



Save the Sound[®]

Action for our region's environment.

April 4, 2024

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 to reply to comments made by Attorney Geraghty during the March 21, 2024 hearing on this matter in response to my March 21 letter regarding the zoning permit application for 91 Boston Post Road conceptual site plan application.

First, I re-iterate that there is no basis in the plain language of East Lyme Zoning Regulations or in the affordable housing appeals statute, C.G.S. § 8-30g, for the idea that a conceptual site plan has any relevance outside of the context of a zone change application. Indeed, even within the context of a preliminary site plan submitted for an East Lyme zone change application, Judge Berger recently stated:

the 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).

Attorney Geraghty does not seem to contest that this case is on point. Instead, he cites two cases that he claims require a decision on a conceptual site plan **even apart from a zoning application** despite the fact that there is no basis for this in regulation or statute.

His primary case, *Jag Capital Drive, LLC v. East Lyme Zoning Commission*, 168 Conn. App. 655 (2016), does not support his point and in fact supports our argument that a conceptual site

plan is not relevant or actionable outside of the context of a zone change request. That case involved a **final site plan** approval request, not a conceptual site plan approval. It stands for the very basic (and uncontested) proposition that one can seek final site plan approval under C.G.S. § 8-30g without first securing a zone change as such applications are not controlled by zoning regulations. To do so, however, one must follow the procedure followed in *Jag Capital* and file a final, rather than a conceptual, site plan application. The final site plan in that case was complete and had already been fully through wetlands and the entire process. The conceptual plan at issue does not meet that standard and has no basis in the East Lyme Zoning Regulations or § 8-30g outside of the context of something that may be submitted as part of a zone change request. There is nothing in *Jag Capital* that even discusses, much less requires, consideration of a conceptual site plan in the context of a § 8-30g site plan approval process.

The other case that Attorney Geraghty relies on, *Carr v. Bridgewater planning and Zoning Commission*, 2019 WL 7858569 (CT Superior Court 2019) was a superior court case that disregarded statutory language, prematurely and inappropriately reached out to decide the conceptual plan issue when it had no jurisdiction, misinterpreted caselaw, and relied primarily upon Judge Berger's initial 2018 *Landmark* decision which was not on point and which was superseded by the final 2021 *Landmark* decision.

At issue in *Carr* was a complex long-running set of zoning applications. The court ultimately found that the court had no jurisdiction over the application under § 8-30g as it did not constitute an affordable housing application. Despite the fact that there was no affordable housing application and therefore no jurisdiction, the court inappropriately reached out and opined, in *dicta*, that it could review a conceptual site plan even though there was no zone change requested or final site plan approval requested. To make this decision, however, the court relied solely on cases that involved a zone change request. *See Kaufman v. Zoning Commission*, 232 Conn. 122 (1995) “[w]e are unpersuaded that . . . § 8–30g requires the submission of **site plans with affordable housing applications for zone changes.**”); *West Hartford Interfaith Coalition, Inc. v. Town Council*, 228 Conn. 498 (1994) (dealing with denial of **a zone change**); *Landmark Development Group, LLC v. East Lyme Zoning Commission*, WL 6120204, 67 Conn. L. Rptr. 341 (Superior Court of Connecticut, September 18, 2018) (dealing with **an application for zone change**). The court disregarded the text of § 8-30g that mentions conceptual plans only in the context of zone change applications.

The distinction between seeking a zone change, and seeking final site plan approval to build, are substantial. A zone change modifies a map whereas a site plan approval allows construction of a specific project. In the instant case, as in *Jag Capital*, the applicant has chosen to pursue a site plan approval and therefore, as in that case, must provide a final site plan with all the relevant information (including all environmental information and a wetlands determination) before a formal approval or rejection can be rendered under § 8-

30g. There is no basis for it to provide whatever information it wants whenever it wants and demand a formal decision on whatever part of the application it has chosen to provide.

Thus, the plain language of the East Lyme Zoning Regulations and § 8-30g(c) only discuss consideration of conceptual site plans in the context of zone change applications and, for very good reason, do not address applications for final approval under § 8-30g. While an applicant may file a conceptual site plan (or a request for feedback or however else it chooses to style it), and the commission, at its discretion, may comment on it, such feedback does not have to be in the form of formal approval or disapproval, is not a final decision, and will have no binding effect on future decisions involving an actual site plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Reynolds".

Roger Reynolds, Esq.
Senior Legal Director
127 Church Street, 2d Floor
New Haven, CT 06510-2001
Office: 203-787-0646 x105
reynolds@savethesound.org