



**Save the Sound**<sup>®</sup>

Action for our region's environment.

EAST LYME  
ZONING COMMISSION

MAR 21 2024

AGENDA# 4a

March 21, 2024

Received

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Town of East Lyme  
Land Use

East Lyme Zoning Commission  
East Lyme Town Hall  
108 Pennsylvania Ave  
Niantic, CT 06357

**RE: 91 Boston Post Road Conceptual Site Plan Application**

*Save the Sound is a nonprofit 501(c)(3) membership organization that advocates for the protection and improvement of the air, land and water in the entire Long Island Sound region, including the Sound itself, its rivers and tributaries, and both the human and wildlife communities of its watershed.*

Dear Commission Members.

I am writing on behalf of Save the Sound regarding the zoning permit application for 91 Boston Post Road that purports to be for the approval of a conceptual site plan. Because there is no authority in the East Lyme Zoning Regulations or the affordable housing appeals statute to grant or deny such a conceptual site plan independently of a zone change application, the Commission should dismiss the application without action. Moreover, though it is without consequence to this proceeding because of the above, Save the Sound supports the comments submitted by Save the River Save the Hills (Exhibit TT) and Donald Danila (Exhibit SS).

It is important to note at the outset that the Zoning Permit Application being considered is not seeking designation as an Affordable Housing District ("AHD") zone. Instead, the application is for, "Conceptual site plan approval for an age restricted rental housing community per Conn. Gen. Statute[sic] 8-30g." The East Lyme Zoning Regulations do not provide for review of a conceptual site plan outside of the context of an AHD zone change request.

The East Lyme Zoning Regulations provide that:

An application for designation as an AHD may be initiated in three ways: (i) a conceptual site plan in accordance with General Statutes Section 8-30g; or (ii) an application for approval of a Preliminary Site Plan ("PSP"); or (iii) an application for approval of a Final Site Plan ("FSP"). The Commission shall have the discretion to hold a public hearing on an application for approval of a PSP and/or on an application for approval of a FSP. An application for designation as an AHD cannot be approved without an approved FSP.

While there are approval processes laid out for a PSP, an FSP, and an AHD designation, there is no approval or denial process laid out for a conceptual site plan. Regardless of whether a

Exhibit  
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conceptual site plan is submitted, there are two potential routes to a final decision on the AHD. If a PSP is submitted, the commission shall act on the PSP “at the time it acts on the proposed AHD designation.” EL Zoning Regulations 32.9.3. If a PSP is not submitted or approved, the commission shall act on the FSP “at the time in acts on the proposed AHD designation.” *Id.* There is no provision requiring or allowing the commission to “act” on a conceptual site plan at any time.

Thus, the only significance of a conceptual site plan in the EL Zoning Regulations is something that “may” be submitted in conjunction with an AHD zone change application. Conceptual plans are a valuable planning tool for an applicant to get early feedback from a zoning commission, but they are not contested cases that require up or down decisions. Because there is no application for an AHD in this instance, the conceptual site plan has no broader relevance, and the zoning commission has no power to render a decision.

The provisions of C.G.S. § 8-30g also do not provide authority for the zoning commission to make a decision on a conceptual site plan. Section 8-30g(c) provides,

[a]ny commission, by regulation, may require that an affordable housing application seeking a change of zone include the submission of a conceptual site plan . . . .”

(emphasis added). The use of the word “may” makes this section permissive. More importantly, it is only relevant in the context of an applicant who is “seeking a change of zone.” There is no zone change application before this agency. Moreover, even if there was, the only decision the zoning commission would be empowered to make under their regulations and under § 8-30g would be on that zone change itself. There is no provision under state or local law or regulation that requires a decision on a conceptual site plan. Finally, §8-30g makes clear that if a commission wishes to require a conceptual site plan, it must do it by regulation. Thus, the regulation would create and define any rights the applicant may have. Because the regulation doesn’t require review of the conceptual site plan separate from a zoning change, there is no basis for the commission to engage in one.

The case cited by attorney Geraghty in his January 31, 2024 (Exhibit L) letter does not support his argument. Indeed, the case demonstrates the flaw in attorney Geraghty’s reasoning. That case was an appeal of an **application for an AHD zone change**. See *Landmark Development Group, LLC v. East Lyme Zoning Commission*, WL 6120204, 67 Conn. L. Rptr. 341 (Superior Court of Connecticut, September 18, 2018). The case did not involve a conceptual site plan but rather a PSP. More importantly, the discussion of the conceptual site plan was wholly in the context of a decision on a zoning application. There was no determination, express or implied, that a conceptual site plan could be decided outside the context of a zone change application as the applicant is seeking in this case. Thus, the case is not on point and is completely consistent with the language of the East Lyme Zoning Regulations and § 8-30g which do not provide for a hearing or decision on a conceptual site plan detached from a zone change application.

Indeed, attorney Geraghty failed to note the ultimate decision in the *Landmark* case he cites where the court declined to review a decision on a PSP. In that decision, the court noted:

[T]he commission's conditional approval of the preliminary site plan **is of no moment**: it neither approved nor denied the application or even mandated anything. Presuming the plaintiffs supply all of the necessary information, the application for the final site plan will be evaluated under § 8-30g(g) to determine whether the project can be safely constructed in compliance with General Statutes § 22a-19 and our environmental laws.

*Landmark Development Group, LLC v. East Lyme Zoning Commission*, 2021 WL 5542087 (Superior Court of Connecticut, October 22, 2021). (emphasis added). Thus, the court adopted the argument of the intervenors (Save the Sound)<sup>1</sup> in that case and declined to review the agency action on the preliminary site plan. In fact, in declining to review it, the court noted that “the court interprets the preliminary site plan application process as an enhanced conceptual plan during which comments have been received for the next application phase. . . . the process moves to a final site plan.” *Id.*

All this being said, it appears the purpose of a conceptual site plan has been served and the applicant has received valuable feedback from the commission and the public that can and should inform its final site plan submission.

For the reasons set forth above, the Commission has no jurisdiction under its regulations to approve or deny a conceptual site plan outside of the context of a zone change application and should dismiss the application without action.

Sincerely,



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<sup>1</sup> The arguments of the intervenors were also supported by the East Lyme Zoning Commission.

