

Minutes of East Lyme Zoning Commission March 7, 2024, Regular Meeting

Date and Time: 3/7/2024 7:30PM to 10:40PM

Present: Members: Anne Thurlow, Chairman, Nancy Kalal, Secretary, Norman Peck, Michael Foley, Denise Markovitz, Gary Pivo. Alternates: Sarah Susco. Ex-Officio: Roseanne Hardy. Recording Secretary: Jessica Laroco. Town Attorney: Michael Carey

Absent: Alternate: Cathy Yuhas, Staff: William Mulholland.

Location: East Lyme Town Hall, Upper Conf. Room, 108 Pennsylvania Avenue

1. Call Meeting to Order and Pledge

Chairman Thurlow called the March 7, 2024, Regular Meeting of the East Lyme Zoning Commission to order at 7:30PM and led the Pledge of Allegiance.

2. Attendance

Ms. Thurlow called the roll and noted that Alternate Cathy Yuhas and Staff William Mulholland were absent, and that Attorney Michael Carey was present to represent the Town.

3. Public Delegations

Ms. Thurlow noted that it had come to her attention that Members were not given the most current set of By-Laws and that the set recorded with the Clerk's Office on April 27, 2023, are the most current set. This set indicated that Public Delegations were a time for members of the Public to speak to items that were not on the agenda. She offered a current set to the Commissioners and invited the Public to speak.

- a. Eric Vilcheck, 4 Meadow St, has concerns over the potential development at the Trakas property including the pollinator pathway, the wetlands.
- b. Lisa McGowan, 3 Spinnaker Dr, stated that Ms. Thurlow lost the previous election. She read an excerpt of an ethics code on conflicts of interest.

4. Public Hearing

- a. **Application by Kristen Clarke, P. E., "for Conceptual Site Plan approval for Conn. Gen. Stat. 8-30g (affordable housing)" of a 25-unit age-restricted single-and multi-family affordable residential housing development to be located on the northerly side of Boston Post Rd on a parcel identified as 91 Boston Post Road, Assessor Map 31.0 Lot 2.**

Ms. Thurow noted that Attorney Mike Carey was present to represent the Town.

Mr. Pivo asked for clarity on the decision required of the Board regarding this application.

Attorney Carey stated that he believed the Applicant was filing under 8-30g of the CT Gen. Statutes and not by East Lyme Zoning Regulations. He noted that this is conceptual only and not to be considered a final site plan and they were looking to have a general approval of the application on the proposed location. He asked that the Applicant layout the details of the application.

Ms. Kalal read a memo from Town Engineer Alex Klose (Exhibit item P)

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EAST LYME, CT
2024 MAR 11 A 9:26
Cathy Yuhas
TOWN CLERK

Ms. Thurlow noted that the memo from Gary Goeschel of the Planning Director-Inland/Wetland Agent was six pages long and would not be read in its entirety, but that Members had copies in their packets for review (Exhibit Item Q).

Ms. Kalal read a memo from Deputy Director of Water and Sewer Ben North (Exhibit X).

Ms. Kalal read a memo from Deputy Fire Marshal Erik Quinn (exhibit Y).

Attorney Paul Geraghty, of Geraghty & Bonnano, LLC, New London CT, spoke on behalf of the Applicant and handed out the upcoming presentation of Tim May Exhibit Item Z, a binder of information on the proposed conceptual site plan Exhibit Item JJ, certificates of mailings to abutters Exhibit Item FF, and Minutes of previous EL Zoning Commission Meetings, Exhibits Items AA, BB, CC, II, the 2024 Zoning Commission regular meeting schedule Exhibit Item DD, a newspaper article of the New London Day EE.

Atty Geraghty made the following points:

- He took issue with the Commission's decision to schedule the application as a Public Hearing stating that procedurally it was done incorrectly. He noted that the standards are very different for a conceptual site plan than with a final site plan. He played a small clip of a previous Regular Meeting showing such.
- There was a meeting with staff including, Mr. Mulholland, Mr. Bundy, Mr. Scheer, Mr. Goeschel, Mr. Garside, Mr. Bragaw, Mr. North which was to gather information so the Applicant could understand the concerns of different departments.
- The application was submitted under CT Gen. Stat. 8-30g.
- A memo he prepared for what the rules are for conceptual site plan and what the burden of proof is for the Commission to make a denial Exhibit Item GG.
- An email to Mr. Mulholland with an attached opinion from Attorney Ed O'Connell Exhibit Item N.
- He cited the Landmark vs. The Town of East Lyme of 9/18/2018 case #156064232, footnote 7, decision by Judge Berger, who is the judge for all affordable housing appeals.
- The acceptance date of this application is January 18, 2024, and therefore if no decision is made within 65 days, there is an inferred approval.
- There is Wetlands Report Exhibit Item W.
- Additional items in the record: Zoning Application, A-2 Survey, Site Plan, Soils Map, Building Elevations, Table describing bedrooms and bathrooms, Affordability Plan, his list of required permits, Design Report, memo to Mr. Mulholland regarding request for review, memo regarding wetlands permit, Drainage Report.
- "Latimer Green Commons" is the name of the project, has been designed by Capital Partners, to address lack of affordable housing in town, will have 1 single family home which is currently on the property. There was background given on the history of the parcel, which is 11 acres in total and it is proposed that just under 9 acres will be kept in open space. The area closest to Latimer Brook to be kept as grass and will connect with the parcel of New England Forestry Foundation which has trails and 200+ acres.

- The intention is to either donate the open space to the EL Land Trust or to put a Conservation Easement on it in favor of the EL Land Trust, so there is no further development once the development goes in.
- There will be 6 duplex homes, for a total of 12 units (single floor apartments). It will be rental properties; the developer will own and maintain.
- No public improvements are necessary at this time, it will be age restricted, 55 and older.
- No endangered state or federal listed species or critical habitat.
- No proposed activity within Wetlands or Watercourse.
- The lower area toward Latimer Brook intended to be used as a sod farm.
- There would be an internal road and the development would be built in phases.

Mr. Pivo asked for clarification on where 65 days is written in the statute, and challenged Atty Geraghty that it did not refer to 8-30g.

Attorney Geraghty stated that the statute was referring to things such as a site plan, special permit etc. and that this is indeed a site plan, even though it is an 8-30g site plan.

Mr. Foley asked for clarification on what the Applicant is hoping to gain as there is little cause to deny and there isn't enough detail to dig into the weeds and he wondered what the reason was for a conceptual plan and not just a complete application. He noted that even if the Commission denies this conceptual plan, the Applicant can still apply with a detailed site plan and application.

Attorney Geraghty explained that the reasoning is to find out what the questions and concerns of the Commission are and to address them, and possibly modify them so that when the completed application and site plan are submitted, they are in alignment with what the Commission desires, as much as the law will allow.

Mr. Pivo stated that he liked the idea of collaborating with the Applicant, but wondered what would happen if the Commission stated some issues, the Applicant came back with changes, and the Commission thought of more issues as it considered information. Is there a point where the Commission can no longer raise issues.

Attorney Geraghty responded that the Commission could raise issues, but that they had to be legally allowed to be considered.

Ms. Kalal questioned the mentioned sod farm, which is a commercial use, and is concerned with the herbicides and pesticides to be used near Latimer Brook.

Attorney Geraghty mentioned a similar use at a property in Wethersfield which utilizes a sod farm because of the nearby flooding of the Connecticut River. He also noted that Staff appreciated the sod farm idea as it acted as a sieve for the flood water, but noted he understood her concern with the commercial use and stated that the Applicant was not intending to develop that area so could be flexible in not putting in a sod farm.

Ms. Thurlow noted that if a sod farm were present then there would be commercial truck activity.

Mr. Foley wondered if CT DEEP and the Fisheries Dept had been contacted regarding the trout management at Latimer Brook.

Attorney Geraghty agreed to discuss with the Applicant.

Mr. Pivo wondered if Attorney Geraghty would prefer no Public Hearing.

Attorney Geraghty answered yes because he's not presenting a file plan. He pointed to Belanger Case #199 West Law 512669 dealt with the issue of a commission scheduling a public hearing and noted that the Commission could change the type to a regular meeting.

Attorney Carey responded that he was not familiar with this case, but he noted his response email of 2/28/2024, to Attorney Geraghty addressing the question of the Public Hearing Exhibit Item R. He cited the Michael Ziska book "What's Legally Required" page 110, note 92, and stating having more process than less is an easier position to defend. He noted that there was concern that the Commission might be unduly persuaded by emotion from the public, but it is presumed the Commission will act appropriately. He noted that other Commissions had scheduled hearings without a vote to hold the hearing.

Attorney Carey also responded to Attorney Geraghty's claim that if the Commission did not decide within 65 days, there was an inferred approval for nonaction. He noted that the statute states that when a site plan is the only thing left to be adjudicated by a Zoning Commission on a particular project, short of the issuance of a building permit, then there can be a deemed approval for failure to act, and that it did not apply to a conceptual site plan. He urged the Commission to complete the action within 65 days to avoid any issue.

Mr. Pivo asked if changing the application to a regular item instead of a public hearing affected the 65-day decision need or the record of evidence.

Attorney Carey responded no, the record was still intact, and the decision still had to be made in the time frame.

Timothy May, of May Engineering LLC made the following points:

- Cited his credentials
- Explained a map to the Commission which showed the home currently on the property roughly 800 feet from the road which had a sloped driveway of about 8-12%, there is ledge at the top of the property, the flood zone including the 100-year storm, and the baseline elevation of 46 feet.
- He showed Boston Post Rd and the wetlands remediation, Latimer Brook property line
- Property is 11.36 acres, there are 5-6 outbuildings.
- He showed the proposed site plan and location with respect to Tri-Town Foods and CVS, and noted these buildings are in the floodway and the entire parking lot is in the 10-year flood zone.
- None of the proposed project is in the flood zone.
- He went through Exhibit Z page by page, noting he used the 2023 Stormwater Management Manual to design the conceptual site plan.
- The previous staff meeting held was successful and gave a lot of feedback.
- The project exit is right turn only.

Mr. Peck noted that the entryway to the parcel was concerning. The roadway either had very fast-moving traffic or, there was a traffic jam. He pointed out that there was quite a hill to enter the property.

Mr. May noted that there were two driveways, and one was less steep than the other, but that being up high could be a sight advantage. He also pointed to the traffic report in the record. The posted speed limit is 35 mph with a two-lane merge down.

Ms. Markovitz noted that at the exit from the nearby Tri-Town Foods plaza is a right only turn and is widely ignored, and she is very concerned. She also wondered if there was a secondary egress from the site.

Mr. May stated there would be a “pork chop turn” at the exit to discourage a left turn and he didn’t foresee a problem. He noted there is only one egress from the site.

Mr. Pivo wondered about the site line distance.

Mr. May stated that is in the report and is 331 feet.

Mr. Pivo questioned the concept of an elderly project and why the project is geared toward seniors only. He noted the Town is incentivized by 8-30g when it comes to the point system. A senior unit gives 0.5 points whereas a family unit gives 1.5-2 points, depending on bedroom size. It is in the Town interest to build more family units because of this.

Attorney Geraghty had not had that conversation with the Applicant, however, he noted that type of project would eliminate more car traffic, as well as school buses, and it limits the water usage.

Ms. Thurlow wondered if sidewalks to the grocery store plaza had been considered.

Attorney Geraghty stated that Staff wanted that as well but that the road is a state highway, and the developer does not control that.

The question of a bridge, with a footpath from the property to the grocery store plaza was raised.

Attorney Geraghty and Mr. May commented that they could consider that, however, the idea is to be the least impactful in the development (there is already 800 feet of sidewalks proposed), and the disturbance to the wetlands would be greater, and they would have to be ADA compliant, and lighted (which would be more light pollution). The paths would have to be maintained structurally and seasonally maintained.

Mr. Pivo noted that this would be a desirable, walkable project.

Ms. Kalal pointed to the intention of 8-30g affordable housing.

Mr. May explained that 8-30g was intended to give people with median income in the community access to housing in their community. He pointed to the difference between affordable housing and low-income housing. He noted that a sidewalk could be discussed but that it would be built on state owned land and therefore it could be hard to have the state agree to build it.

Mr. Peck asked if the current house would be saved.

Mr. May and Attorney Geraghty noted that it was in the process of being made weather tight right now and that the house would be maintained.

Mr. Pivo requested that the proposed project keep the visually appealing hill and woodland appearance such that once it is complete, it should not appear to have a large development on it. Additionally, he requested that there not be a large clearcutting of the hillside once the work on the project begins. He pointed to using colors and materials that are consistent to the current look of the hillside.

Mr. May noted that once the project is complete the buildings will not be visible from the road.

Mr. Pivo asked about the infiltration system and requested that a large effort be made to prevent discharge from getting into the system.

Mr. May responded that that information was included in his presentation.

Ms. Thurlow asked for public comment.

Donald Donella, 24 Pattagansett Dr, is a member of EL Conservation of Natural Resources and the Niantic River Watershed Committee. He is interested in supporting and improving the water quality in the Niantic River and its tributaries. He encouraged developers to look for the Watershed Protection Plan on the Town website. He cited his experience with water quality control. He wished for information to be shared online. Mr. Donella noted that he had seen previous projects fail and is glad for plans to mitigate impacts of impervious surfaces and hoped for low impact technologies for site prep and development. Need to protect existing vegetative and riparian buffers. He is not in favor of the proposed sod farm because of the herbicides and pesticides. He encouraged discussion between commissioners and developers. He noted the large patch of poison ivy near the riverbank and did not suggest putting a bridge at this project, he also stated the expense of a large bridge. He is concerned about the traffic coming out of a right only exit.

Conrad French, 30 Oriole Circle, stated that the need for affordable housing is great but that it is not an example of that because of the age restricted status. Young people and renters, typically younger than 55, need housing. He noted that any private entity working with the Town in a development such as this should be transparent and asking the Commission to change from a public hearing to a regular hearing is not being transparent. He does not appreciate the applicant's attempt at suggesting an inferred approval if a decision is not made within 65 days. Mr. French is also concerned about the previously mentioned sod farm on residential property and would have grave consequences on a sensitive waterway.

Amy Stoddard, 4 Oriole Circle, is concerned with wildlife such as bears, coyotes, foxes, bobcats, turkeys. She is speaking on behalf of herself and of abutting neighbor Andrew Davis. Ms. Stoddard cared for the previous owner of 91 Boston Post Rd, Peter Tytla, and had to call 911 several times and it was difficult for emergency vehicles to enter and exit the property. He was an elderly man, and this project is for elderly people. She stressed that the entrance and exit of this property is very dangerous. Additionally, she questioned the process of the property transfer as she had firsthand knowledge of Mr. Tytla's desire to be donated to the EL Land Trust, and she noted that Mr. Davis had won the public auction but somehow lost the property. She requested a desire for some sort of investigation of the transfer.

Attorney Geraghty wished to discuss the date of the next meeting and the 65-day mark.

It is noted that the 65-day mark would be the 21st of March.

The Commission agreed to hold the next meeting without Mr. May, as he could not be present, they would forward concerns for him to address, if any, and he could be present at the following meeting.

In response to the last public commentor, Attorney Geraghty explained that Mr. Tytla had a reverse mortgage on the property, the bank foreclosed on it, and it went into judgement and that is how it was acquired.

DECISION MOTION 1

Ms. Markovitz moved to continue the Public Hearing to March 14, 2024.

Mr. Foley seconded the motion.

Motion passed 6-0-0.

There was a 3-minute break.

5. **Regular Meeting**

a. **Approval of Minutes of February 15, 2024, Regular Meeting**

DECISION MOTION 2

Ms. Kalal moved to approve the minutes of the February 15, 2024; Regular Meeting as presented.

Ms. Markovitz seconded the motion.

Motion passed 6-0-0.

b. **Continuation of the application of Bride Lake, LLC, for site plan approval for the modification of the December 3, 2020, approval of an eighty (80) unit affordable housing multi-family residential development pursuant to Connecticut General Statutes 8-30g increasing the total unit count to one hundred (100) multi-family units on the westerly side of N. Bride Brook Rd (20.24 acres) now bearing street number 94, Assessor Map 9.0 Lot 37-2.**

Ms. Thurlow noted that Mr. Peck recused himself.

Ms. Thurlow asked Ms. Susco if she had reviewed all the materials and videos and if she was comfortable sitting in for Mr. Peck.

Ms. Susco stated she reviewed the materials.

Ms. Thurlow reviewed a memo from the Town Attorney about the process and reminded the Commission that if anyone had gone to the site and walked around, "Member cannot rely upon facts learned from a firsthand investigation without giving the parties before them an opportunity to rebut the evidence. Site inspections must take place before public hearing is concluded".

Ms. Thurlow asked for discussion and gave instructions that if a motion was made to deny, the reasons for the denial must be clearly stated prior to a second being made. She noted that approval/denial drafts were in each Members packet, or the discussion could be continued.

Mr. Foley noted that he had not heard anything, despite objections over water runoff, in the application to indicate that 20 additional units of an already approved 80-unit project would make a difference.

Ms. Thurlow agreed with Mr. Foley, noting that the third engineer (S. Trinkaus) had not visited the site, nor come to the Regular Meeting to be cross examined. She noted that the town engineer and the applicants engineer had spent a lot of time reviewing and discussing.

Mr. Foley pointed out that the Trinkaus letter was referring to the overall project, not the additional 20-unit application that is before the Commission.

Ms. Thurlow also stated that a denial would mean a lawsuit for the town, and she would not like to spend taxpayer money on a case the town would not win anyway.

Ms. Kalal stated her agreement.

Mr. Pivo added that the additional 20 units, or 25%, would also be a change on the stormwater management. He noted that the stormwater management system proposed is different than the one originally approved. He suggested that there was substantial evidence in the record that questions the effectiveness of the system. He read from the Trinkaus letter. He is unconvinced by Mr. Handfield's rebuttal. He stated that he does not want to deny the application, but he wants to be sure the system

proposed will work. He suggested the applicants engineer and Mr. Trinkaus sit and speak to come to an agreement.

Ms. Thurlow wondered why Mr. Trinkaus did not visit the site or come to be cross examined, and she felt it was difficult to put any weight into relying on such a letter.

Mr. Foley also pointed out that he was hired by someone who was opposed to the project.

Mr. Pivo pointed out that if the project is approved and there is a problem as stated by the Trinkaus letter, then the additional 25% increase in units is 25% increase in pollution.

Ms. Thurlow suggested that the conversation be continued.

Mr. Foley asked who would pay Mr. Trinkaus if he would be involved going forward.

Mr. Pivo indicated that the Town has a \$60 million budget and if we have a world class expert who is supporting us then he would be happy to ask the First Selectman for the money. He is also concerned with the lack of sidewalks and stated that it's dangerous not to have them within the site. Additionally, he stated that this site does not provide for the affordable housing need in town, as they are not affordable.

Ms. Markovitz stated that if a citizen is concerned enough to spend her own money, then we need to take the time to address it.

Ms. Susco agreed that pursuing the Trinkaus point of view was important and questioned if the As-Built site plan is a change from the original.

Mr. Pivo listed off Mr. Trinkaus' credentials.

Ms. Thurlow asked if Mr. Pivo knew him personally, and he responded "no".

There was discussion on bringing in a third party to refute the two differing expert opinions.

Ms. Thurlow will speak with Mr. Mulholland and approach Mr. Cunningham to ask for funding to pay Mr. Trinkaus.

Ms. Susco stepped down and Mr. Peck resumed his place.

6. Old Business

a. Subcommittee - Outdoor Lighting

Ms. Thurlow noted that Mr. Peck and Mr. Mulholland had met and were working on a schedule.

b. Subcommittee - Text Amendment in CA Zone

Mr. Peck met with Mr. Mulholland and will schedule a meeting. He wished to discuss eliminating new mixed use which would reduce the chance of tearing down old buildings in town. Since Flanders Road has been redeveloped, there is very little, if anything, left worth saving. He suggested forming a new zone, possibly titled a CA-1, which would be the same as a CA zone except for mixed use. So that CA would have mixed use, but CA-1 would not have mixed use. It is intended to save the historic part of town.

c. Affordable Housing Update

Ms. Thurlow noted that Attorney Bleasdale is still planning on coming to update the committee.

7. **New Business**

a. Election to fill alternate vacancy.

Ms. Thurlow noted that because of the minority rule, the applicant had to be a Republican or Unaffiliated. There was one application received, by James Liska. Ms. Thurlow noted Mr. Liska was present and invited him up to speak.

James Liska, 11 Legendary Rd, was previously on the Zoning Board from 2010-2021 and lost his seat. He gave background on his profession, he noted that alternates are very important because the Board relies on them to step in if necessary.

DECISION MOTION 3

Ms. Kalal moved to accept the application of James Liska as Zoning Commission Alternate.

Ms. Markovitz seconded the motion.

Motion passed 6-0-0.

b. Application of Elefterious Tsiropoulos for Architectural Design Review for a small addition to pretty located at 167 Main St Niantic, Assessor Map 12 Lot 84.

Ms. Thurlow will have staff schedule that.

c. Any business on the floor, if any, by the majority vote of the Commission.

Mr. Peck spoke with Mr. Mulholland regarding the requirements for the Design District and the words "shall hire" an architect to guide the design. He noted that those are expensive, and the proposal would be to change "shall" to "may" and would give the Town the flexibility to hire an architect if it deemed necessary. Mr. Peck noted that Mr. Mulholland had been doing a great job of working with developers to produce good-looking buildings.

Ms. Thurlow noted that the intention of the regulation was to allow the Commission to hire an architect of needed, perhaps "shall" was a mistake. She did not think every single application needed an architect.

Mr. Peck agreed and noted that it would be for substantial improvement.

Ms. Kalal thought the change was appropriate.

Mr. Pivo thought that the statute would not allow for the change.

Mr. Peck noted that Mr. Mulholland had checked that.

Mr. Pivo is against because he thinks it is a good idea to have a design expert on larger projects and reminded the Commission of the suggested Ordinance proposals.

Ms. Markovitz would like to revisit the start times of meetings.

DECISION MOTION 4

Mr. Peck moved to make the change from "shall" to "may" subject to Mr. Mulholland's double checking the statute and legalities, and present to the Commission for a Text Amendment.

Mr. Foley seconded the motion.

Mr. Pivo voted against.

Motion passed 5-1-0.

d. Zoning Official

Absent

e. Comments from the Ex-Officio

Ms. Hardy stated that budget hearings continue as needs and wants are addressed, they are trying to keep tax burdens down. Grant writers can help find grant money and they are trying to find money to pay them and there will be a public hearing coming up for public comment.

Ms. Hardy would like Mr. Mulholland to be involved in requesting money from the First Selectman.

f. Comments from the Zoning Board Liaison to the Planning Commission

1. Ms. Susco will attend the March 12, 2024, meeting.

8. Adjournment

DECISION MOTION 5

Ms. Kalal moved to adjourn the March 7, 2024, Regular Meeting at 10:40PM.

Ms. Markovitz seconded the motion.

Motion passed 6-0-0.

Respectfully submitted,

Jessica Laroco

Recording Secretary