed-Markovitz, Jett-Harris.

Mark Peterson is appointed as alternate.

1. Any Business on the floor, if any, by the majority vote of the Commission-none

2. Zoning Official-update on trees at Stop and Shop. B. Mulholland will invite Attorney Sweeney to the next meeting.

Comments from Ex-Officio-none

3. Comments from Zoning Commission liaison to Planning Commission:

D. Markovitz reported the Zoning Commission discussed:

- N. Kalal public statement concerning easements and fire access
- A 5-lot subdivision on Holmes Road and Upper Walnut was presented
- Language concerning affordable house areas was not brought in from the previous POCD to the most recently approved POCD
- They are revising the sub-division regulations

4. Comments from the Chairman: none

VII. ADJOURNMENT

MOTION: (Jett-Harris/Schmitt) to adjourn at 9:00. Vote: APPROVED unanimously

Respectfully Submitted
Sue Spang,
Recording Secretary