

## Gary Goeschel

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**From:** Mark S. Zamarka <mszamarka@wallersmithpalmer.com>  
**Sent:** Wednesday, May 22, 2024 11:10 AM  
**To:** Gary Goeschel  
**Cc:** Timothy Bleasdale  
**Subject:** 4-14 proposed amendments

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Gary

You have asked that we review proposed amendments to §4-14 of the East Lyme Subdivision Regulations. As background, the Planning Commission recently amended §4-14 to remove the Environmental Review Team provision, in light of the decision in the Lepkowski subdivision appeal.

The Commission now proposes changes to §4-14-3 regarding the Environmental Impact Assessment ("EIA"). Before addressing the changes, it should be noted that as currently written, the opening section is somewhat problematic. It requires an applicant responsible for actions which "may significantly impact the environment" to provide a "detailed written evaluation of its impact" to the Commission. However, the section does not define what constitutes a "significant impact" nor does it state who makes that determination - the applicant, the Town Planner or the Commission itself. If the Commission wishes to keep the EIA section, these ambiguities should be addressed.

The major changes are found in §4-14-4 – §4-14-6, and are summarized as follows:

1. §4-14-4 - the Commission shall refer the EIA to the East Lyme Conservation Commission at least 35 days prior to the public hearing.
2. §4-14-5 - the Conservation Commission report shall its findings, a statement of the vote, and other recommendations deemed relevant.
3. §4-14-6 - the failure of the Conservation Commission to provide a report shall be taken as "favorable of such action".

Comments:

1. If the public hearing referenced in §4-14-4 refers to the hearing on the subdivision application this should be specified.
2. The Commission must decide whether the Conservation Commission report is mandatory (that the Commission must consider and abide by the report's findings, etc.) or merely advisory, meaning that the Commission may in its discretion consider the report but is not bound to follow it. Our advice is that it be advisory only, as this is consistent with the Conservation Commission's statutory authority - General Statutes §7-131a(b) states in general that a Conservation Commission "may make recommendations to ... planning commissions" on

proposed land use changes. (Emphasis added). This is also consistent with §4-14-6 regarding the failure of the Conservation Commission to issue a report.

3. §4-14-6 should be clarified to specify that the failure of the Conservation Commission to issue a report does not affect the pending subdivision application. Again this is also consistent with the report being advisory only. Moreover, if the Commission requires a public hearing on a subdivision application, it is then bound by the timelines set forth in General Statutes §8-7d. If the Conservation report is deemed mandatory but not provided in a timely manner, the Commission could risk going beyond the §8-7d timelines, which in turn could risk inferred approval of a pending application.
4. Finally, the Commission may want to consider whether an EIA is necessary in light of the other information already required by §4-2-3. According to that section, and by way of example only, an applicant is required to submit (1) a detailed Natural and Cultural Resources Plan, (2) Archaeology Survey, (3) Soil Scientist Report, (4) Biological Survey (5) Pesticide Report and (6) Open Space Report. Given the scope of the Conservation Commission, much of that information may already be contained in the required reports above.

If you have any other questions please let me know.

Mark



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