For the record

Exhibit #3
Russo / Landmark

BOS 8/6/25
Public Hearing

Packet 1 of 2

EAST LYME WATER & SEWER COMMISSION
SPECIAL MEETING MINUTES
Monday, JANUARY 14th, 2019

PRESENT: Mark Nickerson, Chairman, Dave Bond, Steve DiGiovanna, David Jacques, David Murphy, Carol Russell, Roger Spencer

ALSO PRESENT: Attorney Mark Zamarka, Town Counsel
Joe Bragaw, Public Works Director
Brad Kargl, Utility Engineer

FILED IN EAST LYME
CONNECTICUT
Jan 16, 2019 AT 9:55 AM/PM
EAST LYME TOWN CLERK
ATC

ABSENT: Joe Mingo, Dave Zoller

1. Call to Order
Chairman Nickerson called this Special Meeting of the Water & Sewer Commission to order at 7:00 PM and led the assembly in the Pledge of Allegiance.

2. Consider Adoption of Proposed Regulation Regarding Applications for Determination of Adequacy of Sewer Capacity
Mr. Nickerson asked Attorney Zamarka to bring them up to date from the last meeting.

Mr. Zamarka said that after last weeks comments from the public and commissioners that he had come up with the current changes which he passed out (copy attached). He recapped them noting that under Application that they had add the 'more than 20 residential units or more than 5,000 gpd of capacity' an application shall be made to the EL Water & Sewer Commission. An application fee was added; with regard to the application fee ($250) – he said that it is arbitrary and as Attorney Heller had stated – it is not unusual to recap the administrative fees and staff costs to prepare the information.
Under Duration – Regarding - if within the 12 months that the applicant has not applied for all necessary land use approvals or provided proof that they are in process then the capacity becomes null and void. The applicant would be notified of this in writing. He said that the reservation fee was eliminated from this area. They can discuss and make a decision regarding utilizing 4. a. or b.

He said that he had received an email from Attorney Hollister with a request that there was a letter (in addition to the comments that were submitted) that Attorney Ranelli had that was supposed to be part of the public record. He asked them about it.

Mr. Jacques recalled that it was not submitted during the public hearing or special meeting, but rather after the meeting was over.
Mr. Nickerson said that as it was not submitted during the public hearing that it could not at this time be included.

Mr. DiGiovanna asked if he understood correctly that they were to choose under Duration – Item 4. the a. or b. version.
Mr. Zamarka said that was correct as there was discussion and concern regarding the element of time.
Mr. DiGiovanna suggested that they leave it at 4.a. as what they had discussed was that they felt that 10 years was much too long of a time frame to tie up capacity.

Mr. Murphy said that he was prepared to make a motion that they accept the updated document with the 4.a. option.

****MOTION (1)**
Mr. Murphy moved to accept the modifications to the Regulation Regarding Applications for Determination of Adequacy of Sewer Capacity Pursuant to General Statutes §7-246a(a)(1) as presented and to accept under II. Duration - #4. (a). (see Attached)
Mr. DiGiovanna seconded the motion.

Ms. Russell said that with reference to the Shipman & Goodwin comments that perhaps they should state it as it is in the ordinance.
Mr. Zamarka said that there is nothing wrong with how it is because as the WPCA they can exercise this. He added that the responsibility is covered in the opening paragraph.

Mr. DiGiovanna asked Mr. Bragaw and Mr. Kargl if they were on board with the application fee as presented.
Mr. Kargl said that they did review the time that it would take to prepare the application information and the associated fees.
Mr. Bragaw said that they are thinking that it should be $500 and that if a Public Hearing is required that it should be another $500 to cover the associated advertising and preparation costs.

Mr. DiGiovanna suggested that the state that a Public Hearing fee would be charged if applicable.
Mr. Zamarka added that they will also do Notices of Decision which have an associated cost.

Mr. Nickerson noted that they would also have an Attorney present. He asked Mr. Zamarka if changing the $250 would present a problem.
Mr. Zamarka said that the original 25% reservation fee would have been much more than the $500, so there would not be a problem.

Mr. DiGiovanna suggested the non-refundable $500 application fee and an additional $450 Public Hearing fee if a Public Hearing is required.
Mr. Kargl noted that there would always be a Notice of Decision and that costs $150.

Mr. Jacques asked that they add the words 'non-refundable' before the word fee.

Ms. Russell asked about the fruition of the project, a Certificate of Occupancy and how long they would hold the reserve allocation.
Mr. Bond said that the problem with a Certificate of Occupancy is that it has no relation to this and should not be tied to this.

Mr. Zamarka said that this Commission does not have any influence over how long a project takes.
Mr. Nickerson said that they are not going to be holding the capacity forever – if someone comes in at four (4) years time saying that they are just starting the process – we would not be holding it for them.
Mr. Zamarka said that in looking at other similar regulations in other Towns that we are more definitive than others.

Mr. Jacques noted that in order to do what Ms. Russell appears to be suggesting, that it is beyond what they are discussing here and they would also be talking about metering which they do not do.

Mr. Murphy said he would like to amend his MOTION (1).

****MOTION (1) amended**
Mr. Murphy moved to amend under I. Application - #4 – A non-refundable application fee of $500 shall be paid by the applicant when submitting the application and should a Public Hearing be required there will be an additional $450 due to cover the Public Hearing.
Mr. DiGiovanna seconded the amendment to MOTION (1).

Mr. Zamarka synopsized that to be clear – the capacity allocation is good for 18 months after the last land use approval (if not appealed). The four (4) years kicks in only if there is an appeal.

Mr. Jacques suggested that some of them had thought that they were talking about four (4) years and suggested that they change the 18 months in 4. a. under Duration to 48 months.
Mr. Zamarka said that they would then remove the part of the sentence with the four years as that is in effect what they are saying with the 48 months rather than 18 months.

Mr. Murphy said that he would make a motion to further amend MOTION (1).

****MOTION (1) second amendment**
Mr. Murphy moved to amend under II. Duration - #4 (a) to delete the (a) and have the section read as follows: *'4. A capacity allocation shall be in effect for a period not to exceed 48 months from the expiration of the appeal period of the applicant's last land use approval with no appeal having been taken therefrom or an unappealed decision of a court of competent jurisdiction adjudicating such land use appeal. The Commission may extend an allocation of sewer capacity beyond 4 years if it determines, in its sole discretion, that good cause exists.*
Mr. DiGiovanna seconded the second amendment to MOTION (1)

Mr. Nickerson asked what would happen if people don't apply until the very end of the time frame.
Mr. Zamarka said that they have to get the approvals within 12 months.

Mr. Nickerson called for a vote on the amended motion.

Vote: 7 – 0 – 0. Motion passed.

3. ADJOURNMENT

Mr. Nickerson called for a motion to adjourn.

****MOTION (1)**
Mr. Murphy moved to adjourn this Special Meeting of the Water & Sewer Commission at 8:04 PM.
Mr. DiGiovanna seconded the motion.
Vote: 7 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

Regulation as amended attached

EAST LYME WATER & SEWER COMMISSION
SPECIAL MEETING MOTIONS
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PRESENT: Mark Nickerson, Chairman, Dave Bond, Steve DiGiovanna, David Jacques, David Murphy, Carol Russell, Roger Spencer

ALSO PRESENT: Attorney Mark Zamarka, Town Counsel
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ABSENT: Joe Mingo, Dave Zoller

1. Call to Order

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2. Consider Adoption of Proposed Regulation Regarding Applications for Determination of Adequacy of Sewer Capacity

****MOTION (1)**
Mr. Murphy moved to accept the modifications to the Regulation Regarding Applications for Determination of Adequacy of Sewer Capacity Pursuant to General Statutes §7-246a(a)(1) as presented and to accept under II. Duration - #4. (a). (Attached)
Mr. DiGiovanna seconded the motion.

****MOTION (1) amended**
Mr. Murphy moved to amend under I. Application - #4 – to read as follows: *'A non-refundable application fee of $500.00 shall be paid by the applicant when submitting the application. Should a Public Hearing be required there will be an additional $450.00 due to cover the Public Hearing costs.'*
Mr. DiGiovanna seconded the amendment to MOTION (1).

****MOTION (1) second amendment**
Mr. Murphy moved to amend under II. Duration - #4 (a) to delete the (a) and have the section read as follows: *'4. A capacity allocation shall be in effect for a period not to exceed 48 months from the expiration of the appeal period of the applicant's last land use approval with no appeal having been taken therefrom or an unappealed decision of a court of competent jurisdiction adjudicating such land use appeal. The Commission may extend an allocation of sewer capacity beyond 4 years if it determines, in its sole discretion, that good cause exists.* (See attached)
Mr. DiGiovanna seconded the second amendment to MOTION (1)

Mr. Nickerson called for a vote on the amended motion.

Vote: 7 – 0 – 0. Motion passed.

FILED
Apr 16 2019 AT 2:20 AM/PM
EAST LYME TOWN CLERK

3. ADJOURNMENT

Mr. Nickerson called for a motion to adjourn.

****MOTION (1)**
Mr. Murphy moved to adjourn this Special Meeting of the Water & Sewer Commission at 8:04 PM.
Mr. DiGiovanna seconded the motion.

APPLICATIONS FOR DETERMINATION OF ADEQUACY OF SEWER CAPACITY PURSUANT TO GENERAL STATUTES §7-246a(a)(1)

Sewage treatment for the Town of East Lyme is limited. Pursuant to an agreement with the City of New London and Town of Waterford, East Lyme is currently entitled to a maximum of 1.5 million gallons per day of sewer treatment capacity at the New London Regional Water Pollution Control Facility. In order to ensure that there is adequate capacity for all customers, the Commission adopts the following regulation for applications for sewer treatment capacity pursuant to General Statutes §7-246a(a)(1).

I. Application. For all development projects that either (a) request a connection for more than 20 residential units or (b) require more than 5,000 gallons per day of sewage treatment capacity, an application, pursuant to General Statutes §7-246a(a)(1), for determination of adequacy of sewer capacity related to a proposed use of land, shall be submitted to the East Lyme Water and Sewer Commission ("Commission") on a form satisfactory to the Commission, and shall include all of the following:

1. A class A-2 survey of the property to be developed, showing the general layout of the proposed use of land;

2. Proof that the applicant owns the property to be developed, or has the right to develop the property, and

3. Documentation supporting the amount of capacity being requested.

    a. Documentation related to a proposed residential development shall include the number of residential units, the numbers of bedrooms per unit, and the methodology used in calculating the amount of capacity being requested.

    b. Documentation related to a proposed non-residential or commercial development shall include the methodology used in calculating the amount of capacity being requested, and any special circumstances (i.e. the type of sewage being treated, design specifications, etc.) that would affect the amount of capacity being requested.

    c. The Commission reserves the right to request from an applicant such other information that it deems necessary.

4. ~~An application fee of $250.00~~ shall be paid when an application is submitted. A non-refundable application fee of $500.00 see motion

Attachment
Final - Was Spec. Mtg. 1/14/19 3pgs.

II. Duration.

1. Within 12 months after the expiration of the appeal period of a capacity allocation, the applicant shall (1) apply for all necessary land use approvals for the proposed use of land, and (2) provide proof of all such applications to the Commission. If an applicant fails to apply for all necessary land use approvals, or fails to provide proof of such applications to the Commission within this 12-month period, the sewer capacity allocated to the applicant shall terminate and be considered null and void.

2. If the applicant fails to obtain all land use approvals required for the proposed use of land, the sewer capacity allocated to the applicant shall terminate and be considered null and void.

3. The Commission will notify an applicant in writing when an allocation has terminated. The failure of the Commission to provide written notice in a timely manner shall not constitute or be construed as a waiver of the Commission's right to declare a terminated allocation null and void.

4. A capacity allocation shall be in effect for a period not to exceed

(a) ~~48~~ months from the expiration of the appeal period of the applicant's last land use approval with no appeal having been taken therefrom or an unappealed decision of a court of competent jurisdiction adjudicating such land use appeal; ~~provided, however, that such period shall be not more than 4 years from the date of the allocation~~. The Commission may extend an allocation of sewer capacity beyond 4 years if it determines, in its sole discretion, that good cause exists.

OR

(b) 5 years from the date of site plan approval for projects less than 400 residential units or commercial or industrial projects of more than 400,000 square feet, and 10 years from the date of site plan approval for projects of 400 or more residential units. The Commission may, in its sole discretion, extend 5-year periods set forth above for good cause shown, but in no case shall an allocation of capacity be in effect for more than 10 years from the date of final site plan approval.

5. If the amount of sewer treatment capacity needed by an applicant decreases during the land use approval process, the applicant shall notify the Commission immediately.

III. Public Hearing. The Commission may, in its sole discretion, hold a public hearing on any application. Any such public hearing shall be in accordance with the provisions of General Statutes 8-7d.

IV. Criteria. In making a decision on an application the Commission may consider, without limitation, the following:

Need for service in the proposed development area

Other pending applications and areas in town designated for sewer service

Pollution abatement and public health

Limitations and policies for sewer service

Local and state Plans of Conservation and Development

Effect of inflow and infiltration on available capacity

Whether the proposed development area can be serviced by other means

Whether the proposed development area is within the East Lyme Sewer Service District

Size of property proposed to be developed

Remaining sewered and unsewered land area of town

Effect of the allocation on remaining capacity

Safe design standards of the East Lyme sewer system

V. Prior Regulation. This Regulation shall supersede the Interim Sewer Connection Procedure adopted by the Commission on September 25, 2018.

BOOK 754 PAGE 496

WARRANTY DEED

4154

THE SARGENT'S HEAD REALTY CORPORATION, a Connecticut corporation with an office in Waterford, Connecticut, for consideration paid in the amount of One ($1.00) Dollar and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, grants to LANDMARK DEVELOPMENT GROUP, LLC, a Connecticut limited liability company, having an office and principal place of business located at 100 Roscommon Drive, Suite 312, in the Town of Middletown, County of Middlesex and State of Connecticut with WARRANTY COVENANTS, the premises consisting of 148 +/- acres and located at and known as Caulkins Road and River Road, on the west side of the Niantic River in East Lyme, Connecticut and more particularly described on Schedule A attached hereto and made a part hereof.

Said premises are conveyed subject to the taxes on the List of October 1, 2005 (second half) which the grantee assumes and promises to pay as part consideration hereof.

IN WITNESS WHEREOF, it has hereunto set its hand and seal this 21st day of September, 2006.

Signed, Sealed and Delivered
in the presence of

W. Wilson Keithline

Helen Maltezos

THE SARGENT'S HEAD REALTY CORPORATION

By: A. Cynthia Matthews
A. Cynthia Matthews
Its President
Duly Authorized

STATE OF CONNECTICUT)
) ss: Waterford September 21, 2006
COUNTY OF NEW LONDON)

On this the 21st day of September, 2006, before me, W. Wilson Keithline, the undersigned officer, personally appeared A. Cynthia Matthews, who acknowledged herself to be the president of The Sargent's Head Realty Corporation, and that she, as such president, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by herself as such president as her free act and deed and the free act and deed of said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

W. Wilson Keithline
Commissioner of the Superior Court

Grantee's Address:
Landmark Development Group, LLC
100 Roscommon Drive, Suite 312
Middletown, CT 06457
P:\Real Estate\Sargent Head\Landmark Development Group, LLC\Warranty Deed 9-21-06 10.DOC

CONVEYANCE TAXES COLLECTED $8825.00
4412.50

Esther B Williams
TOWN CLERK OF EAST LYME

PROPERTY DESCRIPTION

All that certain piece or parcel of land, with all improvements thereon, situated in the Town of East Lyme, County of New London and State of Connecticut, shown on a map entitled: "ALTA MORTGAGE SURVEY PREPARED FOR LANDMARK DEVELOPMENT GROUP, LLC, JARVIS OF CHESHIRE, LLC FIRST AMERICAN TITLE INSURANCE COMPANY THE SARGENT'S HEAD REALTY CORPORATION AMR CAPITAL, LLC BOSTON POST ROAD, RIVER ROAD AND CAULKINS HILL ROAD EAST LYME, CONNECTICUT", Scale 1"=200', Dated Aug. 22, 2006, Rev. 9-13-06, Rev. 9-21-06 prepared by the office of Flynn and Cyr Land Surveying, LLC 376 Berlin Turnpike, 860 828 7886, Berlin, Connecticut 06037. Said parcel is more particularly bounded and described as follows:

Beginning at a point, said point being the following four courses from a Connecticut Highway Department Monument along the south highway line of Boston Post Road: N72° 45' 04"W 75.00', S17° 14' 56"W 215.36', N86° 06' 29"W 182.06' and S03° 51' 57"E 50.00'; said point also being the northeast corner of land now or formerly of Catherine Marie Seale Vescom and the northeasterly corner of the herein described parcel;

thence, S03° 51' 57"E a distance of 101.39 feet to a point;
thence, S86° 06' 29"E a distance of 29.57 feet to a point;
thence, S03° 53' 31"W a distance of 115.00 feet to a point;
thence, N86° 06' 29"W a distance of 10.00 feet to a point;
thence, S03° 53' 31"W a distance of 75.00 feet to a point;
thence, S86° 06' 29"E a distance of 171.75 feet to a point;
thence, along an inverted curve to the right, having a radius of 169.50',
a delta angle of 25° 30' 29" and an arc length of 75.46 feet,
a chord length and bearing of 74.84' S18° 44' 00"W to a point;
thence, S05° 10' 18"W a distance of 18.05 feet to a point;
thence, S84° 49' 42"E a distance of 249.00 feet to a point;
thence, S10° 09' 37"W a distance of 53.17 feet to a point;
thence, S88° 37' 27"E a distance of 115.00 feet to a point;
thence, N39° 25' 18"E a distance of 66.72 feet to a point;
thence, S16° 03' 17"E a distance of 126.96 feet to a point;
thence, S12° 29'42"W a distance of 68.58 feet to a point;
thence, N73° 51' 30"E a distance of 61.61 feet to a point;
thence, S19° 36' 32"W a distance of 61.61 feet to a point;
thence, S01° 39' 56"W a distance of 52.52 feet to a point;
thence, S16° 34' 19"W a distance of 59.43 feet to a point;
thence, S10° 24' 12"E a distance of 50.25 feet to a point;
thence, S25° 02' 38"E a distance of 50.61 feet to a point;
thence, S30° 11' 27"E a distance of 51.54 feet to a point;
thence, S17° 41' 43"E a distance of 199.69 feet to a point;
thence, N73° 51' 30"E a distance of 175.00 feet to the Niantic River;
thence, turning and running generally southeasterly along the
Niantic River a distance of 4641.87+/- feet to a point;
thence, S89° 56' 30"W a distance of 133.23 feet to a point;
thence, S89° 56' 30"W a distance of 581.29 feet to a point;
thence, S79° 47' 29"W a distance of 940.84 feet to a point;
thence, N16° 46' 46"W a distance of 237.93 feet to a point;
thence, N79° 49' 56"E a distance of 629.18 feet to a point;
thence, N05° 45' 48"W a distance of 1288.43 feet to a point;
thence, S75° 43' 57"W a distance of 1179.84 feet to a point;
thence, N07° 10' 28"W a distance of 759.96 feet to a point;
thence, N16° 53' 04"W a distance of 165.77 feet to a point;
thence, N16° 10' 46"W a distance of 51.44 feet to a point;
thence, N14° 30' 00"W a distance of 161.16 feet to a point;
thence, N07° 32' 50"W a distance of 178.84 feet to a point;
thence, N07° 32' 50"W a distance of 31.60 feet to a point;
thence, N73° 37' 22"E a distance of 1213.89 feet to a point;
thence, N78° 08' 09"E a distance of 273.91 feet to a point;

thence, N11° 47' 36"W a distance of 1605.52 feet to a point;
thence, S62° 49' 34"W a distance of 553.84 feet to a point;
thence, N23° 03' 56"W a distance of 350.73 feet to a point;
thence, N68° 11' 04"E a distance of 263.23 feet to a point;
thence, N11° 07' 10"W a distance of 176.25 feet to a point;
thence, N11° 59' 57"W a distance of 203.77 feet to a point;
thence, N11° 03' 59"W a distance of 382.00 feet to a point;
thence, N50° 46' 40"E a distance of 200.74 feet to the point and place of beginning.

SAID PARCEL CONTAINS 148+/- ACRES.

Subject to:

1. Any and all provisions of any ordinance, regulation, or public or private law, inclusive of zoning, open space regulations, inland wetlands, building and planning laws, rules and regulations as established in and for the Town of East Lyme.

2. Building restriction appearing in a Warranty Deed from Rueben T. Bassett and Lee Claiborne Bassett to P.J. Matthews and C.J. Matthews dated July 30, 1969 and recorded September 9, 1969 in Volume 124, Page 39 of the East Lyme Land Records. (May effect).

The Grantee herein assumes and agrees to pay the taxes due the Town of East Lyme on the List of October 1, 2005, and all subsequent taxes.

It is the purpose and intent of the Grantor herein to convey all of the property that it owns that lies west of the Niantic River in the State of Connecticut and this Deed shall be construed and deemed to convey all such property owned by the Grantor.

Recorded Sept 22 20 06
11:45 (AM) PM Esther P Williams
East Lyme Town Clerk

(7)

3379

QUIT CLAIM DEED - STATUTORY FORM

LANDMARK DEVELOPMENT GROUP, LLC, a Connecticut Limited Liability Company doing business in the Town of Middletown, County of Middlesex, and State of Connecticut, hereinafter called the Releasor,

for no consideration other than that set forth in this document, if any, grant to

JARVIS OF CHESHIRE, LLC, a Connecticut Limited Liability Company doing business in the Town of Cheshire, County of New Haven, and State of Connecticut, hereinafter called the Releasee,

with QUIT CLAIM COVENANTS

A certain tract or parcel of land situated in the Town of East Lyme, County of New London, and State of Connecticut, shown on a map entitled "Plan Prepared for Schnip Development Co. Land of Lawrence C. & Robert H. Howard Boston Post Rd. Conn. Route I East Lyme, CT Scale: Hor. 1 in. = 100 ft. Dated 12-29-88" Fuss & O'Neill Inc. Consulting Engineers, Manchester, Connecticut, which map is on file in the East Lyme Town Clerk's office, being more particularly bounded and described as follows:

Beginning at a point on the south side of Boston Post Road Conn. Route 1, which point marks the northeasterly corner of land herein described.

Thence running S17°10'10"W along land now or formerly of Catherine M. and Searle Vesoul, a distance of 215.36 feet to a point;

Thence turning and running N86°11'15"W along land now or formerly of Sargents Head Realty, Dennis & Kathleen Gilbridge and John H. Foster, Jr. and Annie M. Foster partly by each in all, a distance of 182.06 feet to a point;

Thence turning and running S3°56'43"E along land now & formerly of Sargents Head Realty, a distance of 50.00 feet to a point;

Thence turning and running S50°41'54"W, a distance of 200.74 feet to a point;

Thence turning and running S11°08'45"E, a distance of 382.00 feet to a point;

Thence running S12°04'43"E, a distance of 203.77 feet to a point;

Thence running S11°11'56"E, a distance of 176.25 feet to a point;

Thence turning and running S68°06'18"W, a distance of 263.23 feet to a point;

Thence turning and running S23°08'42"E, a distance of 350.72 feet to a point;

Thence turning and naming N62°44'48"E, a distance of 553.84 feet to a point;

Thence turning and running S11°52'22"E, a distance of 1,605.52 feet to a point;

Thence turning and running S78°03'23"W, a distance of 273.91 feet to a point;

NO CONVEYANCE TAXES COLLECTED
Esther B. Williams
TOWN CLERK OF EAST LYME

Thence running S73°32'36"W, a distance of 1,213.89 feet to a point; the last ten courses and distances being along land now or formerly of Sargents Head Realty;

Thence turning and running N11°04'13"W, a distance of 335.79 feet to a stone head;

Thence running N10°15'46"W, a distance of 656.74 feet to a point;

Thence running N09°36'57"W, a distance of 746.53 feet to a point;

Thence running N10°09'08"W, a distance of 1,057.20 feet to a point;

Thence running N10°14'47"W a distance of 204.78 feet to a point which point is on the high water mark along the southerly bank of Latimer Brook the last five courses and distances being along land now or formerly of Martin Hennesey;

Thence in a meandering line running generally easterly, along said south bank of Latimer Brook (as defined by the high water mark of Latimer Brook) to a point in the southerly bank of Latimer Brook, which point also marks the northwesterly corner of land now or formerly of H.V.G. Assoc., as shown on said map;

The last two points being connected by a "Map Closing Line" as shown on the above-referenced map which "Map Closing Line" runs N78°53'55"E, a distance of 956.71 feet to said point marking the northwesterly corner of land now or formerly of H.V.G. Assoc.;

Thence turning and running S11°22'31"E, a distance of 49.57 feet to a point;

Thence turning and running N78°37'29"E, a distance of 99.00 feet to a point;

Thence turning and running N11°22'31"W, a distance of 52.47 feet to a point in said southerly bank of Latimer Brook;

Thence in a meandering line running generally easterly along said south bank of Latimer Brook (as defined by the high water mark of Latimer Brook) to a point in the southerly street line of Boston Post Road Conn. Route I.

The last two points being connected by a "Map Closing Line" as shown on the above-referenced map which "Map Closing Line" runs N74°31'46"E, a distance of 419.36 feet to said point marking the southerly street line of Boston Post Road Conn. Route 1;

Thence turning and running S72°49'50"E along the southerly street line of Boston Post Road Conn., Route 1, a distance of 54.18 feet to a point which point marks the point and place of beginning.

Provided that as to any portion of the above-described land that lies northerly of the "Approximate Edge of Former Pond" as shown on the above-referenced map. (Said area being 0.5 ± Acres) Grantor shall only be deemed to be conveying to Grantee whatever right, title and interest Grantor has in and to the same, without warranties of any kind.

By accepting this deal and the title to this property, the Releasee agrees to assume all responsibility for payment of FOUR HUNDRED THOUSAND and 00/100 DOLLARS ($400,000.00) and all other obligations set forth in a mortgage deed from Releasor to Alicia M. Russo entered into this day and recorded immediately prior to this document.

Subject to the provisions of any municipal ordinance or regulations, public or private law, including the planning, zoning, and inland wetland and water course regulation of the Town of East Lyme.

Subject to property taxes to the Town of East Lyme on the current list and any municipal assessments hereinafter coming due which shall be assumed by the Releasee.

Signed this 2nd day of October, 2000.

Witnessed By:

M F Dowley

Marie Dowley
Marie Dowley

LANDMARK DEVELOPMENT GROUP, LLC

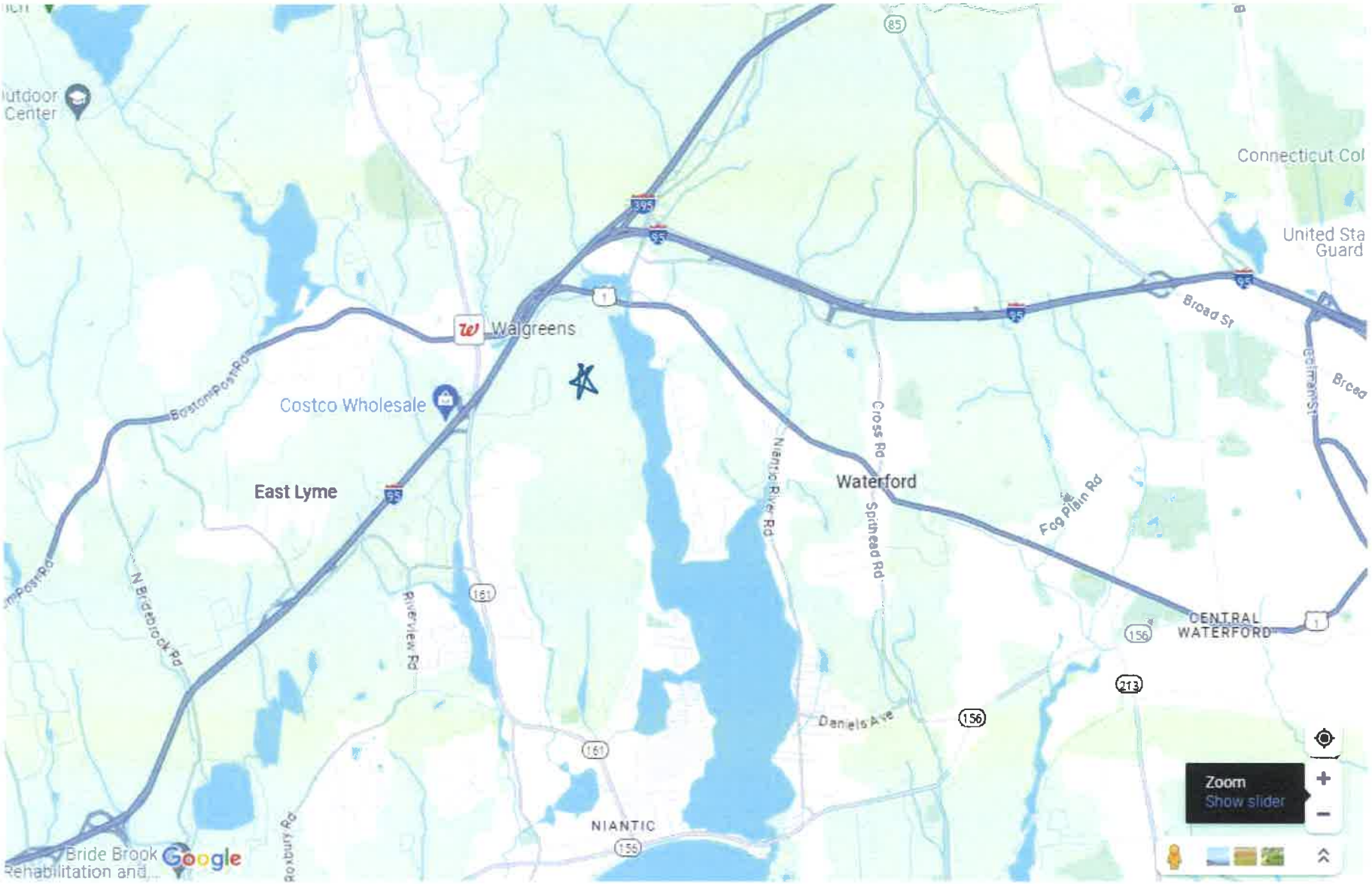
By G Russo MM
Glenn Russo
Member
Duly Authorized

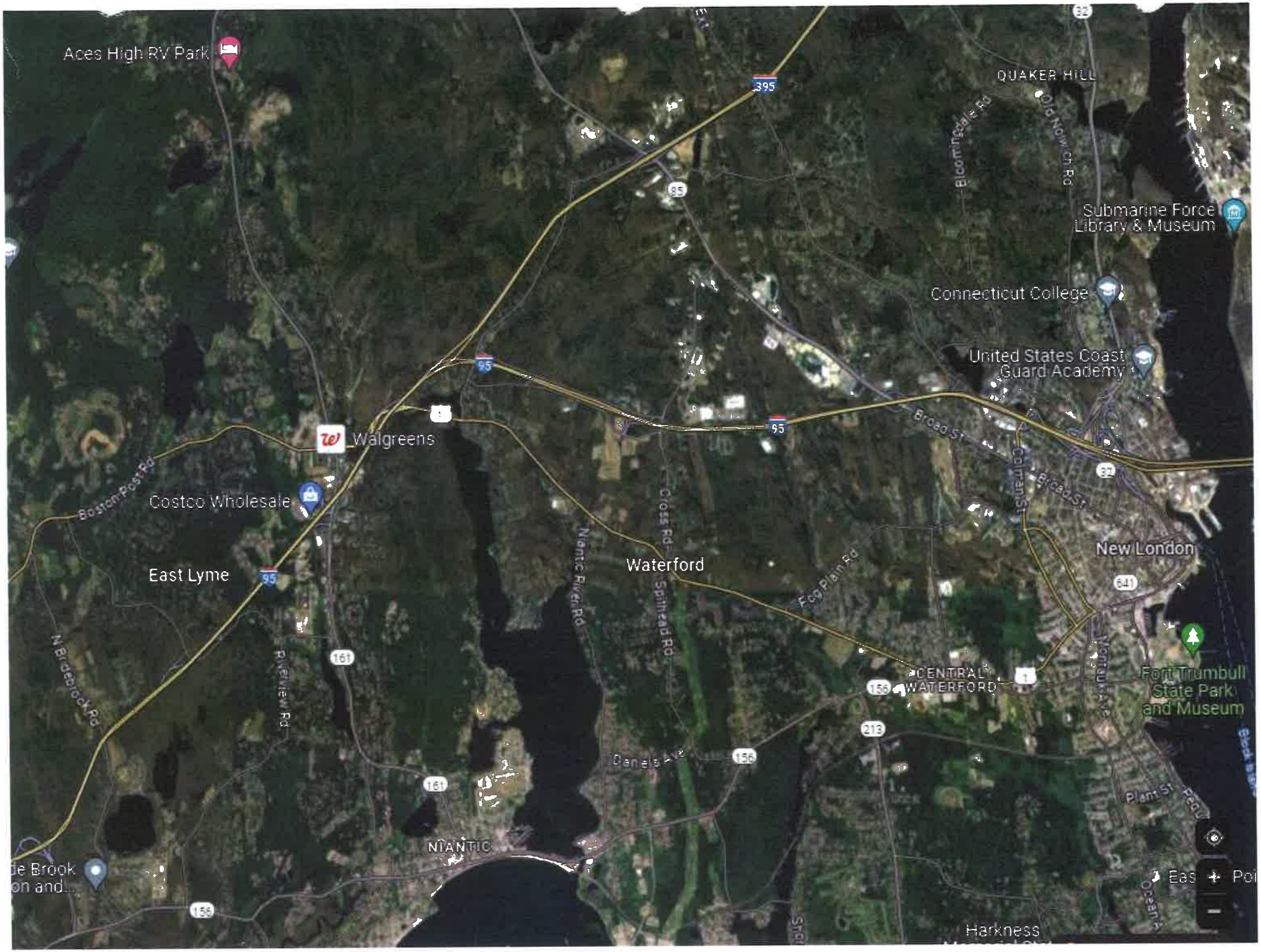
STATE OF CONNECTICUT)
) ss: Middletown
COUNTY OF Middlesex)

Personally appeared Glenn Russo, signer and sealer of the foregoing Instrument, and acknowledged the same to be his free act and deed as such Member and the free act and deed of said Landmark Development Group, LLC, before me.

M F Dowley
Commissioner of the Superior Court
Notary Public M F Dowley
My Commission Expires:

Recorded Oct 2 2000
3:40 AM PM
Esther B Williams
East Lyme Town Clerk


Walgreens
Costco Wholesale
East Lyme
Waterford
NIANTIC
CENTRAL WATERFORD
Connecticut Col
United Sta Guard
Broad St
Cross Rd
Niantic River Rd
Spithead Rd
Fog Plain Rd
Daniels Ave
Riverview Rd
N Bridebrook Rd
Roxbury Rd
Boston Post Rd
Bride Brook Rehabilitation and...
Google
Zoom
Show slider


Aces High RV Park
QUAKER HILL
Bloomingdale Rd
Old Norwich Rd
Submarine Force Library & Museum
Connecticut College
United States Coast Guard Academy
Walgreens
Costco Wholesale
Boston Post Rd
East Lyme
Niantic River Rd
Cross Rd
Waterford
Broad St
Colman St
New London
Fog Plain Rd
Spithead Rd
Riverview Rd
N Bridebrook Rd
CENTRAL WATERFORD
Fort Trumbull State Park and Museum
Vauxhall St
Plant St
Ocean
NIANTIC
Harkness
95
395
32
161
156
213
641

COPY

AGREEMENT

by and between the

City of

NEW LONDON, CONNECTICUT

and the

Town of

WATERFORD, CONNECTICUT

and the

Town of

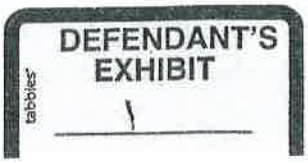
EAST LYME, CONNECTICUT

in connection with the

THOMAS E. PIACENTI

REGIONAL WATER POLLUTION CONTROL FACILITY

Dated , 1990



02/23/90

WHEREAS, the City of New London, hereinafter called "City", and the Town of Waterford, hereinafter called "Waterford", entered into an agreement dated April 10, 1975 regarding the construction and operation of a sewage treatment plant and related facilities located in the City, and

WHEREAS, the Town of East Lyme, hereinafter called "East Lyme", will be providing sewage to be treated at said sewage treatment plant,

NOW THEREFORE, the parties agree:

1. For the purpose of this Agreement, the City's existing treatment plant, known as the "Thomas E. Piacenti Regional Water Pollution Control Facility", hereinafter called the "Piacenti Facility", means:

(a) the primary treatment plant and related facilities which existed on April 30, 1975, including such land which was owned by the City on said date and used for said plant or to be used for the additional plant more particularly described in subparagraph (b) hereof, and

(b) additional sewage treatment plant and related facilities as follows, viz: new work and modifications at the Piacenti Facility, including additional pretreatment and primary and secondary sewage treatment and sludge handling facilities, a new control building, flood prevention work, including the installation of a concrete seawall along the ocean side of the plant and the raising of the concrete walls of the existing primary settling tanks, a new outfall sewer from said Piacenti Facility to the New London harbor channel, modifications to the so-called pumping stations Nos. 6 and 7, a new force main and pressure sewer to convey sewage from the Towns to said Piacenti Facility, the reconditioning land for said Piacenti Facility, being Phase II and a portion of Phase I of the improvements to

the City's sewage system set forth in the report entitled "City of New London Connecticut Report Upon Improvements to Sewage Works and Addition of Secondary Treatment Facilities June 1968 Revised July 1969 Fay, Spofford & Thorndike Engineers Boston, Massachusetts", as revised by "City of New London Connecticut Summary Report Upon Improvements to Sewage Works and Addition of Secondary Treatment Facilities June 1968 Revised January 1973 Fay, Spofford & Thorndike, Inc., Engineers, Boston Massachusetts". Said additional sewage treatment plant and related facilities were planned, constructed and equipped pursuant to Order No. 27 Modified and portions of Order No. 28 Modified of the Water Resources Commission, now the Water Compliance Unit of the Connecticut Department of Environmental Protection, entered as of October 29, 1969 and January 28, 1971. Ownership and title to said Piacenti Facility shall remain in the City.

2. Pursuant to Order No. 100 Modified of said Water Resources Commission entered as of October 17, 1969, Waterford has planned, constructed and equipped an interceptor sewer and related facilities beginning at Smith Cove in Quaker Hill in Waterford and thence extending through a series of gravity sewers, pumping stations and force mains in a general southerly and westerly direction through Quaker Hill, Cohanzie and Central Waterford to the vicinity of the Penn Central Railroad tracks and Great Neck Road and thence in an easterly direction along the Railroad to the New London town line, connected at said point with the sewage system of the City to permit the discharge of sewage from Waterford into the City's sewage system for treatment and disposal, and diverse lateral and trunk sewers and related facilities to serve portions of the Quaker Hill, Cohanzie, Jordan and Gallup areas of Waterford, all in

substantial accordance with the report of Hayden & Harding, consulting engineers, dated January 31, 1972, entitled "Letter Report of Phases I, II and III, Sewage Works Construction Program, Town of Waterford, Connecticut, Hayden & Harding, consulting engineers, Boston, Massachusetts, January 1972". Ownership and title to said interceptor sewer and related facilities shall remain in the Town of Waterford.

3. By resolution adopted by its Town Meeting on October 5, 1985, East Lyme appropriated funds for the construction and equipment, pursuant to Order No. 2241 of the Commissioner of Environmental Protection entered as of April 6, 1977 and subsequently modified, of an interceptor sewer and related facilities beginning at the Rocky Neck State Park area and thence extending through a series of gravity sewers, pumping stations and force mains in a general easterly direction serving Giants Neck Heights, New Black Point, Attawan Beach, Crescent Beach, the Route 161 corridor to Flanders, the Village of Niantic and in Rope Ferry Road in the Town of Waterford to the westerly terminus of Waterford's interceptor located at the intersection of Rope Ferry Road and Gallup Lane, to be connected at said point with the interceptor sewer mains of Waterford, to permit the discharge of sewage from East Lyme through Waterford's mains into the City's sewerage system for treatment and disposal, and for diverse lateral and trunk sewers and related facilities to serve the Rocky Neck State Park, East Lyme Corporate Park, Giants Neck Beach, Giants Neck Heights, New Black Point, Attawan Beach, Crescent Beach, Route 161 corridor to Flanders and Village of Niantic areas of East Lyme, all to be completed in substantial accordance with the "Updated Water Pollution Control Facilities Plan for the Town of East Lyme dated June, 1985, prepared by Consulting Environmental

Engineers, Inc. of Hartford, Connecticut" as revised to relocate the interceptor from Fairhaven Road to Route 165. Ownership and title to the sewers and related facilities located in East Lyme will be in the Town of East Lyme , and upon Waterford's acceptance of the sewer main and related facilities located in Waterford, ownership and title to said main and facilities shall be in the Town of Waterford.

4. Septic tank pumpings from sources located in either Town or the City may be deposited at the City's treatment facilities, subject to rules and regulations promulgated by the City with respect to such deposits, which rules and regulations shall be the same as are established for residents of New London. The rate for such night soil deposits is presently $25.00 per 1,000 gallons, and the rate thereafter shall be subject to adjustment by mutual agreement. In the event of a failure to reach a mutual agreement, the dispute shall be resolved by arbitration in accordance with the provisions of paragraph 22 of this Agreement.

5. At a mutually acceptable location on East Lyme's sewer main, East Lyme will install a flow measuring device which meets mutually acceptable specifications to measure, record and transmit the volume of sewage flow from East Lyme. Waterford has installed and will maintain a flow measuring device which meets mutually acceptable standards at the connection between its sewer interceptor and the City's sewerage system to measure, record and transmit to the Piacenti Facility the volume of sewage flow from East Lyme and Waterford. The City has installed and will maintain flow measuring devices which meet mutually acceptable specifications at the City's treatment facilities to measure and record the total volume of sewage flow into said facilities.

6. The City will accept, treat and discharge the sewage flow from the Towns in the same manner in which it accepts, treats and discharges sewage flow from within the City and shall be responsible to such State or Federal authorities as may have jurisdiction over it with respect to the manner and treatment of and the discharge of such sewage.

7. The National Pollution Discharge Elimination System permit for the operation of the Piacenti Facility having been issued to the City, the City shall have the right to inspect, sample and test sewage discharged by the Towns into said Piacenti Facility. In the event that such samples or tests provide evidence that a user within either Town is discharging material into said Piacenti Facility which causes non-compliance with the terms of said permit, the City shall immediately notify the Water Pollution Control Authority of the Town within which the offending user is located. Upon receipt of such notice, the Towns shall promptly require pre-treatment of the discharge of said material by the offending user. The Towns shall include provisions for enforcement of the provisions of this paragraph in their respective sewer ordinances, together with provisions for the recovery from an offending user of any fines or damages which may be incurred by the City as a result of the discharge of said material into said Piacenti Facility.

8. The City and the Towns will not discharge into the City's sewerage system any sewage which contains substances not amenable to treatment in the City's treatment plant and related facilities referred to in paragraph 1 of this Agreement or which are not amenable to treatment therein to the degree required by agencies having jurisdiction over the discharge of effluent into New London harbor and under no conditions shall the City or the Towns discharge sewage into the City's sewerage system which

shall have a concentration of biochemical oxygen demand (BOD) in excess of 240 average milligrams per liter or concentration of suspended solids in excess of a concentration of 240 average milligrams per liter.

9. The Water Pollution Control Authority of the City has promulgated rules and regulations consistent with State and Federal guidelines with respect to the operation of the sewage treatment plant and related facilities, which rules and regulations shall be adhered to and enforced by the Towns and the City. Waterford has adopted and is enforcing the same rules and regulations within the boundaries of Waterford. East Lyme will adopt and enforce the same rules and regulations and any amendments thereto within the boundaries of East Lyme. If the City or either Town proposes to adopt new rules and regulations which affect the sewage treatment plant and related facilities and are more stringent than those required by state and federal and the city's guidelines, the respective Water Pollution Control Authorities of each town shall agree upon the necessity and terms of such rules and regulations before they are adopted, except that the City and Towns may apply and enforce any such more stringent rules and regulations within their own boundaries before agreement by all parties regarding the necessity and terms of such rules and regulations.

10. Not later than 180 days before the beginning of each fiscal year of the City, the Chairman of Waterford's Water and Sewer Commission will forward to the City, either by hand or by registered mail, properly addressed, postage prepaid, a statement in writing setting forth in reasonable detail the estimated volume of sewage from Waterford to be treated during such fiscal year. Not later that 150 days before the beginning of each fiscal year of the City, the City will forward to the

Chief Executive Officer of Waterford and the Chairman of Waterford's Water and Sewer Commission, either by hand or by registered mail, properly addressed, postage prepaid, a statement in writing setting forth in reasonable detail the preliminary estimated costs to the City of maintaining, repairing and operating its sewerage facilities referred to in paragraph 1 of mutual benefit during such fiscal year, including an estimated amount for expenditures and reserves which will be necessary to maintain efficiently and provide for necessary repair or replacement of components of said facilities, and if the City has issued bonds for Waterford's share of the cost of the additional facilities and related equipment referred to in paragraph 1(b) of this Agreement, on the interest and principal payments on any outstanding bonds issued by the City for Waterford which shall become payable during such fiscal year. Said statement shall include Waterford's share of such operating and maintenance costs, determined as hereinafter set forth, and of such interest and principal payments, if any, determined as hereinafter set forth, and Waterford will pay to the City its share of such maintenance and operating costs in two installments; the first half on or before the fifteenth day of July, and the second half on or before the fifteenth day of January, and will pay to the City its share of such principal and interest payments not later than seven (7) days before such payments become due. Not later than 60 days before the beginning of each fiscal year of the City, the City will forward to the aforesaid officials of Waterford, in the aforesaid manner, its final estimate of the aforesaid costs. Waterford shall, within thirty (30) days after receipt of said final estimate, give notice to the City of any disagreement that it may have with respect to said statement. Any such disagreement

shall forthwith be resolved by arbitration in accordance with the provisions of paragraph 22 of this Agreement. Any payment as required by this paragraph shall be made by Waterford within the time required whether or not a disagreement concerning such payment shall be submitted to arbitration. If the outcome of such arbitration shall result in an adjustment in the amount of such payment, such adjustment shall be made at the time of the next payment required herein.

11. Not later than 180 days before the anticipated commencement of transmission of wastewater from East Lyme to the City's Piacenti Facility, the Chairman of East Lyme's Water and Sewer Commission will forward to the City, either by hand or by registered mail, properly addressed, postage prepaid, a statement in writing setting forth in reasonable detail the estimated volume of sewage from East Lyme to be treated during the interim period between the commencement of transmission of wastewater and the beginning of the ensuing fiscal year of East Lyme. Not later than 150 days before the anticipated commencement of transmission of waste from East Lyme to the City's Piacenti Facility, the City will forward to the Chief Executive Officer of East Lyme and the Chairman of East Lyme's Water and Sewer Commission, either by hand or by registered mail, properly addressed, postage prepaid, a statement in writing setting forth in reasonable detail the preliminary estimated costs to the City during said interim period of maintaining, repairing and operating its sewerage facilities referred to in paragraph 1 of mutual benefit, including an estimated amount for expenditures and reserves which will be necessary to maintain efficiently and provide for necessary repair or replacement of components of said facilities. Said

repair and maintenance costs determined as hereinafter set forth, and East Lyme will pay to the City its share of such costs at the time of the commencement of transmission of wastewater. Not later than 60 days before the anticipated commencement of transmission of wastewater from East Lyme to the City's Piacenti Facility, the City will forward the aforesaid officials of East Lyme, in the aforesaid manner, its final estimate of the aforesaid costs. East Lyme shall, within thirty (30) days after receipt of the said final estimate, give notice to the City of any disagreement that it may have with respect to said statement. Any such disagreement shall forthwith be resolved by arbitration in accordance with the provisions of paragraph 22 of this Agreement. Any payment as required by this paragraph shall be made by East Lyme within the time required whether or not a disagreement concerning such payment shall be submitted to arbitration. If the outcome of such arbitration shall result in an adjustment in the amount of such payment, such adjustment shall be made at the time of the next payment required herein.

12. Not later than 180 days before the beginning of each fiscal year of the City and East Lyme commencing after the expiration of said interim period described in paragraph 11 of this Agreement, the Chairman of East Lyme's Water and Sewer Commission will forward to the City, either by hand or by registered mail, properly addressed, postage prepaid, a statement in writing setting forth in reasonable detail the estimated volume of sewage from East Lyme to be treated during such fiscal year. Not later than 150 days before the beginning of each fiscal year of the City commencing after the expiration of said interim period described in paragraph 11 of this Agreement, the City will forward to the Chief Executive Officer

of East Lyme and the Chairman of East Lyme's Water and Sewer Commission, either by hand or by registered mail, properly addressed, postage prepaid, a statement in writing setting forth in reasonable detail the preliminary estimated costs to the City of maintaining, repairing and operating its sewerage facilities referred to in paragraph 1 of mutual benefit during such fiscal year, including an estimated amount for expenditures and reserves which will be necessary to maintain efficiently and provide for necessary repair or replacement of components of said facilities. Said statement shall include East Lyme's share of such operating, repair and maintenance costs, determined as hereinafter set forth, and East Lyme will pay to the City its share of such maintenance, repair and operating costs in two installments; the first half on or before the fifteenth day of July, and the second half on or before the fifteenth day of January. Not later than 60 days before the beginning of each fiscal year of the City, the City will forward to the aforesaid officials of East Lyme, in the aforesaid manner, its final estimate of the aforesaid costs. East Lyme shall, within thirty (30) days after receipt of the said final estimate, give notice to the City of any disagreement that it may have with respect to said statement. Any such disagreement shall forthwith be resolved by arbitration in accordance with the provisions of paragraph 22 of this Agreement. Any payment as required by this paragraph shall be made by East Lyme within the time required whether or not a disagreement concerning such payment shall be submitted to arbitration. If the outcome of such arbitration shall result in an adjustment in the amount of such payment, such adjustment shall be made at the time of the next payment required herein.

13. Not later than sixty (60) days after the expiration

of the interim period for East Lyme as aforesaid and of each fiscal year of the City and Towns commencing after the expiration of such period the City will forward to the Chief Executive Officer of each Town and to the Chairman of each Town's Water and Sewer Commission either by hand or by registered mail, properly addressed, postage prepaid, a statement in writing setting forth in reasonable detail the actual costs to the City of maintaining, repairing and operating its sewerage facilities referred to in paragraph 1 hereof of mutual benefit during such interim period or fiscal year. Should the actual costs of maintaining, repairing and operating said facilities, including any amounts expended for replacement, repairs and any reserves required by federal or state regulations or good accounting practice, during such interim period or such fiscal year be less than the estimated costs thereof, each Town shall receive a corresponding credit upon the next installment payment to be made by it to the City and should such actual costs exceed such estimated costs, each Town will add its share of such excess to the next installment payment to be made by it to the City. In computing the actual costs aforesaid, credit shall be given to the Towns in the same ratio as provided in paragraph 14 of this Agreement for any income received by the City resulting from the operation of the aforesaid facilities.

14. Each Town's share of the costs agreed upon under paragraphs 10, 11, 12 and 13 of this Agreement for operating, repairing and maintaining the City's sewerage facilities referred to in paragraph 1 hereof of mutual benefit shall be an amount which shall bear the same ratio to such costs as the actual volume of each Town's sewage treated in said facilities bears to the total actual volume of sewage treated in said

15. The City and Waterford have previously agreed on their respective shares of the cost of the Piacenti Facility. East Lyme's share of the value of the Piacenti Facility shall be One Million ($1,000,000) Dollars. East Lyme's share of the value of the Piacenti Facility is based upon the right of East Lyme to have its wastewater accepted and treated at the Piacenti Facility, and have available to it fifteen (15%) percent of the total capacity of the Piacenti Facility as it presently exists and as it may be increased by capital improvements to the treatment plant and related facilities in the future in accordance with the provisions of paragraph 21(B) of this Agreement.

16. East Lyme shall pay to Waterford and the City the total sum of One Million ($1,000,000) Dollars for its share of the Piacenti Facility on the earlier of the following dates: (a) the date that this Agreement becomes executed by all parties hereto; (b) a date which is six months prior to the date on which it is anticipated that sewage will begin to flow from East Lyme. The respective shares of Waterford and the City in and to said amount, and the manner in which East Lyme will make payment to each municipality, shall be as set forth in the attached schedule entitled "Apportionment of East Lyme Payment Between Waterford and New London" dated _____, 1990.

17. Upon the first payment by East Lyme of its share of the cost of maintaining, repairing and operating the sewerage facilities referred to in paragraph 1 of mutual benefit, the City will establish a separate operation and maintenance account in such bank as it shall designate and shall direct the City Treasurer to deposit in said account all monies which shall thereafter be available to pay the costs of maintaining, repairing and operating its sewerage facilities referred to in

paragraph 1 hereof, including any reserves contributed by the respective municipalities. The City will use and apply the funds in said account solely for the purposes and in order as follows: first, to pay costs directly chargeable to the maintenance and operation of said facilities; second, to pay for such maintenance, repairs, reserves and replacement as shall be necessary to maintain efficiently and provide for replacement of said facilities. It is understood and agreed that the reserves described in this paragraph and in paragraphs 10, 11, 12 and 13 of this Agreement are for the purpose of operating and maintaining the sewerage facilities referred to in paragraph 1 of mutual benefit, and are not to be considered as available for capital improvements.

18. On reasonable notice and at reasonable times and intervals, all records of the City pertaining to said maintenance and operation account shall be available for inspection and review by authorized representatives of each Town and of its Water Pollution Control Authorities and by an independent certified public accountant retained and paid by each Town for such purposes.

19. The City may make such emergency repairs as shall be necessitated from time to time to keep the sewerage facilities operational. The cost of said repairs shall be met from the amounts set aside at the beginning of each fiscal year for repairs and maintenance, provided that if such amount is insufficient, the City may make such emergency repairs without a prior agreement between it and the Towns with respect to each Town's share of the costs of such repairs.

20. In exchange for the tax loss to the City caused by the acquisition of private property for expansion of the treatment plant, the City shall have the right to continue using

the garage facilities presently located on City owned land until such time as said land becomes necessary for expansion of said sewage treatment facilities. The cost of relocating said garage shall not be included as a capital or operating cost of the sewerage treatment facilities. If the property acquired by the City or garage facilities used by the City produce revenues from any source whatsoever, such revenues shall be deposited in the maintenance and operation account described in paragraph 17 of this Agreement, and shall be used for the purposes set forth in said paragraph 17.

21. A. Nothing herein contained shall preclude the City or either Town from making extensions and improvements in their respective sanitary sewerage systems, provided the City shall not make any capital improvements to its treatment plant and related facilities referred to in paragraph 1 of this Agreement unless and until an agreement has been entered into between it and the Towns with respect to each municipality's share of the costs of such improvements and the manner in which each municipality shall pay the same or a determination is made under paragraph 21C of this Agreement. Should any extension or improvements of their sanitary sewerage systems by the City or Waterford diminish the continued availability to East Lyme of the capacity described in paragraph 15 of this Agreement, before undertaking such work the City and Towns shall enter into an agreement with respect to each municipality's share of the costs or credits resulting from such extension or improvements, and the manner in which each municipality shall pay the same.

B. In calculating East Lyme's share of the cost of any capital improvements to the treatment plant and related facilities referred to in paragraph 1 of this Agreement, it is understood and agreed that the capacity available to East Lyme,

as described in paragraph 15 of this Agreement, is equivalent to fifteen (15%) percent of the total capacity presently available to the City and Towns, said present total capacity being ten million gallons per day, and fifteen (15%) percent of any presently existing components of the treatment plant and related facilities referred in in paragraph 1 which have a capacity in excess of ten million gallons per day. If any capital improvements to the treatment plant and related facilities referred to in paragraph 1 which have a capacity in excess of ten million gallons per day. If any capital improvements to the treatment plant and related facilities referred to in paragraph 1 of this Agreement result in a total capacity of more than ten million gallons per day, East Lyme shall be responsible for fifteen (15%) percent of the cost of such improvements (less federal and state grants-in-aid) and shall be entitled to have available to it fifteen (15%) percent of the capacity of the improved treatment plant and related facilities.

C. In the event that it becomes necessary to provide capital improvements to the treatment plant and related facilities which will improve or maintain the quality of treatment but will not necessarily increase the capacity of the treatment plant and related facilities, East Lyme shall be responsible for fifteen (15%) of the cost of such improvements (less federal and state grants-in-aid).

D. In calculating the City's and Waterford's share of the cost of any capital improvements to the treatment plant and related facilities described in paragraph 1 of this Agreement reference shall be made to the attached schedule entitled "Apportionment of the Cost of Capital Improvements to the Piacenti Facility Between Waterford and New London" dated _____, 1990.

22. Any disputes, including the question of arbitrability itself, which may arise concerning the interpretation of this Agreement or any matter concerning the maintenance or operation of the City's sewerage facilities referred to in paragraph 1 of this Agreement, shall be attempted to be resolved by the Water Pollution Control Authorities of the City and of the respective Towns, and in the event such disputes cannot be resolved by said Water Pollution Control Authorities then such disputes shall be referred to arbitration by the American Arbitration Association at the initiation of any party upon notice to all other parties, under its rules then in effect, its decision to be binding upon all parties, the cost of such arbitration to be borne in equal shares by the parties participating in such arbitration. If there is a dispute about the necessity, nature or extent of capital improvements to the treatment plant and related facilities referred to in paragraph 1 of this Agreement, such dispute shall be resolved by arbitration before any such capital improvements are designed, installed or constructed. It is expressly understood, however, that if a court or regulating agency issues a final decree or order regarding the necessity, nature or extent of any capital improvements, either before or during any arbitration proceedings, such decree or order shall prevail over any arbitration proceedings relating to such issues, and shall supercede any previously issued arbitration orders relating to such issues. It is further understood that if a challenge to a proposed capital improvement is unsuccessful, the municipality making such challenge shall be responsible for the cost of the arbitration and any incremental delay in effectuating the capital improvement.

23. This Agreement shall remain in effect for a period of thirty (30) years from the date hereof. During the final two

(2) years of said term, either or both the Towns may, by giving written notice to the City, elect to terminate its use of the sewerage facilities referred to in paragraph 1 of this Agreement. In such event, the sewerage system of the Town or Towns electing to terminate shall be physically separated as soon as practicable from the City's facilities or the other Town's facilities, as the case may be, provided that the Town or Towns electing to terminate have obtained all necessary state and/or federal regulatory approvals to use alternative treatment facilities, and provided that at the time of such physical separation the Towns shall have available to them such alternative treatment facilities. During the final two (2) years of said term the City may, by giving written notice to the Towns, elect to terminate the Towns' use of the sewerage facilities referred to in paragraph 1 of this Agreement. In such event, the Towns agree to use due diligence in obtaining all necessary state and/or federal regulatory approvals to use alternative treatment facilities, and after having obtained such approvals, to pursue the construction of such alternative treatment facilities with due diligence. Physical separation of the City's facilities from the Towns' facilities shall not occur until such alternative treatment facilities are available to the Towns. In the event that Waterford elects to terminate its use of the sewerage facilities referred to in paragraph 1 of this Agreement pursuant to the terms of this paragraph, it shall give written notice of its election to terminate to the City and to East Lyme. In such event, East Lyme agrees to use due diligence in obtaining all necessary state and/or federal regulatory approval to use such alternative treatment facilities, and after having obtained such approvals, to pursue the construction of

such alternative treatment facilities with due diligence. Physical separation of Waterford's facilities from East Lyme's facilities shall not occur until such alternative treatment facilities are available to East Lyme. If the Towns or City fail to terminate this Agreement as provided hereinabove, the joint use of said facilities shall continue in effect for successive periods of ten (10) years, beginning at the end of the initial thirty (30) year period, provided that each municipality shall have given written notice to the other municipalities of its election to renew at least two (2) years before the end of the initial term or any subsequent ten (10) year term, and no municipality gives written notice of its election to terminate within the final two (2) years of the initial term or any subsequent ten year term. It is recognized that if an eventual separation should occur either or both of the Towns may be entitled to reimbursement for any portion of City's or other Town's sewerage facilities for which either or both of the Towns have paid a proportionate share which may be of further usefulness to the City or other Town. If the parties are unable to agree on the amount of such reimbursement, the question of further usefulness of any portion of the City's or other Town's sewerage facilities and the value thereof shall be determined by arbitration in accordance with the provisions of paragraph 22 of this Agreement. The percentage of such value for which either or both of the Towns shall be reimbursed will be in the same proportion as the Town's share of the original cost of the City's sewerage facilities as determined under a prior agreement between the City and Waterford dated April 30, 1975 and paragraph 15 of this Agreement. In the event that East Lyme becomes separated from Waterford's sewerage system, the percentage of such value for which East Lyme shall be reimbursed

will be in the same proportion as East Lyme's share of the original cost of the facilities in Waterford as determined under an agreement between East Lyme and Waterford dated August 24, 1988. It is understood that if such arbitration proceedings shall determine that there may be cost incurred by the City in connection with the removal or destruction of any excess facilities, that such costs shall be considered in determining the amount of any reimbursement which may be made to either or both of the Towns, and it is further understood that if the computation should result in a negative value to either or both of the Towns and a positive value to the City, that either or both of the Towns shall be obligated to pay their respective deficiencies to the City.

24. Waterford and the City agree that the provisions of this agreement should, to the extent possible, be construed so as to be harmonious with their agreement dated April 30, 1975 and, to the extent possible, the separate provisions of each agreement should be construed so that each would be operative.

25. Waterford and East Lyme agree that the provisions of this Agreement are to be read and understood in conjunction with an agreement regarding sewer mains in Waterford between East Lyme and Waterford dated August 24, 1988, and as between this Agreement and the said East Lyme/Waterford Agreement, neither is intended to abrogate the rights and responsibilities stated in the other. To the extent possible, said agreements shall be construed so as to be harmonious and the separate provisions of each agreement should be construed so that each would be operative.

26. Except as may be expressly provided herein, nothing in this Agreement is intended to confer on any person other than the City and Towns any rights or remedies under or by reason of

27. In the event that any provision of this Agreement shall for any reason be determined to be invalid, illegal, or unenforceable in any respect, the other provisions shall remain in force and effect.

28. This Agreement and any questions concerning its validity or construction shall be governed by the laws of the State of Connecticut.

29. The provisions of this Agreement shall be amended or modified only by written agreement duly executed by duly authorized representatives of Waterford and East Lyme.

30. The City and Waterford each reserve the right to assign their respective rights and obligations under this Agreement and any related agreements to an entity or system providing for regional water or sewer service. It is expressly understood that this provision shall not be interpreted as requiring East Lyme's consideration of or participation in a regional water system or a regional sewer system.

IN WITNESS WHEREOF, the parties to this Agreement have caused this instrument to be signed in triplicate by their duly authorized officers and their respective seals to be affixed hereto, all as of this day of , 1990.

Signed, sealed and delivered in the presence of:

CITY OF NEW LONDON
By: WATER AND WATER POLLUTION CONTROL AUTHORITY

_____

_____ By: _____
Barry J. Weiner
Its Chairman

TOWN OF WATERFORD
_____ By: WATER POLLUTION CONTROL AUTHORITY

_____ By: _____

_____ By: TOWN OF EAST LYME
WATER AND SEWER COMMISSION

_____ By: _____
David L. Cini
Its Chairman

APPROVED AS TO FORM

_____
City Attorney - City of New London

APPROVED AS TO FORM

_____
Town Attorney - Town of Waterford

APPROVED AS TO FORM

_____
Town Attorney - Town of East Lyme

CHAPTER 53: SEWERS

Section

GENERAL PROVISIONS

§ 53.001 DEFINITIONS.

For the purpose of §§ 53.001 through 53.006, 53.020 through 53.023, 53.035 through 53.049, 53.060 through 53.070 and 53.085 through 53.089, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABBREVIATIONS.

ANSI	American National Standards Institute
ASTM	American Society for Testing and Materials
AWWA	American Water Works Association
CS	Commercial standard
ppm	parts per million
mg/l	milligrams per liter
Reference to standards of the above organization shall refer to the latest edition of same.	

ACT or ***THE ACT.*** The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §§ 1251 et seq.

APPROVAL BY DIRECTOR OR COMMISSION. Will be in writing unless otherwise stated in §§53.001 through 53.006, 53.020 through 53.023, 53.035 through 53.049, 53.060 through 53.070 and 53.085 through 53.089.

BOD (DENOTING BIOCHEMICAL OXYGEN DEMAND). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20°C, expressed in milligrams per liter.

BUILDING DRAIN. The part of the lowest horizontal piping of a drainage system which receives the discharge from the soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (one and one-half meters) outside the inner face of the building wall.

BUILDING SEWER. The extension from the building drain to the public sewer or other place of disposal.

COMMISSION. The Water and Sewer Commission of the Town of East Lyme, Connecticut.

DEP COMMISSIONER. The Commissioner of Environmental Protection for the State of Connecticut.

DEPARTMENT OF ENVIRONMENTAL PROTECTION. The State of Connecticut Environmental Protection Agency; abbreviated DEP.

DIRECTOR OF HEALTH. The Director duly appointed by the town, in accordance with Conn. Gen. Stat. §§ 19a-200 et seq. or his or her authorized deputy, agent or representative.

DIRECTOR or ***SEWER DIRECTOR.*** The person appointed by the Commission as an administrative officer who shall at all times be responsible to and subject to the Commission and subject to removal for cause. The Commission may also appoint a Deputy Director who in the Director's absence shall have the same powers and duties as the ***DIRECTOR***.

GARBAGE. Solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

INDUSTRIAL WASTE. The liquid wastes from industrial manufacturing processes, trade or business as distinct from sanitary wastewater.

NATURAL OUTLET. Any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake or other body of surface or ground water.

OWNER. Titleholder or titleholders of real property.

PERSON. Any individual, firm, company, association, society, corporation or group or other entity.

pH. The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

PROPERLY SHREDDED GARBAGE. The wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in the public sewers, with no particle greater than one-half inch (1.27 centimeters) in any dimension.

PUBLIC SEWER. A sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

SANITARY SEWER. A sewer which carries wastewater and to which storm, surface and ground waters are not intentionally admitted.

SEWAGE or ***WASTEWATER.*** A combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface and storm waters as may be present.

SEWAGE WORKS. All facilities for collecting, pumping, treating and disposing of sewage.

SEWER. A pipe or conduit for carrying sewage.

SHALL. Is mandatory; ***MAY*** is permissive.

SLUG. Any discharge of water, wastewater or industrial waste which in concentration of any given constituent or in quantity of flow, exceeds for any period or duration longer than 15 minutes, more than five times the average 24-hour concentration or flows during normal operation.

STORM DRAIN (SOMETIMES TERMED "STORM SEWER"). A sewer which carries storm and surface waters and drainage, but excludes wastewater and industrial wastes, other than unpolluted cooling water.

SUSPENDED SOLIDS. Solids that either float on the surface of, or are in suspension in, water, wastewater or other liquids, and which are removable by laboratory filtering.

TOWN. The word ***TOWN*** or any other word in common usage designating a legally constituted unit of local government, shall mean the Town of East Lyme Connecticut.

TOWN MEETING. The town meeting of the Town of East Lyme, Connecticut.

WASTEWATER TREATMENT PLANT. Any arrangement of devises and structures used for treating wastewater.

WATERCOURSE. A channel in which a flow of water occurs, either continuously or intermittently.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.002 ESTABLISHMENT OF CHARGES.

(A) All sewer permit, inspection and connection charges, as well as sewage disposal charges, shall be established by the Commission.

(B) The Chairperson of the Water and Sewer Commission is hereby designated a collector of any and all charges lawfully

established, now or in the future, with respect to the rent, use of or connection to the town system.

(C) Any charge not timely paid within 30 days of its due date, shall be delinquent and subject to interest, penalties and liens provided for in Conn. Gen. Stat. § 7-258, as amended.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.003 TAMPERING WITH SEWAGE WORKS.

No unauthorized person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenances or equipment which is a part of the sewerage works. Any person violating this provision shall be subject to prosecution pursuant to law.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998) Penalty, see §53.999

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.004 RIGHT OF ENTRY FOR PURPOSES OF INSPECTION, TESTING AND THE LIKE.

(A) The Director, his or her Deputy and any other duly authorized employee of the Water and Sewer Commission, hereinafter severally or collectively referred to as Director as used in §§ 53.001 through 53.006, 53.020 through 53.023, 53.035 through 53.049, 53.060 through 53.070 and 53.085 through 53.089, bearing proper credentials and identification, shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of §§ 53.001 through 53.006, 53.020 through 53.023, 53.035 through 53.049, 53.060 through 53.070 and 53.085 through 53.089. The Director shall have no authority to inquire into any processes, including metallurgical, chemical, oil, refining, ceramic, paper or other industries, beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.

(B) The Director, his or her Deputy and other duly authorized employees of the Commission, bearing proper credentials and identification, shall be permitted to enter all private properties through which the town holds a duly negotiated easement for the purpose of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the sewerage works lying within said easement. All entries and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

(C) While performing the necessary work in private properties above, the Director or duly authorized employees of the municipality shall observe all safety rules applicable to the premises established by the user. The user shall be held harmless for injury or death to the municipal employees and the municipality shall indemnify the user against loss or damage to its property by municipal employees and against liability claims and demands for personal injury or property damage asserted against the user and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the user to maintain safe conditions as required in this section.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.005 APPEALS; REVIEW BY WATER AND SEWER COMMISSION.

(A) The Commission shall hear and determine appeals from any person presented with a notice of violation in accordance with the provisions of §§ 53.001 through 53.006, 53.020 through 53.023, 53.035 through 53.049, 53.060 through 53.070 and 53.085 through 53.089.

(B) Any person requesting an appeal must notify the Commission in writing of his or her desire to appeal prior to the expiration of the time limit for compliance stated in the notice of violation.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.006 VARIANCES.

It shall be the function of the Commission in its sound discretion to vary or modify the application of any of the provisions of §§ 53.001 through 53.006, 53.020 through 53.023, 53.035 through 53.049, 53.060 through 53.070 and 53.085 through 53.089 when strict enforcement would result in practical difficulties or unnecessary hardship, and when such situations are not caused by or contributed to by such applicant.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

USE OF PUBLIC SEWERS REQUIRED

§ 53.020 DISPOSITION OF OBJECTIONABLE ITEMS IN UNSANITARY MANNER PROHIBITED.

It shall be unlawful for any person to place, deposit or permit to be deposited in any area under the jurisdiction of the town, any human or animal excrement or other objectionable waste in an unsanitary manner as indicated in the Public Health Code of the state.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998) Penalty, see §53.999

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.021 TREATMENT REQUIRED PRIOR TO DISCHARGE TO NATURAL OUTLET.

It shall be unlawful to discharge to any natural outlet within the town, or in any area under the jurisdiction of said town, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of §§ 53.001 through 53.006, 53.020 through 53.023, 53.035 through 53.049, 53.060 through 53.070 and 53.085 through 53.089 or with the provisions of the Public Health Code of the state.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998) Penalty, see §53.999

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.022 CONNECTION TO PUBLIC SEWER; PRIVATE DISPOSAL SYSTEMS.

(A) *Responsibility of owner to provide sanitary facilities and connect upon availability of public sewer.* The owners of all houses, buildings or other structures used for human occupancy, employment, recreation or other purposes, situated within the town and abutting on any street, alley or right-of-way in which there is now located or where construction has been funded for public sewers in the town, are hereby required at their expense to install suitable sanitary facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of §§ 53.001 through 53.006, 53.020 through 53.023, 53.035 through 53.049, 53.060 through 53.070 and 53.085 through 53.089, within 120 days after being ordered to do so by the Commission. This section is subject to the public hearing and appeal rights provided for in Conn. Gen. Stat. §§ 7-257 et seq.

(B) *Utilization of existing disposal system.* An existing subsurface disposal system may only be utilized in lieu of the public sanitary sewer when, in the sole discretion of the Commission, unique circumstances exist to justify such utilization, provided that the existing system has been approved in writing by both the Commission and the Director of Health, which approval shall be given only after said Director's inspection of the subject system, and a finding is made that the same satisfies prevailing public health, sanitation and safety standards. Unique circumstances to allow utilization of an existing system shall be excessive distance from property line to structure, extensive presence of ledge, or other geographical or topographical conditions such as wetlands or grade changes which make sewer connection extremely impractical. Should the system fail at any time after said approval, a connection to the sewer system must be made within 120 days after being ordered to do so by the Commission, subject to the public hearing and appeal rights provided for in Conn. Gen. Stat. §§ 7-257 et seq.

(C) *Connection to sewers installed wholly or partly at the expense of a party other than the town.* When a public sanitary sewer has been constructed and installed wholly or partly at the expense of a party other than the town, the owner of houses, buildings or other structures used for human occupancy, employment, recreation or other purposes situated within the town and abutting on any street, alley or right-of-way in which said public sanitary sewer is located may connect said houses, building or structures to the sewer upon his or her request and at his or her expense. Before the public sanitary sewer is installed, the owners of such houses, buildings or structures shall be notified of their opportunity to connect to the sewer and that their existing subsurface disposal systems will be inspected by the Director of Health. An existing subsurface disposal system may be utilized for such houses, buildings, structures, provided that the existing system has been approved in writing by the Director of Health, which approval shall be given only after inspection of the system and a finding that it satisfies prevailing public health, sanitation and safety standards. Should such existing system not be approved by the Director of Health, or should the system fail at any time after said approval, or should a change in use of the premises require an expansion or improvement of an existing subsurface disposal system, a connection to the sewer system must be made within 120 days after being ordered to do so by the Commission, subject to the public hearing and appeal rights provided for in Conn. Gen. Stat. §§ 7-257 et seq. Any houses, buildings or structures constructed during or after the installation of any such public sanitary sewer system shall be connected directly with the sewer in accordance with the provisions of §§ 53.001 through 53.006, 53.020 through 53.023, 53.035 through 53.049, 53.060 through 53.070 and 53.085 through 53.089, within 120 days after being ordered to do so by the Commission.

(D) *Abandonment of private disposal system.* At such time as a public sewer becomes available to the property served by a private sewage disposal system, and when a direct connection is made to the public sewer in compliance with this section

within the specified period, any septic tanks, cesspools and similar private sewage disposal facilities shall be abandoned, cleaned of sludge and filled with clean bank-run gravel or dirt.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.023 NEW CONSTRUCTION REQUIRING SEWER BUILDING CONSTRUCTION PERMIT.

No person shall be allowed to construct any building which is accessible under §53.022 unless he or she first obtains a written sewer building construction permit from the Commission for direct connection to a public sewer.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998) Penalty, see §53.999

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

BUILDING SEWERS AND CONNECTIONS

§ 53.035 SEPARATE BUILDING SEWER REQUIRED; EXCEPTIONS.

A separate and independent building sewer shall be provided for every building except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, courtyard or driveway. In this case the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer. Where there exists a group of buildings belonging to one commercial, multi-family complex, industrial or municipal complex, separate individual buildings sewers may be connected to a single sewer line designed in accordance with § 53.037 and a single connection made to the public sewer system, provided that it is approved by the Water and Sewer Commission.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.036 USE OF OLD BUILDING SEWERS.

Old building sewers may be used in connection with new buildings only when they are found, upon examination and test by the Director, to meet all requirements of §§ 53.001 through 53.006, 53.020 through 53.023, 53.035 through 53.049, 53.060 through 53.070 and 53.085 through 53.089.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.037 SIZE, SLOPE, ALIGNMENT AND MATERIALS OF BUILDING SEWER CONSTRUCTION.

The size, slope, alignment, materials of construction of a building sewer and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the latest requirements of the Connecticut State Building Code, the Public Health Code of the state or the applicable rules and regulations of the town. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in the appropriate specifications of the ASTM and WPCF Manual of Practice No. 9 shall apply. Any deviation from the prescribed procedures and materials must be approved by the Commission before installation.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.038 LAYING OF BUILDING SEWER IN RELATION TO WATER LINE.

No building sewer shall be laid parallel to or within three feet of any bearing wall. The depth shall be sufficient to afford protection from frost. The building sewer shall be laid at uniform grade and in straight alignments insofar as possible. The changes in direction shall be made only with curved pipe and fittings which have been approved by the Commission. Whenever sewer lines, the building drain or building sewer must cross water mains or private water lines, the sewer shall be laid at such an elevation that the top of the sewer is at least 18 inches below the bottom of the water line.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.039 LAYING OF BUILDING SEWER IN RELATION TO WELLS.

No building sewer shall be constructed within 25 feet of a water supply well. If a building sewer is constructed between 25 and 75 feet of a water well supply, it shall be constructed in accordance with all applicable guidelines promulgated by the DEP Commissioner.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.040 ELEVATION REQUIREMENTS FOR BUILDING SEWER.

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor to permit gravity flow to the public sewer. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged through a pressurized pipe to the building sewer, and suitable check and backwater valves shall be installed. Such means of lifting the sewage shall be provided and maintained by the town and be installed and operated at the owner's expense.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.041 EXCAVATIONS FOR BUILDING SEWER INSTALLATION.

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. All excavations located on public property shall receive prior approval by the Planning and Zoning Commissions in accordance with their regulations. Streets, sidewalks, parkways and other public property shall be restored equal to or better than its original condition prior to construction. All excavations for the installation of a building sewer shall be open trenchwork unless otherwise approved by the Commission. Pipe laying and backfill shall be performed in accordance with ASTM Specification (C12). The contractor shall obtain a permit pursuant to § 53.043 and shall give notice of the date of commencement of work more than 24 hours before work begins.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.042 CLASSES OF PERMITS; APPLICATIONS.

There shall be three classes of sewage connection permits; Class A for the installation of private sewer disposal facilities; Class B for multi-family residential and commercial building sewers; and Class C for service to establishments producing industrial wastes. In all cases, the owner or his or her agent shall make application on a special form furnished by the Commission. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the Commission.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.043 PERMIT REQUIRED FOR CONNECTION.

No person shall uncover, make any connection with or opening into, use, alter or disturb any public sanitary sewer or appurtenance thereof without first obtaining a written permit from the Commission unless he or she represents the Commission in performing maintenance, repair or extension of the system. The fee for said permit shall be set pursuant to § 53.002.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998) Penalty, see §53.999

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.044 LICENSED PLUMBER TO PERFORM WORK; EXCEPTION.

(A) All work shall be performed by a licensed plumber (P-1, P-3) licensed under Conn. Gen. Stat. §§ 20-330 et seq. or as indicated in division (B) below. The system shall be subject to inspection and approval by the Director when the laying of a building sewer is completed and before filling of the trench.

(B) Should an owner of a single-family residence have a Class A installation performed by a subsurface sewage disposal system installer licensed under Conn. Gen. Stat. §§ 20-341a et seq., the system shall be further subject to inspection and approval by the Town Building Inspector when laying of a building sewer is completed and before filling of the trench.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998) Penalty, see §53.999

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.045 PROHIBITED CONNECTIONS.

No person shall make connection of roof downspouts, exterior foundation drains, areaway drains or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer or combined sanitary and storm sewer.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998) Penalty, see §53.999

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.046 INSPECTION BY DIRECTOR.

The applicant for the sewer connection permit shall notify the Director when the building sewer is ready for inspection and connection to the public sewer. All connections to public sewers will be inspected by the Director or his or her Deputy.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.047 RESPONSIBILITY OF OWNER FOR COST OF INSTALLATION OR CONNECTION.

All costs and expenses incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the town for any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.048 DISUSED BUILDING SEWER LINES TO BE SEALED.

When a building is taken down and there is no other building using the sewer line, it shall be sealed at the old wall with concrete so that no dirt from the cellar fill will wash into the sewer.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.049 REVOCATION OF PERMIT.

Permits to connect to the public sewer may be revoked or annulled by the Commission for such cause and at such times as the Commission may deem sufficient and the town is hereby held harmless as a consequence of said revocation or the cause thereof. All other parties in interest shall be held to have waived the right to claim damages from the town or its agents on account of said revocation.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

REGULATION OF DISCHARGES TO PUBLIC SEWERS

§ 53.060 PROHIBITED DISCHARGES.

No person shall discharge or cause to be discharged any storm water, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water or unpolluted industrial process water to any sanitary sewer. The steam cleaning of automotive or other mechanical equipment over manhole covers is prohibited as well as the depositing of wastes from such operation into the sewer system.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998) Penalty, see §53.999

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.061 LIMITATIONS ON DISCHARGES OF UNUSUAL STRENGTH OF CHARACTER; CRITERIA FOR CONSIDERATION.

(A) No person shall discharge or cause to be discharged the following described substances, materials, waters or other wastes which can harm either the sewers, wastewater treatment process or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property or constitute a nuisance. The acceptability of these wastes will be based on consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the wastewater treatment process, capacity of the wastewater treatment plan, degree of treatability of wastes in the wastewater treatment plant and other pertinent factors.

(B) The substances prohibited are:

(1) Any petroleum distillates or other flammable or explosive liquid, solid or gas;

(2) Any water or wastes containing toxic pollutants, malodorous or poisonous solids, liquids or gases, in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the wastewater treatment plant, or of preventing entry into sewers for their maintenance and repair. A toxic pollutant shall include but not be limited to any pollutant identified pursuant to § 307(a) of the Act;

(3) Any water or waste, acid and alkaline in reaction, having a pH lower than five and five-tenths or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewerage works. The upper limit of pH for any industrial wastewater discharge shall be established under the dischargers' state discharge permit. Free acids and alkalies must be neutralized, at all times, within the above pH range;

(4) Solid or viscous substance in quantities or of such size capable of causing obstruction of the flow in sewers, or other interference with the proper operation of the sewerage works, such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, chemical residues, cannery waste, bulk solid, cardboard, styrofoam, beer or distillery slops, lime residues, lime slurry, paint residues, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, whey and the like, either whole or ground by garbage grinders. In no case shall a substance discharged cause the facilities to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under § 405 of the Act, or under the Resource Conservation and Recovery Act, the Clean Air Act, the Toxic Substances Control Act or State criteria applicable to the sludge management method being used;

(5) Any water or waste containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the wastewater treatment plant;

(6) Any storm water, roof drains, spring water, cistern or tank overflow, footing drain, discharge from any vehicle wash rack or water motor, or the contents of any privy vault, septic tank or cesspool, or the discharge of effluent from any air conditioning machine or refrigeration unit;

(7) Any liquid or vapor having a temperature higher than 150°F (65°C);

(8) Any water or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of 50 mg/l or containing substances which may solidify or become viscous at temperatures between 32 and 150°F (0 and 65°C);

(9) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower (0.75 horsepower metric) or greater shall be subject to the review and approval of the Director;

(10) Any water or waste containing strong acid, iron pickling wastes or concentrated plating solutions, whether neutralized or not;

(11) Any water or waste containing iron, chromium, copper, zinc and similar objectionable or toxic substances; or waste exerting an excessive chlorine requirement to such degree that any such material received in the composite sewage at the wastewater treatment works exceeds the limits established by the Commission and by the state regulatory agencies for such materials;

(12) Any water or waste containing phenols or other taste or odor producing substances, in such concentrations, exceeding limits which may be established by the Commission as necessary, after treatment of the composite sewage, to meet the requirements of the state, federal or other public agencies of jurisdiction for such discharge to the receiving waters;

(13) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the applicable state or federal regulations;

(14) Materials which exert or cause:

(a) Unusual concentrations of inert suspended solids (such as, but not limited to, Fuller's earth and lime residues) or

of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate);

(b) Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions);

(c) Unusual BOD, chemical oxygen demand or chlorine requirements in such quantities as to constitute a significant load on the wastewater treatment works; and

(d) Unusual volume of flow or concentration of wastes constituting "slugs" as defined herein.

(15) Unusual quantities of wastes or substances which the treatment plant cannot treat to the minimal level recommended by the state or federal regulatory agencies;

(16) All discharge of wastewater shall also conform with the agreements established between the City of New London, the Town of Waterford and the Town of East Lyme; and

(17) Sewage with a concentration of pollutants in excess of the following limits:

Pollutant	*Concentration Parts/million(mg/l)*
Pollutant	*Concentration Parts/million(mg/l)*
Arsenic as As	0.05
Barium as Ba	5.0
Boron as Bo	5.0
Cadmium	0.1
Chromium (Cr + 6)	0.05
Chromium (total)	1.0
Copper as Cu	1.0
Cyanides as Cn (amendable)	0.1
Fluoride as F	20
Lead	0.1
Magnesium as Mg	100
Manganese as Mn	5.0
Mercury	0.01
Nickel	1.0
Silver	0.1
Tin	2.0
Zinc as Zn	1.0

(Ord. passed 3-17-1991; Ord. passed 9-12-1998) Penalty, see §53.999

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.062 ALTERNATIVE METHODS FOR HANDLING RESTRICTED DISCHARGES.

If any waters or wastes are discharged, or are proposed to be discharged, to the public sewers, which waters contain the substances or possess the characteristics enumerated in § 53.061 and which may have a deleterious effect upon the sewage works, process equipment or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Commission may:

(A) Reject the waste;

(B) Require pretreatment to an acceptable condition for discharge to the public sewers;

(C) Require control over the quantities and rates of discharge; and/or

(D) Require payment to cover the added cost of handling and treating the waste not covered by existing taxes or sewer charges.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.063 RESTRICTED DISCHARGES SUBJECT TO REVIEW BY COMMISSION; PRELIMINARY TREATMENT.

(A) The admission into public sewers of any water or waste having or containing the following shall be subject to the review and approval of the Commission:

(1) Having a five-day biochemical oxygen demand greater than 240 parts per million by weight;

(2) Containing more than 240 parts per million;

(3) Containing more than 15 parts per million of chlorine demand;

(4) Containing any quantity of substances having the characteristics above the previously described limits; or

(5) Having an average daily flow greater than 2% of the average daily sewage flow of the town.

(B) Where necessary, the owner shall provide at his or her own expense, such preliminary treatment as may be necessary to:

(1) Reduce the biochemical oxygen demand to 240 parts per million and the suspended solids to 240 parts per million by weight;

(2) Reduce the chlorine demand to 15 parts per million;

(3) Reduce objectionable characteristics or constituents to within the maximum limits provided for in §53.061; or

(4) Control the quantities and rate of discharge of such water or waste.

(C) Plans, specifications and other pertinent information relating to proposed preliminary treatment facilities shall be submitted to the Commission for approval and no construction of such facilities shall be commenced until said approvals are obtained in writing.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.064 GREASE, OIL AND SAND INTERCEPTORS.

Grease, oil and sand interceptors shall be provided when they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall be of a type and capacity approved by the Commission and shall be located so as to be readily and easily accessible for cleaning and inspection. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight and equipped with easily removable covers which when bolted in place shall be gastight and watertight. Proper operation must be assured by proper maintenance.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998) Penalty, see §53.999

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.065 MAINTENANCE OF PRELIMINARY TREATMENT AND FLOW-EQUALIZING FACILITIES.

Where preliminary treatment of flow-equalizing facilities (including, but not limited to, grease, oil and sand interceptors) are provided for any water or waste, they shall be maintained continuously in satisfactory and effective operation by the owner at his or her expense. These facilities shall be readily accessible and open to inspection by the Director at any time.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998) Penalty, see §53.999

Editor's note:

TM Volume 18, page 63, TM Volume 21, page 584

§ 53.066 CONTROL MANHOLES.

(A) When required by the Commission, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole, together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes.

(B) Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Commission.

(C) The manhole shall be installed by the owner at his or her expense, and shall be maintained by him or her so as to be safe and accessible at all times.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998) Penalty, see §53.999

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.067 AUTHORITY OF COMMISSION TO REQUIRE CERTAIN INFORMATION FROM USER.

(A) The Commission may require a user of sewer services to provide information needed to determine compliance with §§ 53.001 through 53.006, 53.020 through 53.023, 53.035 through 53.049, 53.060 through 53.070 and 53.085 through 53.089.

(B) These requirements may include:

(1) Wastewater discharge peak rate and volume over a specific time period;

(2) Chemical analyses of wastewater;

(3) Information on raw materials, processes and products affecting wastewater volume and quality;

(4) Quantity and disposition of specific liquid, sludge, oil, solvent or other materials important to sewer use control;

(5) A plot plan of sewers on the user's property showing sewer and pretreatment facility location;

(6) Details of wastewater pretreatment facilities; and

(7) Details of systems to prevent and control the losses of materials through spills to the municipal sewer.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.068 STANDARD FOR MEASUREMENT; TESTS AND ANALYSES.

All measurement, tests and analyses of the characteristics of waters and wastes to which reference is made in §§53.001 through 53.006, 53.020 through 53.023, 53.035 through 53.049, 53.060 through 53.070 and 53.085 through 53.089 shall be determined in accordance with the latest edition of *Standard Methods for the Examination of Water and Wastewater*, published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Samplings shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewerage works and to determine the existence of hazards to life, limb and property. The particular analyses involved will determine whether a 24-hour composite of all outfalls of a premises is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solid analyses are obtained from a 24-hour composites of all outfalls whereas pHs are determined from periodic samples. Samples will be made by the Commission or its authorized representative and any fee for such services is the sole responsibility of the owner.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.069 SPECIAL AGREEMENTS.

No statement contained in §§53.001 through 53.006, 53.020 through 53.023, 53.035 through 53.049, 53.060 through 53.070 and 53.085 through 53.089 shall be construed as preventing any special agreement or arrangement between the Commission and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the Commission for treatment, subject to payment therefor by the industrial concern.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.070 STATE REQUIREMENTS OF PUBLIC SEWER CONNECTION.

(A) *State permits required.*

(1) In accordance with Conn. Gen. Stat. § 25-54i, as amended, a permit from the Commissioner of Environmental Protection is required prior to the initiation of a discharge of any of the following wastewaters to a public sewer:

(a) Industrial wastewater of any quantity; and

(b) Domestic sewage in excess of 5,000 gallons per day through any individual building sewer to a public sewer.

(2) A potential discharger must submit a permit application to the Department of Environmental Protection not later than ninety (90) days prior to the anticipated date of initiation of the proposed discharge.

(B) *Protection from accidental discharges.*

(1) Each user shall provide protection from accidental discharge of prohibited materials or other substances regulated by §§ 53.001 through 53.006, 53.020 through 53.023, 53.035 through 53.049, 53.060 through 53.070 and 53.085 through 53.089.

(2) Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner or user's cost and expense as required by the Commission. The Commission may require that plans showing facilities and operating procedures be submitted for review and approval prior to construction of the facilities.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

SEWER EXTENSIONS

§ 53.085 COMPLIANCE WITH STATE AND TOWN REQUIREMENTS; COMMISSION APPROVAL OF PLANS REQUIRED.

All extensions to the sanitary sewer system owned or to be owned and maintained by the town shall be properly designed in accordance with the *Recommended Standards for Sewage Works*, as adopted by the Great Lakes-Upper Mississippi River Board of State Sanitary Engineers (Ten State Standards) and in strict conformance with all requirements of the state and the town and other appropriate town agencies. Plans and specifications for sewer extensions shall be submitted to and approval obtained from, the Commission before construction may proceed. The design of sewers must anticipate and allow for flows from all possible future extensions or developments within the immediate drainage area; the drainage area being that area which can be easily sewered by gravity.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.086 CONSTRUCTION OF SEWER EXTENSIONS AND BUILDING SEWERS BY TOWN; ASSESSMENT OF COSTS.

Sewer extensions, including individual building sewers from the public sewer to the property line, may be constructed by the town under public contract if, in the opinion of the Commission, the number of properties to be serviced by such extension warrants its costs. Under this arrangement the property owner shall pay for and install the building sewer from the property line to his or her residence or place of business in accordance with the requirements of §§ 53.035 through 53.049. Property owners may propose sewer extensions to the town by drafting a written petition, signed by a majority of the benefitting property owners, and filing it with the Commission. The cost of such extensions may be assessed to the benefitted property owners.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.087 CONSTRUCTION BY PROPERTY OWNER, BUILDER OR DEVELOPER; RESPONSIBILITY FOR COSTS; COMPLIANCE WITH SECTION.

If the Commission does not elect to construct a sewer extension under public contract, the property owner, builder or developer must construct the necessary sewer extension, including lateral connections from the sewer main to the property line of each property served by any such extension and lateral connections to the street line of any public street or way intersecting with the street or way in which any such extension is constructed or installed, if such extensions are approved by the Commission, in accordance with the requirements of § 53.085. He, she or they must pay for the entire installation, including all expenses incidental thereto. Each building sewer installed must be installed and inspected as required by §§ 53.001 through 53.006, 53.020 through 53.023, 53.035 through 53.049, 53.060 through 53.070 and 53.085 through 53.089 and the inspection fees as required by the Commission shall be paid. Design of sewers shall be as specified in § 53.088. The installation of the sewer extension must be subject to inspection by the Director and the expenses for these inspections shall be paid for by the owner, builder or developer. The Director's decision shall be final in matters of quality and methods of construction. The sewer as constructed must pass the exfiltration and infiltration test required in § 53.089 before it is to be used. The cost of sewer extensions thus made shall be absorbed by the developers or the property owners, including all building sewers.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.088 TO BE DESIGNED BY REGISTERED ENGINEER.

All designs for sewer extensions shall be accomplished by an engineer who is registered and authorized to practice in the field of sanitary engineering in the state. The designs and plans prepared by such engineer shall be reviewed by the Commission. No construction shall be undertaken until approval of the plan is obtained from the Commission and other agencies as required by the town and the proper permits are issued.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

§ 53.089 EXTENSIONS TO BE TESTED PRIOR TO ACCEPTANCE BY COMMISSION.

Upon completion of construction of any sewer extension, but before final acceptance by the Commission, the sewer system shall be tested for infiltration and exfiltration of both sewer lines and the manholes by approved means and under the direction and inspection of an engineer registered and authorized to practice in the field of sanitary engineering in the state with the presence of the Director. When the sewers have passed tests to demonstrate that they meet the best standards of American workmanship, then the engineer shall certify in writing to the Commission as to the nature of the tests and results thereof, and the fact that the tests meet acceptable standards.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

RESOLUTION REGARDING ADOPTION OF SEWER USE CHARGES;

SEWER RATES AND CHARGES GENERALLY

§ 53.100 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BOD (DENOTING BIOCHEMICAL OXYGEN DEMAND). The quantity of oxygen utilized in the biochemical oxidation or organic matter under standard laboratory procedure at five days at 20°C express in milligrams per liter (mg/l).

COMMERCIAL USER. All retail stores, restaurants, office buildings, laundries and other private businesses and service establishments.

COMMISSION. The Water and Sewer Commission of the Town of East Lyme, Connecticut.

GOVERNMENTAL USERS. Includes legislative, judicial, administrative and regulatory activities of the federal, state and local governments.

INDUSTRIAL USER. Includes any non-governmental, nonresidential user of publicly owned treatment works as defined in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under the following divisions:

(1) Division A - Agriculture, Forestry and Fishing;

(2) Division B - Mining;

(3) Division D - Manufacturing;

(4) Division E - Transportation, Communication, Electric, Gas and Sanitary; and

(5) Division I - Services.

INSTITUTIONAL USER. Includes social, charitable, religious and educational activities such as schools, churches, hospitals, nursing homes, penal institutions and similar institutional users.

NORMAL DOMESTIC WASTEWATER. Wastewater that has a BOD concentration of not more than 240 parts per million by weight; and suspended solids concentration of not more than 240 parts per million; or containing more than 15 parts per million of chlorine demand; or containing any quantity of substances having the characteristics above the previously described limits; or having an average daily flow greater than 2% of the average daily sewage flow of the town.

OPERATION AND MAINTENANCE. Those functions that result in expenditures during the useful life of the treatment works for materials, labor, utilities and other items which are necessary for managing and for which such works were designed and constructed. The term ***OPERATION AND MAINTENANCE*** includes replacement.

REPLACEMENT. Expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance of such works for which such works

were designed and constructed.

RESIDENTIAL USER. Any contributor to the town's treatment works whose lot, parcel or real estate or building is used for domestic dwelling purposes only.

SEWER DIRECTOR. The person appointed by the Commission as an administrative officer who shall at all times be responsible to and subject to the Commission and subject to removal for cause. The Commission may also appoint a Deputy Director who in the Director's absence shall have the same powers and duties as the Director.

SHALL. Is mandatory, ***MAY*** is permissible.

SS (DENOTING SUSPENDED SOLIDS). Solids that either float on the surface of or are in suspension in water, sewage or other liquids in which are removable by laboratory filtering.

TREATMENT WORKS. Any devices and systems for the storage, treatment, recycling and reclamation of municipal sewage, domestic sewage and liquid industrial wastes. These include intercepting sewers, outfall sewers, sewer collection systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled supply of such standby treatment units and clear well facilities; and any works, including side acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment (including land for composting, sludge, temporary storage of such compost and land used for the storage of treated wastewater in land treatment systems before land application); or any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste or industrial waste, including waste in combined storm water and sanitary sewer systems.)

USEFUL LIFE. The estimated period during which the treatment works shall be operated.

USER CHARGE. The portion of the total wastewater service charge which is levied in a proportional and adequate manner for the cost of operation, maintenance and replacement of the wastewater treatment works.

WATER METER. A water volume measuring and recording device, furnished and/or installed by a user and approved by the Town Sewer Director or other duly authorized employee of the Town Water and Sewer Commission.

(Res. passed 5-26-1992; Ord. passed 8-25-1992; Ord. passed 11-27-2001)

§ 53.101 SEWER OPERATION, MAINTENANCE AND REPLACEMENT FUND.

(A) The revenues collected, as a result of the user charges levy, shall be deposited in a separate non-lapsing fund known as the Sewer Operation, Maintenance and Replacement Fund.

(B) (1) Fiscal year-end balances in the Operation, Maintenance and Replacement Fund shall be used for no other purpose than those designated. Monies which have been transferred from other sources to meet temporary shortages in the Operation, Maintenance and Replacement Fund shall be returned to their respective accounts appropriate adjustment of the user charge rates for operation, maintenance and replacement.

(2) The user charge rates shall be adjusted such that the transferred monies will be returned to their respective accounts within six months of the fiscal year in which the monies were borrowed.

(Res. passed 5-26-1992; Ord. passed 8-25-1992; Ord. passed 11-27-2001)

§ 53.102 RATES AND CHARGES.

(A) Each user shall pay for the services provided by the Commission based upon use of the treatment works as determined by water meter readings (or other appropriate methods) acceptable to the Commission.

(B) For residential, industrial and commercial users, semi-annual user charges will be based on actual water usage. If an industrial, institutional or commercial customer uses water which is not discharged into the wastewater collection system, anc desires not to be billed for use of such water, upon application to the Commission and approval of such application flows not discharged to the municipal sewerage system will be metered separately. A second meter to measure flow to be deducted from the total metered water consumption at the site. The cost of providing and plumbing the second meter shall be the sole responsibility of the customer. Properties for which an exception is granted will be charged a flat fee, to be applied to each semi-annual usage bill, to offset the Commission's burden of additional meter readings and administration expenses associated with "exception" accounts. This fee will be in an amount equal to the sewer usage then in effect for 25,000 gallons of sewer usage.

(C) (1) All users of the Commission's facilities shall pay a user fee based in terms of dollars per 1,000 gallons of water used. The user fee is calculated as follows:

$$\text{Rate per 1000 gallons} = \frac{\text{(Total annual O, M \& R Costs Less Permit Fees)}}{\text{(Estimated Annual Water Consumption/1,000)}}$$

(2) Each user shall pay a user charge rate for operation and maintenance including replacement of capital equipment as set forth in § 53.107. The user fee shall be determined per §53.107 on an annual basis by the Commission and subject to the statutory limitations contained in Conn. Gen. Stat. Chapter 103, § 7-255. The initial user charge rate shall hereafter be $4 per 1,000 gallons of water usage. This fee is subject to change by vote of the Commission pursuant to § 53.106 of these

regulations.

(D) Each user shall pay upon connecting into the wastewater collection system a permit and inspection fee of $50. This fee is subject to change by vote of the Commission pursuant to § 53.106 of these regulations.

(E) Those residential users that derive potable water from on site wells without metered water service shall install a water meter for measuring volume or, as approved by the Commission, have their bills computed based on water use associated with similar residential users within the system.

(F) Any user that discharges any toxic pollutants (as defined in §§53.001 through 53.006, 53.020 through 53.023, 53.035 through 53.049, 53.060 through 53.070 and 53.085 through 53.089) which causes an increase in the cost of managing the effluent of the sludge from the town's treatment works, or any user which discharges any substance which singly or by interaction with other substances causes identifiable increases in the cost of operation, maintenance or replacement of the treatment works, shall pay for such increased cost. The charge to each such user shall be determined by the Sewer Director and approved by the Commission.

(Res. passed 5-26-1992; Ord. passed 8-25-1992; Ord. passed 11-27-2001)

§ 53.103 BILLING AND LATE CHARGES.

(A) All users shall be billed semi-annually. Semi-annual bills shall be due and payable to the Commission on November 1 and May 1 of each year. Any payment not received within 30 days after the due date shall be delinquent and subject to interest and penalties pursuant to law.

(B) A late payment penalty of 1% of the user charge bill will be added to each delinquent bill for each 30 days or a portion thereof of delinquency. When any bill is more than 90 days in default, water and/or sewer service to such premises may be discontinued until such bill is paid.

(C) When any bill (including interest and penalty) remains unpaid for one year after the date due, such bill shall be recorded in the land records of the town by the Chairperson of the Commission and shall constitute a lien on the property. If such lien (including interest and penalty) remains unpaid for a period of one year after the date of recordation, such property shall be subject to public sale pursuant to law.

(Res. passed 5-26-1992; Ord. passed 8-25-1992; Ord. passed 11-27-2001)

§ 53.104 REPORTING REQUIREMENTS.

All users contributing more than 200,000 gallons per month and whose waste strength is greater than 240 mg/l BOD/l or 240 mg/l SS/l shall prepare and file with the Commission a report that shall include pertinent data relating to the wastewater characteristics, including the methods of sampling and measurement to obtain these data, and these data shall be used to calculate the user charges for that user. The Commission shall have the right to gain access to the waste stream and make its own samples. Should the Commission do so and should the results be substantially different as determined by the Commission from the data submitted by the user, the user charge for that user shall be revised for the next billing cycle/period.

(Res. passed 5-26-1992; Ord. passed 8-25-1992; Ord. passed 11-27-2001)

§ 53.105 REVIEW OF CHARGES BY COMMISSION.

(A) Any user(s) who feels their user charge is unjust or inequitable may make written application to the Commission requesting a review of their user charge. Said written request shall, where necessary, show the actual or estimated flow and/or strength of his or her wastewater in comparison with the values upon which the charge is based, including how the measurements or estimates were made.

(B) Review of the request shall be made by the Water and Sewer Commission and, if substantiated, the user charges for that user shall be recomputed on the basis of the revised flow and/or strength data and the new charges shall be applicable to the next billing cycle/period.

(Res. passed 5-26-1992; Ord. passed 8-25-1992; Ord. passed 11-27-2001)

§ 53.106 ANNUAL CHARGES BY COMMISSION.

(A) The Commission will review the user charges when it deems appropriate and may revise its rates and fees as are necessary to ensure that adequate revenues are generated to pay the cost of operation and maintenance including replacement and that the system continues to provide for the proportional distribution of operation and maintenance including replacement cost among users and user classes.

(B) The Commission will notify each user of any rate change(s) by publication of said rate change in *The Day* newspaper on at least two occasions more than 30 days before said rate change becomes effective.

(Res. passed 5-26-1992; Ord. passed 8-25-1992; Ord. passed 11-27-2001)

§ 53.107 METHODOLOGY TO BE USED IN CALCULATING USER CHARGE RATES AND SURCHARGES.

This section presents the methodology to be used in calculating user charge rates and surcharges and illustrates the

calculations followed in arriving at the first year's user charges and surcharges.

(A) Expenses: total annual expenses by unit process are:

Unit Process	*Total Annual Amount*	*Volume Amount*	*Permit Fund*	*Gen*	*Costs*
Pump stations, collection and conveyance system	$269,200	85%	4.5%	10.5%	
Administrative and general	$20,800	85%	4.5%	10.5%	
Operative reserve	0				
Reserve capital replacement	0				
TOTAL O, M & R Costs = $290,000					

(B) Loadings: the total water consumption is estimated to be 61,750,000 gal/year.

(C) Unit costs.

Total annual O, M & R costs in $/1,000 gallons = Total annual O, M & F $ Estimated annual water consumption/ 1,000 gallons $/1,000 gallons = $247,000 = 4.00/1,000 gal. 61,750

(Res. passed 5-26-1992; Ord. passed 8-25-1992; Ord. passed 11-27-2001)

SEWER RATES AND CHARGES

§ 53.120 SEWER RATES AND CHARGES.

(A) On October 25, 2016, the Town Water and Sewer Commission approved the following revised schedule of rates and charges for connection to and use of the town sewerage system.

Schedule I - Rates for Usage Based on Meter Readings at 6-Month Intervals	
	Rate
Up to 2,500,000 gallons per 6-month period	$7.90/1,000 gallons
2,500,000 gallons and over per 6-month period	$8.59/1,000 gallons
Unmetered, per six 6-month period	$208
Schedule II - Miscellaneous Sewer Charges	
Application for connection permit	
Class A - Residential	$105
Class B - Multi-family and commercial	$210
Class C - Industrial	$525
Demolition/disconnect - any class	$55
Inspection services	
After normal working hours	$110/hour
During normal working hours	$73.50/hour
Sale of stocked material	Cost, incl. shipping, plus 12% admin fee

(B) These revised rates and charges would be effective on November 1, 2017. Rates for usage shall be payable at six-month intervals. All other rates shall be payable at the time services are rendered.

(C) The owners of properties against which the revised rates and charges are to be levied are hereby notified that any appeals from the revised rates and charges must be taken within 21 days after the date this notice was filed with the Town Clerk on November 3, 2017.

(Ord. passed 11-1-2006; Ord. passed - -2009; Ord. passed 10-24-2012; Ord. passed 10-29-2014; Ord. passed 10-25-2016; Ord. passed 11-2-2017)

Editor's note:

TM Volume 14, page 49

AMENDED BELOW

TM Volume 15, page 229; TM Volume 16, page 19; TM Volume 16, page 126; TM Volume 20, page 5; TM Volume 22, page 150; TM Volume 22, page 624

§ 53.999 PENALTY.

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) The filling of a trench before inspection is complete shall subject the owner to whom a permit is issued to a penalty of $100 for each offense and the owner may be required to reopen the trench for inspection.

(Ord. passed 3-17-1991; Ord. passed 9-12-1998)

Editor's note:

TM Volume 18, page 63; TM Volume 21, page 584

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7. No Certificate of Occupancy for a new structure shall be issued until compliance with this ordinance is completed.

8. The compliance officer for enforcement of this ordinance shall be the Building Official.

9. Whoever shall violate any of the provisions of this ordinance or refuses or neglects to comply with the same, shall be deemed guilty of an infraction and shall be fined $10.00 for each offense, and each and every ten-day period of refusal or neglect to comply with the provisions of this section shall be deemed a separate offense.

10. This ordinance shall become effective ten days after publication of the notice of effective date.

April 16, 1988 TM Volume 16, page 196

SEWER USE AND SEWAGE DISPOSAL ORDINANCE

SECTION 1. General

1.1 Definitions

Unless the context specifically indicates otherwise, the meaning of terms used in this article shall be as follows:

(1) Town: The word "Town" or any other word in common usage designating a legally constituted unit of local government, shall mean the Town of East Lyme Connecticut.

(2) Commission shall mean the Water and Sewer Commission of the Town of East Lyme, Connecticut.

(3) Director of Health shall mean the director duly appointed by the Town of East Lyme, Connecticut, in accordance with Connecticut General Statutes, Section 19a-200 et seq. or his authorized deputy, agent or representative.

(4) Person shall mean any individual, firm, company, association, society, corporation or group or other entity.

(5) Town Meeting shall mean the Town Meeting of the Town of East Lyme, Connecticut.

(6) Director or Sewer Director shall mean the person appointed by the commission as an administrative officer who shall at all times be responsible to and subject to the commission and subject to removal for cause. The commission may also appoint a deputy director who in the director's absence shall have the same powers and duties as the director.

(7) Act or The Act is The Federal Water Pollution Control Act, also known as The Clean Water Act, as amended, 33 USC 1251, et seq.

(8) BOD (denoting biochemical oxygen demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees centigrade, expressed in milligrams per liter.

(9) Building drain shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from the soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.

(10) Building sewer shall mean the extension from the building drain to the public sewer or other place of disposal.

(11) Garbage shall mean solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

(12) Industrial waste shall mean the liquid wastes from industrial manufacturing processes, trade or business as distinct from sanitary waste water.

(13) Natural outlet shall mean any outlet, including storm sewers and combined sewer overflows, into a water-course, pond, ditch, lake or other body of surface or ground water.

(14) Owner shall mean titleholder or titleholders of real property.

(15) pH shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

(16) Properly shredded garbage shall mean the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in the public sewers, with no particle greater than one-half inch (1.27 centimeters) in any dimension.

(17) Public sewer shall mean a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

(18) Sanitary sewer shall mean a sewer which carries waste water and to which storm, surface and ground waters are not intentionally admitted.

(19) Sewage or waste water shall mean a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface and storm waters as may be present.

(20) Sewage works shall mean all facilities for collecting, pumping, treating and disposing of sewage.

(21) Sewer shall mean a pipe or conduit for carrying sewage.

(22) Shall is mandatory; may permissive.

(23) Slug shall mean any discharge of water, waste water or industrial waste which in concentration of any given constituent or in quantity of flow, exceeds for any period or duration longer than fifteen (15) minutes, more than five (5) times the average 24-hour concentration or flows during normal operation.

(24) Storm drain (sometimes termed "storm sewer") shall mean a sewer which carries storm and surface waters and drainage, but excludes waste water and industrial wastes, other than unpolluted cooling water.

(25) Suspended solids shall mean solids that either float on the surface of, or are in suspension in, water, waste water or other liquids, and which are removable by laboratory filtering.

(26) Watercourse shall mean a channel in which a flow of water occurs, either continuously or intermittently.

(27) Waste water treatment plant shall mean any arrangement of devises and structures used for treating waste water.

(28) Abbreviations:

ANSI shall mean American National Standards Institute;

ASTM shall mean American Society for Testing and Materials;

AWWA shall mean American Water Works Association;

CS shall mean Commercial Standard;
ppm shall mean parts per million;
mg/1 shall mean milligrams per liter.

Reference to standards of the above organization shall refer to the latest edition of same.

(29) Approval by director or commission will be in writing unless otherwise stated in this ordinance.

(30) Department of Environmental Protection shall mean the State of Connecticut Environmental Protection Agency; abbreviated DEP.

(31) DEP Commissioner means the Commissioner of Environmental Protection for the State of Connecticut.

1.2 Establishment of Charges

(a) All sewer permit, inspection and connection charges, as well as sewage disposal charges, shall be established by the Commission.

(b) The Chairman of the Water and Sewer Commission is hereby designated a collector of any and all charges lawfully established, now or in the future, with respect to the rent, use of, or connection to the town system.

(c) Any charge not timely paid within thirty (30) days of its due date, shall be delinquent and subject to interest, penalties and liens provided for in Connecticut General Statutes Section 7-258, as amended.

1.3 Tampering with sewerage works.

No unauthorized person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenances or equipment which is a part of the sewerage works. Any person violating this provision shall be subject to prosecution pursuant to law.

1.4 Right of entry for purposes of inspection, testing, etc.

(a) The Director, his Deputy and any other duly authorized employee of the Water and Sewer Commission, hereinafter severally or collectively referred to as Director as used in this article, bearing proper credentials and identification, shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this article. The Director shall have no authority to inquire into any processes, including metallurgical, chemical, oil, refining, ceramic, paper or other industries, beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.

(b) The Director, his Deputy and other duly authorized employees of the commission, bearing proper credentials and identification, shall be permitted to enter all private properties through which the Town holds a duly negotiated easement for the purpose of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the sewerage works lying within said easement. All entries and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

(c) While performing the necessary work in private properties above, the Director or duly authorized employees of the municipality shall observe all safety rules applicable to the premises established by the user. The user shall be held harmless for injury or death to the municipal employees and the municipality shall indemnify the user against loss or damage to its property by municipal employees and against liability claims and demands for personal injury or property damage asserted against the user and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the user to maintain safe conditions as required in this section.

1.5 Appeals; review by water and sewer commission.

The Commission shall hear and determine appeals from any person presented with a notice of violation in accordance with the provisions of this ordinance. Any person requesting an appeal must notify the Commission in writing of his desire to appeal prior to the expiration of the time limit for compliance stated in the notice of violation.

1.6 Variances.

It shall be the function of the Commission in its sound discretion to vary or modify the application of any of the provisions of this ordinance when strict

enforcement would result in practical difficulties or unnecessary hardship, and when such situations are not caused by or contributed to by such applicant.

SECTION 2. USE OF PUBLIC SEWERS REQUIRED

2.1 Disposition of objectionable waste in unsanitary manner prohibited.

It shall be unlawful for any person to place, deposit, or permit to be deposited in any area under the jurisdiction of the town, any human or animal excrement or other objectionable waste in an unsanitary manner as indicated in the Public Health Code of the State of Connecticut.

2.2 Treatment required prior to discharge to natural outlet.

It shall be unlawful to discharge to any natural outlet within the Town of East Lyme, or in any area under the jurisdiction of said town, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this article or with the provisions of the Public Health Code of the State of Connecticut.

2.3 Connection to public sewer; private disposal systems.

(a) [Responsibility of owner to provide sanitary facilities and connect upon availability of public sewer. The owners of all houses, buildings or other structures used for human occupancy, employment, recreation or other purposes, situated within the Town and abutting on any street, alley or right-of-way in which there is now located or where construction has been funded for public sewers in the Town, are hereby required at their expense to install suitable sanitary facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this ordinance, within one hundred twenty (120) days after being ordered to do so by the Commission. This Section is subject to the public hearing and appeal rights provided for in Connecticut General Statutes, Section 7-257 et seq.

(b) [Utilization of existing disposal system.] An existing subsurface disposal system may only be utilized in lieu of the public sanitary sewer when, in the sole discretion of the Commission, unique circumstances exist to justify such utilization, provided that the existing system has been approved in writing by both the Commission and the Director of Health, which approval shall be given only after said Director's inspection of the subject system, and a finding is made that the same satisfies prevailing public health, sanitation and safety standards. Unique circumstances to allow utilization of an existing system shall be excessive distance from property line to structure, extensive presence of ledge, or other geographical or topographical conditions such as wetlands or grade changes which make sewer connection extremely impractical. Should the system fail at any time after said approval, a connection to the sewer system must be made within one hundred twenty (120) days after being ordered to do so by the Commission, subject to the public hearing and appeal rights provided for in Connecticut General Statutes, Section 7-257 et seq.

(c) [Connection to sewers installed wholly or partly at the expense of a party other than the Town of East Lyme.] When a public sanitary sewer has been constructed and installed wholly or partly at the expense of a party other than the Town of East Lyme, the owner of houses, buildings, or other structures used for human occupancy, employment, recreation or other purposes situated within the Town and abutting on any street, alley or right of

way in which said public sanitary sewer is located may connect said houses, building or structures to the sewer upon their request and at their expense. Before the public sanitary sewer is installed, the owners of such houses, buildings or structures shall be notified of their opportunity to connect to the sewer and that their existing subsurface disposal systems will be inspected by the Director of Health. An existing subsurface disposal system may be utilized for such houses, buildings, structures, provided that the existing system has been approved in writing by the Director of Health, which approval shall be given only after inspection of the system and a finding that it satisfies prevailing public health, sanitation and safety standards. Should such existing system not be approved by the Director of Health, or should the system fail at at any time after said approval, or should a change in use of the premises require an expansion or improvement of an existing subsurface disposal system, a connection to the sewer system must be made within one hundred twenty (120) days after being ordered to do so by the Commission, subject to the public hearing and appeal rights provided for in Connecticut General Statutes, Section 7-257 et seq. Any houses, buildings or structures constructed during or after the installation of any such public sanitary sewer system shall be connected directly with the sewer in accordance with the provisions of this ordinance, within one hundred twenty (120) days after being ordered to do so by the Commission.

(d) [Abandonment of private disposal system.] At such time as a public sewer becomes available to the property served by a private sewage disposal system, and when a direct connection is made to the public sewer in compliance with this section within the specified period, any septic tanks, cesspools and similar private sewage disposal facilities shall be abandoned, cleaned of sludge and filled with clean bank-run gravel or dirt.

2.4 New construction requiring sewer building construction permit.

No person shall be allowed to construct any building which is accessible under section 2.3 unless he first obtains a written sewer building construction permit from the Commission for direct connection to a public sewer.

SECTION 3. BUILDING SEWERS AND CONNECTIONS

3.1 Separate building sewer required; exceptions.

A separate and independent building sewer shall be provided for every building except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, courtyard or driveway. In this case the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer. Where there exists a group of buildings belonging to one commercial, multifamily complex, industrial or municipal complex, separate individual buildings sewers may be connected to a single sewer line designed in accordance with section 3.3 and a single connection made to the public sewer system provided that it is approved by the Water and Sewer Commission.

3.2 Use of old building sewers.

Old building sewers may be used in connection with new buildings only when they are found, upon examination and test by the Director, to meet all requirements of this Section.

3.3 Size, slope, alignment and materials of building sewer construction.

The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the latest requirements of the Connecticut State Building Code, the Public Health Code of the State of Connecticut, or the applicable rules and regulations of the Town. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in the appropriate specifications of the ASTM and WPCF Manual of Practice No. 9 shall apply. Any deviation from the prescribed procedures and materials must be approved by the Commission before installation.

3.4 Laying of building sewer in relation to water line.

No building sewer shall be laid parallel to or within three (3) feet of any bearing wall. The depth shall be sufficient to afford protection from frost. The building sewer shall be laid at uniform grade and in straight alignments insofar as possible. The changes in direction shall be made only with curved pipe and fittings which have been approved by the Commission. Whenever sewer lines, the building drain or building sewer must cross water mains or private water lines, the sewer shall be laid at such an elevation that the top of the sewer is at least eighteen (18) inches below the bottom of the water line.

3.5 Laying of building sewer in relation to wells.

No building sewer shall be constructed within twenty five (25) feet of a water supply well. If a building sewer is constructed between twenty five (25) and seventy five (75) feet of a water well supply, it shall be constructed in accordance with all applicable guidelines promulgated by the DEP Commissioner.

3.6 Elevation requirements for building sewer.

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor to permit gravity flow to the public sewer. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged through a pressurized pipe to the building sewer, and suitable check and backwater valves shall be installed. Such means of lifting the sewage shall be provided and maintained by the Town and be installed and operated at the owner's expense.

3.7 Excavations for building sewer installation.

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. All excavations located on public property shall receive prior approval by the Planning and Zoning Commissions in accordance with their regulations. Streets, sidewalks, parkways and other public property shall be restored equal to or better than its original condition prior to construction. All excavations for the installation of a building sewer shall be open trenchwork unless otherwise approved by the Commission. Pipe laying and backfill shall be performed in accordance with ASTM Specification (C12). The contractor shall obtain a permit pursuant to section 3.9 and shall give notice of the date of commencement of work more than twenty four (24) hours before work begins.

3.8 Classes of permits; application.

There shall be three (3) classes of sewage connection permits; Class A for the installation of private sewer disposal facilities; Class B for multifamily residential and commercial building sewers; and Class C for service to establishments producing industrial wastes. In all cases, the owner or his agent shall make application on a special form furnished by the Commission. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the Commission.

3.9 Permit required for connection

No person shall uncover, make any connection with or opening into, use, alter or disturb any public sanitary sewer or appurtenance thereof without first obtaining a written permit from the Commission unless he represents the Commission in performing maintenance, repair or extension of the system. The fee for said permit shall be set pursuant to section 1.2.

3.10 Licensed plumber to perform work; exception.

(a) All work shall be performed by a licensed plumber (P-1, P-3) licensed under Connecticut General Statutes Section 20-330 et seq. or as indicated in subsection (b) below. The system shall be subject to inspection and approval by the Director when the laying of a building sewer is completed and before filling of the trench.

(b) Should an owner of a single-family residence have a Class A installation performed by a Subsurface Sewage Disposal System Installer licensed under Connecticut General Statutes, Section 20-341a et seq, the system shall be further subject to inspection and approval by the Town Building Inspector when laying of a building sewer is completed and before filling of the trench.

(c) The filling of a trench before inspection is complete shall subject the owner to whom a permit is issued to a penalty of one hundred dollars ($100.00) for each offense and the owner may be required to reopen the trench for inspection.

3.11 Prohibited connections.

No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer or combined sanitary and storm sewer.

3.12 Inspection by director.

The applicant for the sewer connection permit shall notify the Director when the building sewer is ready for inspection and connection to the public sewer. All connections to public sewers will be inspected by the Director or his Deputy.

3.13 Responsibility of owner for cost of installation or connection.

All costs and expenses incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the Town for any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

3.14 Disused building sewer lines to be sealed.

When a building is taken down and there is no other building using the sewer line, it shall be sealed at the old wall with concrete so that no dirt from the cellar fill will wash into the sewer.

3.15 Revocation of permit.

Permits to connect to the public sewer may be revoked or annulled by the Commission for such cause and at such times as the Commission may deem sufficient and the Town is hereby held harmless as a consequence of said revocation or the cause thereof. All other parties in interest shall be held to have waived the right to claim damages from the Town or its Agents on account of said revocation.

SECTION 4. REGULATION OF DISCHARGES TO PUBLIC SEWERS

4.1 Prohibited discharges.

No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, sub-surface drainage, uncontaminated cooling water or unpolluted industrial process water to any sanitary sewer. The steam cleaning of automotive or other mechanical equipment over manhole covers is prohibited as well as the depositing of wastes from such operation into the sewer system.

4.2 Limitations on discharges of unusual strength or character; criteria for consideration.

No person shall discharge or cause to be discharged the following described substances, materials, waters or other wastes which can harm either the sewers, waste water treatment process or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property or constitute a nuisance. The acceptability of these wastes will be based on consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the waste water treatment process, capacity of the waste water treatment plan, degree of treatability of wastes in the waste water treatment plant, and other pertinent factors. The substances prohibited are:

(a) Any petroleum distillates or other flammable or explosive liquid, solid or gas.

(b) Any water or wastes containing toxic pollutants, malodorous or poisonous solids, liquids or gases, in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any waste water treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the waste water treatment plant, or of preventing entry into sewers for their maintenance and repair. A toxic pollutant shall include but not be limited to any pollutant identified pursuant to Section 307(a) of the Act.

(c) Any water or waste, acid and alkaline in reaction, having a pH lower than five and five-tenths (5.5) or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewerage works. The upper limit of pH for any industrial wastewater discharge shall be established under the dischargers State Discharge permit. Free acids and alkalies must be neutralized, at all times, within the above Ph range.

(d) Solid or viscous substance in quantities or of such size capable of causing obstruction of the flow in sewers, or other interference with the proper operation of the sewerage works, such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, chemical residues, cannery waste, bulk solid, cardboard, styrofoam, beer or distillery slops, lime residues, lime slurry, paint residues, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, whey, etc., either whole or ground by garbage grinders. In no case shall a substance discharged cause the facilities to be in non-compliance with sludge use or disposal criteria, guidelines or regulations developed under Section 405 of The Act, or under the Resource Conservation and Recovery Act, the Clean Air Act, the Toxic Substances Control Act or State criteria applicable to the sludge management method being used.

(e) Any water or waste containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the waste water treatment plant.

(f) Any stormwater, roof drains, spring water, cistern or tank overflow, footing drain, discharge from any vehicle wash rack or water motor, or the contents of any privy vault, septic tank or cesspool, or the discharge of effluent from any air conditioning machine or refrigeration unit.

(g) Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees Fahrenheit (sixty-five (65) degrees centigrade).

(h) Any water or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of fifty (50) mg/1 or containing substances which may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150) degrees Fahrenheit (0 and 65 degrees centigrade).

(i) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower (0.75 horsepower metric) or greater shall be subject to the review and approval of the Director.

(j) Any water or waste containing strong acid, iron pickling wastes, or concentrated plating solutions, whether neutralized or not.

(k) Any water or waste containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or waste exerting an excessive chlorine requirement to such degree that any such material received in the composite sewage at the waste water treatment works exceeds the limits established by the Commission and by the state regulatory agencies for such materials.

(l) Any water or waste containing phenols or other taste or odor producing substances, in such concentrations, exceeding limits which may be established by the Commission as necessary, after treatment of the composite sewage, to meet the requirements of the state, federal or other public agencies of jurisdiction for such discharge to the receiving waters.

(m) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the applicable state or federal regulations.

(n) Materials which exert or cause:

(1) Unusual concentrations of inert suspended solids (such as, but not limited to, Fuller's earth and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate).

(2) Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).

(3) Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the waste water treatment works.

(4) Unusual volume of flow or concentration of wastes constituting "slugs" as defined herein.

(o) Unusual quantities of wastes or substances which the treatment plant cannot treat to the minimal level recommended by the state or federal regulatory agencies.

(p) All discharge of waste water shall also conform with the agreements established between the City of New London, the Town of Waterford, and the Town of East Lyme.

(q) Sewage with a concentration of pollutants in excess of the following limits:

Pollutant	Concentration Parts/million(mg/1)
Arsenic as As	0.05
Barium as Ba	5.0
Boron as Bo	5.0
Cyanides as Cn (amendable)	0.1
Fluoride as F	20
Chromium (total)	1.0
Chromium (Cr + 6)	0.05
Magnesium as Mg	100
Manganese as Mn	5.0
Copper as Cu	1.0
Zinc as Zn	1.0
Cadmium	0.1
Lead	0.1

Tin	2.0	
Silver	0.1	
Mercury		0.01
Nickel	1.0	

4.3 Alternative methods for handling restricted discharges.

If any waters or wastes are discharged, or are proposed to be discharged, to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 4.2 and which may have a deleterious effect upon the sewage works, process equipment or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Commission may:

(a) Reject the waste

(b) Require pretreatment to an acceptable condition for discharge to the public sewers;

(c) Require control over the quantities and rates of discharge; and/or

(d) Require payment to cover the added cost of handling and treating the waste not covered by existing taxes or sewer charges.

4.4 Restricted discharges subject to review by Commission; preliminary treatment.

(a) The admission into public sewers of any water or waste:

(1) Having a five-day biochemical oxygen demand greater than two hundred forty (240) parts per million by weight; or

(2) Containing more than two hundred forty (240) parts per million; or

(3) Containing more than fifteen (15) parts per million of chlorine demand; or

(4) Containing any quantity of substances having the characteristics above the previously described limits; or

(5) Having an average daily flow greater than two (2) per cent of the average daily sewage flow of the town;

shall be subject to the review and approval of the Commission.

(b) Where necessary, the owner shall provide at his own expense, such preliminary treatment as may be necessary to:

(1) Reduce the biochemical oxygen demand to two hundred forty (240) parts per million and the suspended solids to two hundred forty (240) parts per million by weight; or

(2) Reduce the chlorine demand to fifteen (15) parts per million; or

(3) Reduce objectionable characteristics or constituents to within the maximum limits provided for in section 4.2; or

(4) Control the quantities and rate of discharge of such water or waste.

Plans, specifications and other pertinent information relating to proposed preliminary treatment facilities shall be submitted to the commission for approval and no construction of such facilities shall be commenced until said approvals are obtained in writing.

4.5 Grease, oil and sand interceptors.

Grease, oil and sand interceptors shall be provided when they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall be of a type and capacity approved by the commission and shall be located so as to be readily and easily accessible for cleaning and inspection. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight and equipped with easily removable covers which when bolted in place shall be gastight and watertight. Proper operation must be assured by proper maintenance.

4.6 Maintenance of preliminary treatment and flow-equalizing facilities.

Where preliminary treatment of flow-equalizing facilities (including but not limited to grease, oil and sand interceptors) are provided for any water or waste, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense. These facilities shall be readily accessible and open to inspection by the Director at any time.

4.7 Control manholes

When required by the Commission, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Commission. The manhole shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times.

4.8 Authority of commission to require certain information from user.

The Commission may require a user of sewer services to provide information needed to determine compliance with this article. These requirements may include:

(a) Waste water discharge peak rate and volume over a specific time period.

(b) Chemical analyses of waste water.

(c) Information on raw materials, processes and products affecting waste water volume and quality.

(d) Quantity and disposition of specific liquid, sludge, oil, solvent, or other materials important to sewer use control.

(e) A plot plan of sewers on the user's property showing sewer and pretreatment facility location.

(f) Details of waste water pretreatment facilities.

(g) Details of systems to prevent and control the losses of materials through spills to the municipal sewer.

4.9 Standards for measurement, tests and analyses.

All measurement, tests and analyses of the characteristics of waters and wastes to which reference is made in this article shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Waste-water," published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Samplings shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewerage works and to determine the existence of hazards to life, limb and property. The particular analyses involved will determine whether a 24-hour composite of all outfalls of a premises is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solid analyses are obtained from a 24-hour composites of all outfalls whereas pH's are determined from periodic samples. Samples will be made by the Commission or its authorized representative and any fee for such services is the sole responsibility of the owner.

4.10 Special agreements.

No statement contained in this article shall be construed as preventing any special agreement or arrangement between the Commission and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the Commission for treatment, subject to payment therefor by the industrial concern.

4.11 State requirements of public sewer connections

(a) State permits required. In accordance with Section 25-54i of the Connecticut General Statutes as amended, a permit from the Commissioner of Environmental Protection is required prior to the initiation of a discharge of any of the following wastewaters to a public sewer:

(1) Industrial wastewater of any quantity.

(2) Domestic sewage in excess of five thousand (5,000) gallons per day through any individual building sewer to a public sewer.

A potential discharger must submit a permit application to the Department of Environmental Protection not later than ninety (90) days prior to the anticipated date of initiation of the proposed discharge.

(b) Protection from accidental discharges. Each user shall provide protection from accidental discharge of prohibited materials or other substances regulated by this ordinance. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner or user's cost and expense as required by the Commission. The Commission may require that plans showing facilities and operating procedures be submitted for review and approval prior to construction of the facilities.

SECTION 5. SEWER EXTENSIONS

5.1 Compliance with state and town requirements; Commission approval of plans required.

All extensions to the sanitary sewer system owned or to be owned and maintained by the Town shall be properly designed in accordance with the "Recommended Standards for Sewage Works," as adopted by the Great Lakes-Upper Mississippi River Board of State Sanitary Engineers (Ten State Standards) and in strict conformance with all requirements of the State of Connecticut and the Town of East Lyme and other appropriate town agencies. Plans and specifications for sewer extensions shall be submitted to, and approval obtained from, the Commission before construction may proceed. The design of sewers must anticipate and allow for flows from all possible future extensions or developments within the immediate drainage area; the drainage area being that area which can be easily sewered by gravity.

5.2 Construction of sewer extensions and building sewers by Town; assessment of costs.

Sewer extensions, including individual building sewers from the public sewer to the property line, may be constructed by the Town under public contract if, in the opinion of the Commission, the number of properties to be serviced by such extension warrants its costs. Under this arrangement the property owner shall pay for and install the building sewer from the property line to his residence or place of business in accordance with the requirements of Section 3.1 et seq. Property owners may propose sewer extensions to the Town by drafting a written petition, signed by a majority of the benefiting property owners, and filing it with the Commission. The cost of such extensions may be assessed to the benefitted property owners.

5.3 Construction by property owner, builder or developer; responsibility for costs; compliance with section.

If the Commission does not elect to construct a sewer extension under public contract, the property owner, builder or developer must construct the necessary sewer extension, including lateral connections from the sewer main to the property line of each property served by any such extension and lateral connections to the street line of any public street or way intersecting with the street or way in which any such extension is constructed or installed, if such extensions are approved by the Commission, in accordance with the requirements of section 5.1. He or they must pay for the entire installation, including all expenses incidental thereto. Each building sewer installed must be

installed and inspected as required by this article and the inspection fees as required by the Commission shall be paid. Design of sewers shall be as spectified in section 5.4. The installation of the sewer extension must be subject to inspection by the Director and the expenses for these inspections shall be paid for by the owner, builder or developer. The Director's decision shall be final in matters of quality and methods of construction. The sewer as constructed must pass the exfiltration and infiltration test required in section 5.5 before it is to be used. The cost of sewer extensions thus made shall be absorbed by the developers or the property owners, including all building sewers.

5.4 To be designed by registered engineer.

All designs for sewer extensions shall be accomplished by an engineer who is registered and authorized to practice in the field of sanitary engineering in the State of Connecticut. The designs and plans prepared by such engineer shall be reviewed by the Commission. No construction shall be undertaken until approval of the plan is obtained from the Commission and other agencies as required by the Town and the proper permits are issued.

5.5 Extensions to be tested prior to acceptance by Commission.

Upon completion of construction of any sewer extension, but before final acceptance by the Commission, the sewer system shall be tested for infiltration and exfiltration of both sewer lines and the manholes by approved means and under the direction and inspection of an engineer registered and authorized to practice in the field of sanitary engineering in the State of Connecticut with the presence of the Director. When the sewers have passed tests to demonstrate that they meet the best standards of American workmanship, then the engineer shall certify in writing to the Commission as to the nature of the tests and results thereof, and the fact that the tests meet acceptable standards.

SECTION 6. PENALTIES

6.1 Any person found to be in violation of any provisions of this ordinance shall be served by the Town with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

6.2 Any person who continues any violation beyond the time limit provided for in section 6.1, shall be fined in the amount not exceeding one hundred dollars ($100.00) for each violation. Each day in which any such violation shall continue shall be deemed a separate offense.

6.3 Any person who is found to be in violation of any of the provisions of this ordinance shall become liable to the Town for any expense, loss or damage occasioned the Town by reason of such violation

6.4 Any person who is found to be in violation of Section 25-54i of the Connecticut General Statutes as amended shall be subject to a monetary penalty or forfeiture under Section 25-54q of the statutes.

SECTION 7. VALIDITY

7.1 All ordinances or parts of ordinances in conflict herewith are hereby repealed.

7.2 The invalidity of any section, clause, sentence, or provision of this ordinance shall not affect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

SECTION 8. ORDINANCE IN FORCE

8.1 This ordinance shall be in full force and effect from and after its passage, approval, recording and publication as provided by law.

March 17, 1991	TM Volume 18, page 63
Amended Sept. 12, 1998	TM Volume 21, page 584

SEWER ASSESSMENTS

At the March 26, 1991 Water and Sewer Commission meeting a Motion was passed to amend Rule 4.h of the Proposed Sewer Assessment as follows:

"Rule 2.h.4. - Lot - A separate parcel of land shown on the East Lyme Assessor maps. Provided, however, any lot which was so shown on the Grand List of October 1, 1990, which lot was a valid non-conforming lot under any validly adopted Zoning Regulation may be combined with any adjoining non-conforming lot prior to May 15, 1991. Any lots which when so joined produce a single lot which may not thereafter be separated under the applicable Zoning Regulation shall be treated as a single lot for purposes of this Assessment Resolution."

Dated at East Lyme, this 13th day of April, 1991.

East Lyme Water & Sewer Commission
David L. Cini, Chairman

ORDINANCE CONCERNING THE REMOVAL OF ANIMAL FECES FROM TOWN PROPERTY

1. Any person, whose dog or other domesticated animal defecates on Town-owned property or a public highway within the Town, shall dispose of the animal feces left by that animal in a proper receptacle.

2. Any person who walks or otherwise brings a dog or other domesticated animal onto Town-owned property or onto a public highway within the Town, must be prepared to dispose of said animal's feces by whatever means necessary, which may include carrying plastic bags, a pooper scooper or other necessary tools to remove said waste.

3. Anyone who shall violate this ordinance shall be fined the sum of not more than $50.00 for each violation.

4. The provision of this section shall not apply to a guide dog accompanying any blind person.

5. The ordinance entitled "Ordinance Concerning the Removal of Animal Feces from Town Parks" which became effective on December 1, 1991 is repealed.

6. This ordinance shall take effect ten days after publication.

Effective October 5, 1995 TM Vol 21, page 99

SANITARY SEWER BENEFIT RESOLUTION

RESOLUTION relative to assessment of benefits for public sanitary collection sewers installed in the Town of East Lyme, Connecticut; establishing the due date of said assessments; providing for installment payments of assessments and interest thereon;

WHEREAS, the Water and Sewer Commission, the Water Pollution Control Authority, the statutory municipal authority existing under the laws of the State of Connecticut and within and for the Town of East Lyme, has heretofore, approved and directed the work of making public improvements by construction of Phase I through Phase IV public sanitary sewers, consisting of pumping stations and approximately 48.5 miles of force main, gravity interceptor and lateral sewer lines. Said improvements being more specifically designated on plans prepared for the Town of East Lyme by Consulting Environmental Engineers, Inc.'s plans and specifications - Contracts 1 through 14.

The public sanitary sewer project was divided into fourteen contracts which were supervised by Consulting Environmental Engineers, Inc.

Said plans being the same filed with the Town Clerk and the Water and Sewer Commission of the Town of East Lyme.

WHEREAS, the Connecticut General Statutes, provides in part that at any time after a municipality, by its Water Pollution Control Authority, has authorized the acquisition or construction of a sewerage system, or portion thereof, the Water Pollution Control Authority may apportion and assess the whole or any portion of the cost thereof upon the lands and buildings in the municipality, which, in its judgment, are especially benefited thereby, whether they abut on such sewerage system or not, and upon the owners of such land and buildings according to said Connecticut General Statutes and such rules as the Water Pollution Control Authority adopts.

1. NOW THEREFORE, BE IT RESOLVED by the Water and Sewer Commission of the Town of East Lyme, as follows:

a. Areas within which sewer assessments are due for Phase I through Phase IV public sanitary sewers include all properties abutting or actually making use of the public sanitary sewer system.

b.1. By and large, the Phase I sewer contract package covers, with the exception of a few sections, all roads and properties on Route 156 between East Pattagansett Road and Waterford, Haigh and Katherine Streets, Lake Street from Main Street to Hope Street, Hope Street from Lake Street to East Pattagansett Road.

b.2. By and large, the Phase II sewer contract package covers, with the exception of a few sections, Route 156 from Rocky Neck Corporate Park to East Pattagansett Road, Atwood Drive and North

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

December 18, 1997

Mr. William . Konrad
54 Laurel Hill Drive
Niantic, CT 06357

Dear Mr. Konrad:

Thank you for your interest in open space and the Governor's Blue Ribbon Task Force.

The Task Force was charged by Governor Rowland to recommend strategies for increasing the amount of state held open space land. As a result, the Task Force is developing a general statewide strategy and not evaluating specific properties for acquisition.

Nevertheless, a review of the files from the Department of Environmental Protection's Division of Land Acquisition and Management reveals that the Connecticut General Assembly provided a grant-in-aid of $1 million to the Town of East Lyme for the purchase of land in the Oswegatchie Hills area of East Lyme in 1987. The Town apparently was unable to act on the grant and the funding was repealed by the General Assembly in 1989. After the funding was repealed, the Department of Environmental Protection reviewed the property for possible State acquisition under the Recreation and Natural Heritage Trust program. The property received low scores from the various resource managing divisions that reviewed the property. The DEP decided not to pursue acquisition because the site offered limited recreation opportunities; was not contiguous with any other state property and the cost of the land was determined to be high relative to the site's resource significance to programs of the DEP. I am not surprised that you found an abandoned rock quarry. The review comments noted that the property was very rocky. It was also noted that physical access to the Niantic River by the general public was not feasible due to the shoreline characteristics in the area. No doubt these same attributes have prevented the development of this property.

I will forward the information that you provided to Charles Reed of DEP's Land Acquisition and Management Division. Should acquisition funds become available, the property may be of interest for purchase as higher priority properties are addressed.

I hope you continue your interest in our State's valuable open spaces.

Sincerely,

David K. Leff
Assistant Commissioner
Chairman, Governor's
Open Space Task Force

DKL:CJR:jk

cc D. Clifford

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

MEMORANDUM

TO: RNHTP REVIEWERS @ Wildlife, Forestry, Fisheries, Parks, Boating, Natural Resources

Pete - I assume this will be a Park? Beth

FROM: Elizabeth A. Varhue, Program Coordinator Beth

DATE: August 12, 1998

SUBJECT: Quick Review - Oswegatchie Hills area of East Lyme

Attached please find a map delineating properties being considered for acquisition. Those areas shaded in green are currently available and those areas shaded in yellow are vacant parcels which may be available.

Please review the attached properties and forward your comments to my attention by September 1, 1998.

If you have any questions, please do not hesitate to contact me at 424-3016. Thank you in advance for your anticipated assistance in this matter.

EAV:bv

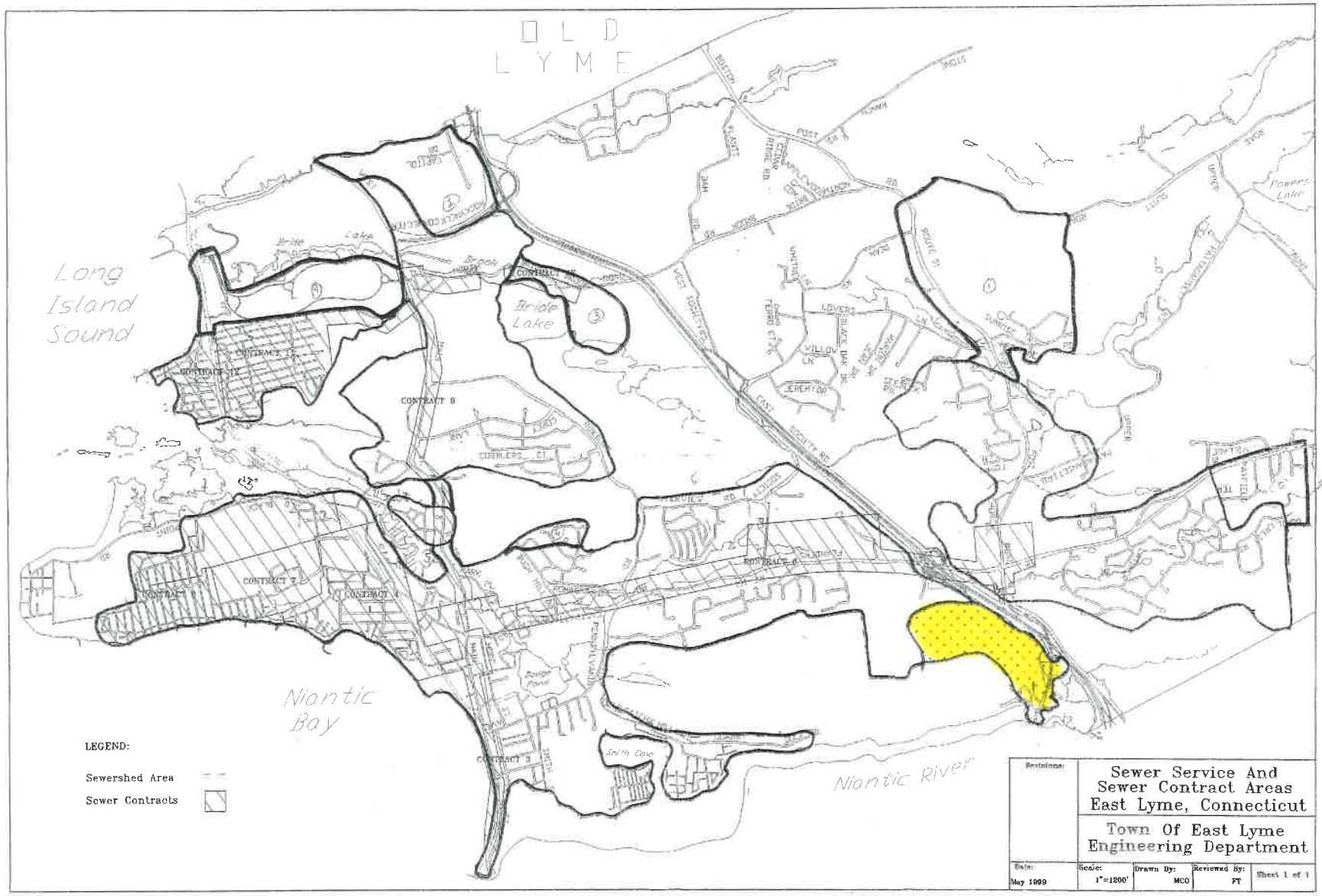
9/1/98

To - Beth Varhue

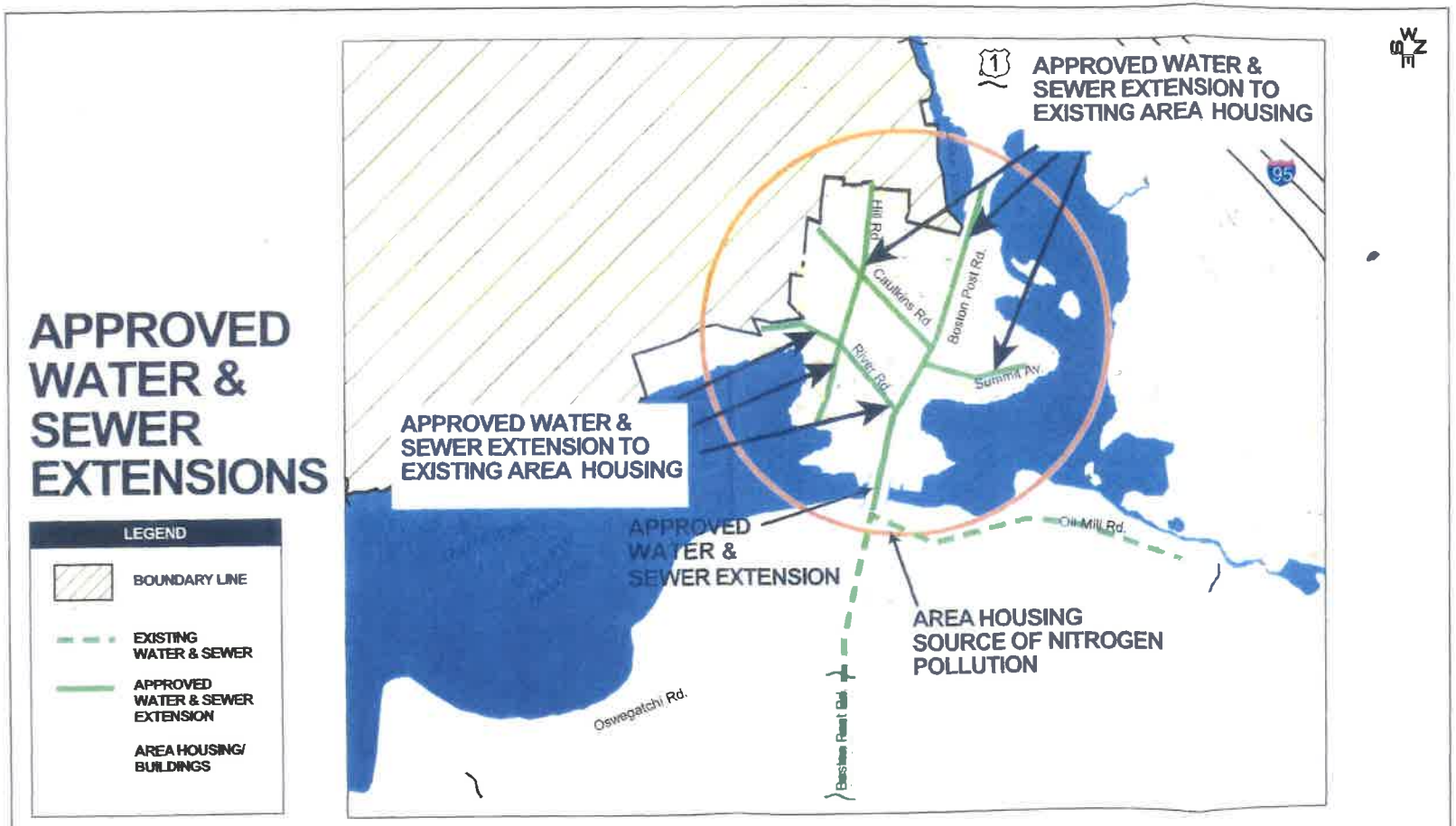
From - Pete Bayne

The Wildlife Division has no interest in this land acquisition project due to the intensive development in the surrounding area.

Is this project a park designation?


OLD LYME
Long Island Sound
Bride Lake
Powers Lake
Niantic Bay
Niantic River
Smith Cove
CONTRACT 1
CONTRACT 2
CONTRACT 3
CONTRACT 4
CONTRACT 5
CONTRACT 6
CONTRACT 7
CONTRACT 8
CONTRACT 9
CONTRACT 10
CONTRACT 11
LEGEND:
Sewershed Area
Sewer Contracts
Sewer Service And Sewer Contract Areas East Lyme, Connecticut
Town Of East Lyme Engineering Department
Date: May 1999
Scale: 1"=1200'
Drawn By: MCO
Reviewed By: FT
Sheet 1 of 1

APPROVED WATER & SEWER EXTENSIONS



LEGEND

- BOUNDARY LINE
- EXISTING WATER & SEWER
- APPROVED WATER & SEWER EXTENSION
- AREA HOUSING/ BUILDINGS

NO.	DATE	DESCRIPTION
		REVISIONS

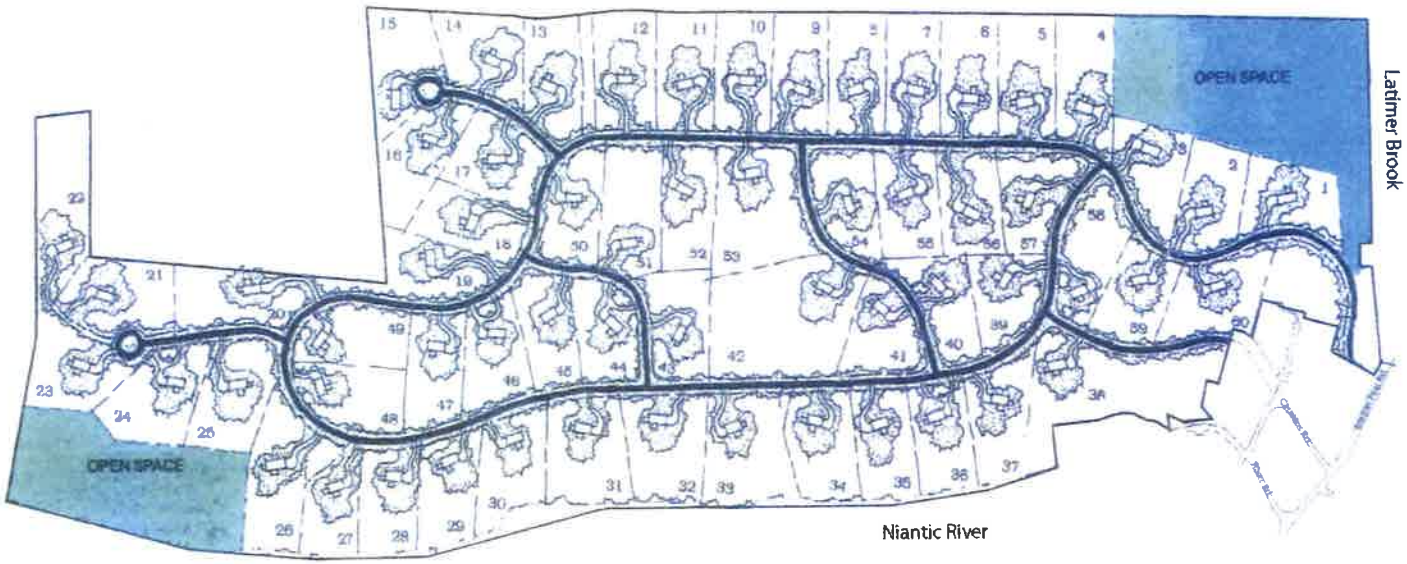
SURV.
DESIGN
DRAWN
CHECKED
DATE

NO SCALE

PREPARED FOR
LANDMARK INVESTMENT GROUP LLC
100 ROSCOMMON DRIVE
SUITE 312
MIDDLETOWN, CONNECTICUT 06457

PROPOSED SEWER EXTENSION MAP
RIVERVIEW HEIGHTS
RIVER & CAULKINS RD – EAST LYME, CT

D -



LEGEND

OPEN SPACE

60 LOT CONVENTIONAL SUBDIVISION

No scale

PREPARED FOR
LANDMARK INVESTMENT GROUP LLC
100 ROSCOMMON DRIVE
SUITE 312
MIDDLETOWN, CONNECTICUT 06457

60 LOT CONVENTIONAL SUBDIVISION MAP
RIVERVIEW HEIGHTS
RIVER & CAULKINS RD – EAST LYME, CT

EAST LYME WATER & SEWER COMMISSION
REGULAR MEETING
JANUARY 28, 2003
MINUTES

A REGULAR MEETING of the East Lyme Water & Sewer Commission was held January 28, 2003 at 7:30 PM at the East Lyme Town Hall, 108 Pennsylvania Ave., Niantic, CT. Mr. Sistare called the meeting to order at 7:30 AM

Present: Kent Sistare, Joseph Mingo, Ed Ramatowski, Steve DiGiovanna, Mary Cahill, Michael S. Tinkel and H. Tisler

Also Present: F. Thumm, M. Poola, Atty. E. O'Connell, R. Pape.

Absent: Charles Ashburn and Dave Zoller

GENERAL

MOTION (1) Mr. DiGiovanna moved to add the Sewer Consent Calendar Weston & Sampson Invoice of $1,848.75
Seconded by Mr. Tinkel
Vote in favor: (7-0), Unanimous

DELEGATIONS

Edward Dzwilewski, 90 North Bride Brook Rd. stated he hooked into the Water System 6-7 months ago and has had brown water since. Mike Poola and Fred Thumm have both been involved in the problem. He indicated his neighbors have had the same problem and he has been buying water. He wanted to know what could be done about it. He would like someone to get back to him on what is going to be done.

APPROVAL OF MINUTES

MOTION (2) Mr. DiGiovanna moved to approve the Minutes of November 26, 2002
Mr. Tisler seconded the motion.
Vote in favor: (7-0), Unanimous.

Mr. Mingo stated that he questioned the reasons for making this presentation if Walnut Hill is not requesting a community septic system. Mr. Harris stated that at this time the developer has decided to go with this system for the clubhouse and wanted to acquaint the Commission with the system because there is the potential that the develop would come back to the Commission and request consideration of this system for a community system.

Mr. Katz added that he wanted to work closely with the town and provide the town with information upfront so that the Commission is familiar with the system. He added that he has worked with East Lyme and Montville over the past year and a half and anticipates a $20 million development.

2. Discussion of Sewer Shed Boundary

Mr. Thumm presented a map of the sewer shed and in discussion with Atty. O'Connell and First Selectman, an annotation has been placed at the property north of I-95 and west of Route 161. He pointed out that the contour of the sewer shed boundary does not include the entire parcel. He indicated it was always the intent that parcel, fronting on Route 161, be in the sewer shed. He indicated that this is a technical correction.

Mr. O'Connell added that the boundary of the sewer shed consistent with the property lines. He recommended that staff prepare a current map of the sewer shed incorporating this corrected boundary line and then present it to the Commission at a subsequent meeting.

Mr. Ramatowski stated the sewer shed map should be signed and the boundary indicated as a change. Mr. Tinkel also challenged the process of correction as rather a revision.

Mr. Thumm stated that this is a clarification incorporated into the map to make a correction to a divided property. He noted that this map is the "base sewer shed map" as approved by this Commission 1999, drawn by Melodie Osterhaut and check by Mr. Thumm. If this motion is approved, a new original map will be prepared based on this map and annotation. The new original map will be signed, dated, and noted as restated through January 2003.

MOTION (8) Mr. Mingo moved RESOLVED, that the Water and Sewer Commission affirm and restate its sewershed boundaries by reference to a map presented to it on this date, which map contains technical corrections to more accurately reflect the sewershed boundaries adopted by the Commission, as annotated by Fred Thumm and dated January 28, 2003
Mr. DiGiovanna seconded the motion.
Vote in favor: (5-2-0), Voting against the motion: Mr. Ramatowski and Mr. Tinkel. Voting in favor of the motion: Mr. DiGiovanna, Mrs. Cahill, Mr. Tisler, Mr. Sistare, Mr. Mingo.

E. Communications

F. Chairman's Report

G. Information and Reports

1. Balance Sheet – Construction
2. Balance Sheet – Operations
3. Balance Sheet – Assessments
4. Monthly Budget Sheet.

Adjournment

MOTION (9) Mr. DiGiovanna moved to adjourn at 9:15 PM
Seconded by Mr. Ramatowski.
Vote in Favor: (7-0), Unanimous.

Respectfully submitted,

Anita M. Bennett
Recording Secretary

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

#43

September 29, 2004

Ms. Meg Parulis
Planning Director
Town of East Lyme
P.O. Box 519
Niantic, CT 06357

BY FAX: 860.739.6930

Re: Riverview Heights (proposed)
Oswegatchie Hills area, East Lyme, CT

Dear Ms. Parulis:

In March 2002, I prepared a memo as background for a coastal management review regarding a proposed development possibly relying on sanitary sewer service. The development was proposed in a section of East Lyme known as Oswegatchie Hills, which generally refers to the land on the western side of the Niantic River immediately south of Route 1, extending south for roughly one mile. At the time, I was not in possession of any documents delineating any specific development proposal in the Oswegatchie Hills area, so when the question was posed about the potential for sewer service, I answered (via the aforementioned memo) that "...Oswegatchie Hills is NOT shown as part of the approved sewer service area, nor was it shown as a future sewer service area."

Earlier today, I met with Mr. Glen Russo, representing Landmark Investment Group LLC, who is proposing to develop a portion of Oswegatchie Hills. I received from him a copy of the preliminary drawings for a project entitled Riverview Heights, prepared for Landmark by ASW Consulting Group, LLC. Based on a comparison of those drawings with Plate 1 from the East Lyme Facilities Plan (dated June 1985 and received by DEP on June 28, 1985), I can now state that a portion of the project known as Riverview Heights is within the ultimate tributary area (which I am assuming is intended to be the same as the future sewer service area) for the East Lyme sewer system. That portion (based on ASW's drawing O-1, dated 7/21/04) includes proposed buildings no. 10, 11, 13, 14, 15, 16, and 17. It may, depending on the exact location of the boundary of the tributary area, also include a portion of buildings no. 9, 12 and 18. All other proposed structures to the south of those mentioned lie outside the future sewer service area, as established by the Facilities Plan on file with DEP.

If you have any questions regarding this matter, please feel free to contact me at (860) 424-3751.

Sincerely,

Dennis J. Greci, P.E.
Supervising Sanitary Engineer
Municipal Facilities Section
Water Management Bureau

cc: Glenn Russo, Landmark Investment Group LLC (by FAX:860.613.0754)
Michael Zizka (by FAX 860.240.6150)
Marcy Balint, CT DEP

2004 WL 2166353
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut, Judicial District of New Britain.

LANDMARK DEVELOPMENT GROUP, LLC et al.
v.
EAST LYME ZONING COMMISSION.

No. CV020520497S. | Sept. 7, 2004.

Attorneys and Law Firms

Murtha Cullina LLP, Hartford, for Landmark Development Group LLC and Jarvis of Cheshire LLC.

Waller Smith & Palmer PC, New London, Robert Fuller, Wilton, for East Lyme Zoning Commission.

Opinion

BARBARA M. QUINN, Judge.

*1 The plaintiffs, Landmark Development Group, LLC (hereafter Landmark) and Jarvis of Cheshire, LLC, (hereafter Jarvis) appeal to this court from a decision by the defendant East Lyme denying their application for a change of zone for property to be located within an "affordable housing district" and amendments to the zoning regulations to establish such a district. For the reasons set forth in detail below the court concludes that defendant commission has demonstrated that there is substantial evidence in the record supporting its decision. Further the court finds, from its independent and detailed review of the record, that defendant commission's decision is based on the substantial public interests in preserving the Oswegatchie Hills area as open space, protection of the public's health due to the limited facilities for water and disposal of sewage, the adverse traffic conditions; to protection of area waters from the fallout of dense development on the slopes and thin top soil of the area as well as protection of the Oswegatchie Hills' fragile ecosystem. The commission properly concluded that these public interests clearly outweighed the need for affordable housing at this location. Because the reasons are site-specific, there were no reasonable changes that could have been made to accommodate the other adversely impacted public interests found. The court therefore dismisses this affordable housing appeal.

I FACTS

A. Procedural History

This action was commenced by Landmark and Jarvis on October 29, 2002 as an appeal from the Town of East Lyme Zoning Commission which denied the plaintiffs' modified applications for a zone change and proposed amendment to the East Lyme zoning. regulations by notice in the *East Lyme Tymes* on October 17, 2002. The property involved in this appeal (hereafter the "property") consists of approximately two hundred and thirty-six (236) acres of land in the Oswegatchie Hills area of East Lyme. Generally speaking, the parcel of land in question is a steep, rocky and largely undeveloped expanse of land bordered by the Niantic River on the east; Interstate Route 95, Latimers Brook and residences on Calkins and River Roads to the north; residences and other large undeveloped tracts to the west; and Smith Cove, residences and other undeveloped portions of Oswegatchie Hills to the south. The tract has vistas of the Niantic River and of Long Island Sound. It is a rugged hilly wilderness and one of the last undeveloped areas in the Town of East Lyme. [1] It consists of two larger tracts of land and several smaller parcels. A portion of the property is designated as "proposed open space" in the Town's Plan of Development, but some is not. [2] The property is presently located in a low-density, single-family residential zone, now requiring three-acre lots. Neither municipal water nor a sewer system are available to the site nor are there any plans to extend such services to the Oswegatchie Hills area in the foreseeable future.

*2 In December 2001, Landmark simultaneously applied for an amendment to the East Lyme zoning regulations to create a new Section 32 in the zoning regulations titled "Affordable Housing District" and for a change of zone of the property to a new "Affordable Housing District." The regulations would permit a maximum density of 10 units per acre, 50% lot coverage with no setbacks from waterways nor provision for open space. The application proposed that the site be served by municipal water and sewer. 30% of the dwelling units would be required to be deed restricted to ensure affordability. In addition, the plaintiff included an affordability plan to

govern the administration of its commitment, as required by statute, to provide affordable housing to the property.

Hearings were held on the initial applications on April 25, May 2 and May 9, 2002, during which the commission considered testimony presented by the applicant and others including the town planner, the senior coastal planner of the Department of Environmental Protection, who presented the reports of the East Lyme Planning Commission and the DEP, planning consultants, the East Lyme Water and Sewer Commission, municipal officers, concerned citizens and residents. It also considered reports and written statements. On June 26, 2002, the commission denied the application.[3] Notice of its decision was published in the *New London Day* on July 3, 2002.[4]

B. Reasons for Denial

The Commission duly articulated the reasons for its denial of the applications. It cited a total of five reasons: (1) the proposal was incompatible with the local and state plans of development for the area, which sought to preserve and protect Oswegatchie Hills as open space; (2) the site was inadequate as to the available infrastructure for water and sewer at a capacity to make the proposed dense development feasible, (3) the development at the density proposed could result in substantial damage to the ecosystem of Long Island Sound and the Niantic River; (4) similar damage would occur to Latimers Brook in the North; and (5) the volume of traffic generated by development at the proposed density levels would cause unsafe conditions for motorists and exceed current roadway capacity because of restricted access to the site.[5] The commission stated that denial was necessary for four related reasons: (1) to protect the public's substantial interest in the preservation of open space; (2) to protect the public's health due to the limited facilities for water and the disposal of sewage; (3) to protect public safety as to traffic conditions and; (4) to protect the area waters from the fallout of dense development on the steep slopes and thin top soil of the Oswegatchie Hills and generally to protect the Oswegatchie Hills' fragile ecosystem which could not be properly insulated from the effects of such dense development. Based on these reasons, the commission also denied the amendments to the zoning regulations. No appeal was taken from this decision.

C. Modified Proposal

*3 On July 17, 2002, Landmark submitted a modified proposal, which sought to address the reasons for denying the first application.[6] The revised application reduced the maximum allowable density, proposed that onsite sewer and water by community systems could be used instead of municipal services, added 100-foot setbacks from several waterways, decreased the maximum lot coverage from 50% to 30% and added a requirement of a minimum of 20% open space and changed the name of the proposed "Affordable Housing District" to "Affordable Housing Conservation District."[7]

Additional public hearings were held on September 19, 26 and 30, 2002. Evidence was again presented by the applicant, planning consultants, ecologists, traffic engineers and concerned citizens. Additional reports were submitted by the planning commission and the DEP. A total of 50 new exhibits was presented and accepted by the commission. On October 3, 2002, the commission determined that the modifications did not address the fundamental site-specific problems revealed by the initial application and denied the revised application.[8] The commission again listed the five reasons previously given for denying the application, the commission stated the adoption of any affordable housing application would include that public water and sewer be available to the site, and it stated its intention to adopt such provisions.[9] Notice of the commission's decision was duly published in the *East Lyme Tymes* on October 17, 2002 and on October 28, 2002, Landmark commenced the present appeal.

II. JURISDICTION

A. Aggrievement and Jurisdiction

In order to have standing to bring an administrative appeal, a person must be aggrieved. *New England Rehabilitation Hospital of Hartford, Inc. v. Commission on Hospitals & Health Care,* 226 Conn. 105, 120, 627 A.2d 1257 (1993). Pleading and proof of facts that constitute aggrievement within the meaning of the statute are prerequisites to the trial court's subject matter jurisdiction over an administrative appeal. *Jolly, Inc. v. Zoning Board of Appeals,* 237 Conn. 184, 192, 676 A.2d 831 (1996). Pursuant to Connecticut General

Statutes § 8-30g(b), any person whose affordable housing application is denied may appeal such decision pursuant to the procedures of the section. Thus, "under § 8-30g(b) only an affordable housing applicant may initiate an appeal from a decision of a commission." *Ensign-Bickford Realty Corp. v. Zoning Commission,* 245 Conn. 257, 267, 715 A.2d 701 (1998). In addition, the section states, "except as otherwise provided in this section, appeals involving an affordable housing application shall proceed in conformance with the provisions of said Section 8-8, 8-9, 8-28, 8-30 or 8-30a, as applicable." It follows, therefore, that aggrievement must be shown in an affordable housing appeal as the reference to § 8-8 indicates. *Trimar Equities, LLC v. Planning & Zoning Board,* 66 Conn.App. 631, 785 A.2d 619 (2001).

***4** "Aggrievement falls within two broad categories, classical and statutory." (Internal quotation marks omitted.) *Cole v. Planning & Zoning Commission,* 30 Conn.App. 511, 514, 620 A.2d 1324 (1993). Each is an aspect of standing. "Statutory aggrievement exists by legislative fiat, not by judicial analysis of the particular facts of the case. In other words, in cases of statutory aggrievement, particular legislation grants standing to those who claim injury to an interest protected by that legislation." (Internal quotation marks omitted.) *Connecticut Coalition Against Millstone v. Rocque,* 267 Conn. 116, 129, 836 A.2d 414 (2003). A plaintiff may prove aggrievement "by the production of the original documents or certified copies from the record." (Internal quotation marks omitted.) *Quarry Knoll II Corp. v. Planning & Zoning Commission,* 256 Conn. 674, 703, 780 A.2d 1 (2001). The deeds and evidence introduced at the hearing established that the second named plaintiff, Jarvis of Cheshire, LLC has owned a portion of the property in question since October 2000, [10] and is therefore statutorily aggrieved. [11]

Landmark's status is, however, different and does require the court to consider the issues of classical aggrievement.

> The fundamental test for determining [classical] aggrievement encompasses a well-settled twofold determination: first, the party claiming aggrievement must successfully demonstrate a specific personal and legal interest in the subject matter of the decision, as distinguished from a general interest such as is the concern of all the members of the community as a whole. Second, the party claiming aggrievement must successfully establish that the specific personal and legal interest has been specially and injuriously affected by the decision ... Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest ... has been adversely affected ...

(Citations omitted; internal quotation marks omitted.) *Bongiorno Supermarket, Inc. v. Zoning Board of Appeals,* 266 Conn. 531, 537-38, 833 A.2d 883 (2003).

From the evidence, the court concludes that Sargent's Head Realty Corporation owns the balance of the parcel comprising approximately 200 acres. It is uncontested that Landmark had the agreement of both Sargent's and Jarvis to act on their behalf in filing the application. Landmark owns none of the land in question, but has a signed purchase and sales agreement with Sargent's Head Realty. The court finds that the parties to the agreement believe it to be in effect and binding. Each acknowledges that the effective existence of the contract is at the sole discretion of the plaintiff. [12] The court concludes, despite the discretionary aspects of the contract, that it need not determine the contract is fully legally enforceable. "Standing is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights." *Bethlehem Christian Fellowship v. Planning & Zoning Commission,* 58 Conn.App. 441, 443, 755 A.2d 249 (2000). See also *DiBonaventura v. Zoning Board of Appeals,* 24 Conn.App. 369, 588 A.2d 244 (1991). The court finds that Landmark's interest in this contract satisfies the first prong of classical aggrievement, that it has a specific interest in the subject mater before the court.

***5** The court also concludes that the second prong of classical aggrievement has been met by Landmark. Nonetheless, defendant urges the court to conclude that the second prong of classical aggrievement has not and cannot be established by Landmark. Landmark has not yet been harmed by the Commission's actions, it claims. In *Wisniowski v. Planning Commission,* 37 Conn.App. 303, 312, 655 A.2d 1146, cert. denied, 233 Conn. 909, 658 A.2d 981 (1995), the court specifically held that the affordable housing statute "does not contemplate the denial of an affordable housing subdivision application on the ground that it does not comply with the underlying zoning of an area." As noted in the Commission's brief, stated another way, if the plaintiff Landmark returned with another site plan and a specific

application, the Commission would not be able to deny the application because of incongruence with the underlying zone.

The fundamental difficulty with this analysis is that it would require each affordable housing applicant to file a specific affordable housing application, which the statute itself does not contemplate. In its definitional sections, § 8-30g(a)(2), the statute states " 'Affordable housing application' means any application made to a commission in connection with an affordable housing development by a person who proposes to develop such affordable housing." In § 8-30g(f) it grants to any person whose affordable housing application is denied, the right of appeal pursuant to § 8-8. Interpreting the statue to permit appeals only for actual specific site plan applications would be to effectively delete these more generous provisions of the statute.

In *Kaufman v. Zoning Commission*, 232 Conn. 122, 140, 653 A.2d 798 (1995), where the commission asked the court to interpret the statute to include such a requirement the court declined. The court, after reviewing the statute, the legislative history and the remedial policies of the affordable housing statute, concluded: "[W]e can discern no policy reason why site plans must be submitted to the commission as part of the zone change process ..." While *Kaufman* did not concern itself with aggrievement, the reasons for its holding are equally relevant in the aggrievement context.

In further support of its claims that the plaintiff cannot meet the second prong for demonstrating classical aggrievement, defendant cites the case of *Jordan Properties, LLC v. Old Saybrook Zoning Commission*, Superior Court, Docket No. CV 01-0508892S, judicial district of New Britain at New Britain, (November 10, 2003, Tanzer, J.), for the proposition that "[m]ere denial of an application does not constitute aggrievement." While it is correct that the case does so state, it quotes this language from the case of *Fletcher v. Planning and Zoning Commission*, 158 Conn. 497, 502, 264 A.2d 566 (1969), a case not involving the affordable housing statute. In addition, a careful reading of *Fletcher* reveals that there, the court concluded that the subordinate acts found by the trial court did not support the trial court's conclusion of specific financial harm. The law regarding classical aggrievement has continued to evolve since 1969 and no longer requires a showing of specific financial harm, but merely the "possibility" of such harm. See *Bongiorno Supermarket, Inc. v. Zoning Board of Appeals, supra*, 266 Conn. at 539. This court concludes from the evidence and due to its contractual interest in the property, Landmark has demonstrated the "possibility" of specific and unique harm by denial of its application. It is classically aggrieved by the action of the Commission. Further, because the court has concluded both applicants are aggrieved, this court has jurisdiction to hear this appeal.

B. Timeliness and Service of Process

***6** Pursuant to Connecticut General Statutes § 8-8(b), an appeal shall be commenced by service of process within fifteen days from the date that the commission's notice of decision is published. Further, it shall be commenced by leaving the process with, or at the abode of the clerk or chairman of the commission, and with the clerk of the municipality. See General Statutes § 8-8(f). Notice of the commission's denials of the zone change and of the proposed amendments were originally published in the *East Lyme Tymes* on July 3, 2002 and after modified applications were filed, on October 17, 2002. The plaintiff served the commission on October 29, 2002, by leaving copies of the appeal papers with Lesley A. Bliss, Assistant Town Clerk at the East Lyme Town Hall and with Mark Nickerson, Chairman of the East Lyme Zoning Commission on the same date. (Sheriff's Return.) The appeal was filed with the clerk of the superior court for the New London judicial district at New London on November 5, 2002. This appeal, therefore, is timely and the proper parties were served, pursuant to Connecticut General Statutes §§ 8-8(e) and 8-30(g).

III DISCUSSION

A. Preliminary Considerations

(1) Landmark's application is related to an "affordable housing development"

Before commencing a review pursuant to the standards articulated by statute and case law, the defendant commission has raised a preliminary issue, and that is whether or not the applications filed by Landmark are affordable housing applications. For the reasons detailed below the court concludes that they are such applications, given the statute's expansive use of the term "application" and its remedial effect. The commission correctly states that the proposed regulations to create the "affordable housing district" are site

specific, that is to say the creation of the district cannot be severed from the site chosen by the applicant. Because all other land in East Lyme other than the approximately 236 acres in question are excluded from these proposed regulations, the commission maintains that the applicant was required to submit a site plan to actually develop the parcels of land in Oswegatchie Hills under consideration. The defendant commission argues that pursuant to § 8-30g, as amended, Landmark's application does not qualify as such an application. The argument in outline form is asserted as a special defense in their answer and special defense to the complaint, dated June 2, 2003. It asserts that even Landmark admitted its procedure was highly unusual in the context of affordable housing applications as approval of the amendments and the zone would not result in any housing development, a crucial requirement of the statute.

Landmark claims that it was attempting to work with the commission to establish certain ground rules before investing in detailed site development investigations. [13] Its goal was to submit a specific site development plan after the change of zone and regulations were approved and that such plan would be based on the resources and limitations determined through detailed site investigation. [14] It further asserts that the issues now raised were previously raised in a motion to strike the complaint, which motion was denied on July 17, 2003 (Levine, J.). In addition, Landmark asserts that since the commission treated the application as an affordable housing application throughout the administrative process, it should, as a matter of equity, be estopped from now asserting that the application cannot be treated as such. It points out that the commission for the first time in its denial raised the issue, after all opportunity for the plaintiff to respond had passed.

*7 Turning now to the statute, it defines an "affordable housing application" as any application in connection with an affordable housing development. An affordable housing development is further defined as "a proposed housing development." It is the case that no specific proposed site plan was submitted by Landmark other than a schematic site plan, about which Landmark stated that "the final site plan could be radically different." [15] In *Kaufman v. Zoning Commission,* 232 Conn. 122, 131-48, 653 A.2d 798 (1995), the court concluded that an actual site plan was not required to be filed pursuant to the statute. The changes and amendments to the statute since *Kaufman* was decided permit, but do not require, a commission, by regulation to require the filing of a conceptual site plan. [16] East Lyme had no such regulatory requirement. Given the expansive nature of the affordable housing statute's definition of the word "application" as well as its remedial propose, the court concludes that in this instance, no site specific plan was required and Landmark's application is an "affordable housing application in connection with an affordable housing development."

(2) East Lyme is subject to the provisions of the Act

A further preliminary issue concerns affordable housing in East Lyme. The court concludes, from the record, that East Lyme has an undeniable need for additional affordable housing. Only 4.8% of East Lyme's housing stock qualifies as affordable and most of it serves as elderly housing. [17] In addition, housing pressures in the area are such that there is a decreasing housing vacancy rate. The affordable housing statute together with its appeal procedure applies to all municipalities where affordable housing stock is less than 10% of the total. See Connecticut General Statutes § 8-30g(k).

B. Standard of Review

In *Quarry Knoll II Corp. v. Planning and Zoning Commission of Greenwich,* 256 Conn. 674, 780 A.2d 1 (2001), the Supreme Court has articulated the current standard of review applicable to affordable housing matters and overruled that portion of *Christian Activities Council v. Town Council,* 249 Conn. 566 (1999), which dealt with the standard of review. In *Quarry Knoll* the court relied on the legislature's recent clarification of the burden of proof through adopted statutory changes. The Court noted that the original intent of Public Act 89-311 was that "the normally applicable presumption of regularity that applies to municipal enactments would not apply in Affordable Housing Appeals ..." and thus a fundamental purpose of the affordable housing statute was to eliminate deference to commission judgments. *Quarry Knoll,* 256 Conn. at 716. The Court summarized the court's duty on appeal in the following manner:

> [T]he court's function in an appeal under Section 8-30g is to review the record made in the zoning proceeding. Under 8-309(c)(1)(A), the court must determine ... whether the commission has shown that its decision is supported by sufficient evidence in the record.

> Under subparagraphs (B), (C) and (D) of the statute, however, the court must review the commission's decision independently, based upon its own scrupulous examination of the record. Therefore, the proper scope of review regarding whether the commission has sustained its burden of proof, namely that: its decision is based upon the protection of some substantial public interest; the public interest clearly outweighs the need for affordable housing; and there are no modifications that reasonably can be made to the application that would permit the application to be granted-requires the court, not to ascertain whether the commission's decision is supported by sufficient evidence, but to conduct a plenary review of the record, in order to make an independent determination on this issue. At page 729.

***8** As noted in the case of *Juniper Ridge Association v. Wallingford Planning and Zoning Commission,* Superior Court, Docket number, CV 02-0518845S, judicial district of New Britain at New Britain, (March 8, 2004, Eveleigh, J.): the current rules for analyzing a commission's burden of proof pursuant to § 8-30g are as follows:

1. The statute is remedial, and its purpose is to assist property owners in overcoming local zoning regulations that are exclusionary or provide no real opportunity to overcome arbitrary or local limits, and to eliminate unsupported reasons for denial. See *West Hartford Interfaith Coalition, Inc. v. Town Council,* 228 Conn. 498, 508-12, 636 A.A.2d 1342 (1994).

2. The statute requires the Commission to state its reasons and analysis in writing. *Christian Activities Council, Congregational v. Town Council,* 249 Conn. 566, 576, 735 A.2d 231 (1999).

3. The Commission, in its denial resolution and its brief, must discuss, with references to the record, how each of its reasons for denial satisfies the criteria stated in the statute. See *Quarry Knoll,* 256 Conn. at 729-31.

4. The statute eliminates the traditional judicial deference to commission factual findings and regulatory interpretations for all types of zoning or planning applications, including zone changes. See *West Hartford Interfaith,* 228 Conn. at 509 ("we construe the language of Section 8-30g to apply to every type of application filed with a commission in connection with an affordable housing proposal").

5. Regarding the statutory criterion of a "substantial public interest in health or safety," the commission must identify the type of harm that allegedly will result from approval of the application and the probability of that ham. See *Kaufman v. Zoning Comm'n,* 232 Conn. 122, 156 (1995).

6. The statute requires the Court to conduct an independent examination of the record and to make its own determination with respect to the second, third, and fourth criteria of subsection (g). See *Quarry Knoll,* 256 Conn. at 727. It is incumbent upon the Commission to first establish the correctness of its decision. If demonstrated, it is then incumbent upon the Court to conduct a plenary review pursuant to the last three prongs of the statute.

C. Review of the Decision of the Commission

(1) Preservation of Open Space

The first of the five reasons the commission stated for denial of the application was the preservation of the area as open space. The commission concluded that the proposal was incompatible with the local and state plans of development for the area, which all sought to preserve and protect Oswegatchie Hills as open space. The record reflects a long history of efforts to preserve this area for such purposes beginning with the preparation of the comprehensive plan for the town in 1967.[18] Some years later, in 1974, the Conservation Commission along with the Southeastern Connecticut Regional Planning Agency developed an open space acquisition plan including this area. In a 1977 report by the town's Land Use and Natural Resources Subcommittee of the Planning Commission, the committee recommended that this area should be purchased outright by the Town or protected by easement against development. In 1987, the first selectman sought assistance from local state representatives to secure legislation and/ or appropriations to preserve the areas. East Lyme's 1987

revision to its plan of development again lists the area as a target for preservation. The State legislature in 1987 designated the area as a "Conservation Zone" and established the Niantic River Gateway Commission, which has as its purpose development of minimum standards to preserve the character of the area. [19]

*9 In 1990, the area was rezoned for lower density as a rural residential (RU-120) zone, requiring a three-acre minimum lot size. As true today as it was at that time, the first selectman wrote: "If ever there was a place that nature never intended to be developed, the east slope of the Oswegatchie Hills is that place. Nowhere else is the land less suitable for construction, the natural resources on and adjacent to the land more susceptible to damage, and the public benefits to be gained from preservation greater." [20] Efforts to later change the zoning to require five-acre building lots failed, after a court determination that there was improper publication of the effective date of the zone change. *Wilson v. Zoning Commission,* 77 Conn.App 525, 823 A.2d 405 (2003).

In addition to local preservation efforts, there was also substantial evidence that the application was inconsistent with state and regional plans of development. The DEP reported that the application was inconsistent with the Coastal Management Act, the Municipal Coastal Program and the Harbor Management Plan as well as with the Town of East Lyme Plan of Development. [21] The Southeastern Connecticut Council of Governments stated that the zone change was inconsistent with the regional plan of conservation and development of 1997, which had classified the areas for low-density development and conservation. Area residents were opposed, with over 1700 signatures collected on various petitions to preserve the Oswegatchie Hills area.

The plaintiff argues that despite the availability of a grant of $1 million dollars of state aid in 1987, the Town has never seen fit to acquire the land for preservation. This plus the Commission's other actions, it claims, demonstrate that reference to the plan to maintain this area as open space is but a sham. The court does not agree. The lengthy history of preservation efforts alone make it apparent that the area has been under consideration for conservation due to its unique features for a long time. In addition, it is precisely some of the site's unique features, its fragile soils and rocky slopes as well as any development's impact upon the water resources which make it physically less suitable for dense development than other areas of the town.

In *Christian Activities Council, Congregational v. Town Council,* 249 Conn. 566, 597, 735 A.2d 231 (1999), the Supreme Court found that preservation of open space can, in the appropriate circumstance, constitute a substantial public interest that may supercede the public interest in the creation of public housing. It held that the town agency must establish that "it reasonably could have concluded, based on the record evidence that (1) that there was some quantifiable probability-more than a mere possibility but not necessarily amounting to a preponderance of the evidence-that the legitimate preservation of open space could have been harmed by the zone change, and (2) that the preservation of open space would not be protected if the zone change were granted." At page 597.

*10 Plaintiff seeks to distinguish *Christian Activities* from the facts before the court by noting that in that case, there was a large tract of land owned by a public water company that had always been marked as open space and which would not have been at risk for development while so owned. It notes that the town could not have condemned such public land for open space use, whereas the Town of East Lyme could condemn that portion of the Oswegatchie Hills that it sought to preserve. But condemnation as a potential remedy is not relevant to the inquiry before the court. In the record before the court, there is substantial evidence that the Oswegatchie Hills area, which local, regional and state authorities had designated as worthy of preservation, would be harmed by the zone change and that the resource could not be protected if this zone change, tied as it is to the tract of land in question, were granted. The court further finds, pursuant to Connecticut General Statutes § 8-30g that the Commission has sustained its burden of proof that there are no modifications to this site-specific application with the general density of development it proposes, which could accommodate the public interest in open space. Further, the record supports the commission's finding that the public interest in preserving this area as potential future open space outweighs the public interest in affordable housing, given the nature of this site.

(2) Municipal Water and Sewer

The second reason given for the denial of the application was the site's inadequacy as to the available infrastructure for water and sewer at a capacity to make the proposed dense development feasible. [22] The first application filed by Landmark proposed that the development would be served by municipal sewer and water. The Commission found that

the site lacked the infrastructure to provide such water supply and sewer capacity. The director of Public Works reported that the availability of such services was restricted. First, the town system did not extend to the site. Second, the town is under a consent order issued by the State Department of Environmental Protection that prevents extension of the water service area. While the town may submit a written request for extension, it must await the Commissioner's written decision prior to enacting any additional ordinances.[23] In addition, when the town identified what areas of the town were to be sewered in 1985, this area was not in the sewer-shed boundary. In 1998, when the town prepared a capacity analysis of its system, it determined that all capacity was accounted for and any expansion would require no services to areas to which sewers were now committed. And although Landmark stated it could connect to the Boston Post Road extension, the Chairman of the Water and Sewer Commission testified that this was not correct.[24] There is substantial evidence in the record that municipal water and sewer service will not be extended to the property.

***11** The commission determined that since such services were not available, this militated against the proposed zone change and the density of development the application envisioned. Indeed, in the town plan of conservation and development of 1999, a stated objective is that the town "should continue to provide for multi-family housing ... to meet a portion of the regional need for a variety of housing types available at affordable cost." It recommends that housing sites to be considered should generally be "free of major site development constraints such as wetlands, bedrock, steep slopes and primary aquifers and within the boundaries of or readily connected to the municipal water and sewer service area."[25] Such site development constraints, the court concludes, with the exception of primary aquifers, are all present in the land that is the subject of this affordable housing application. Such development would be contrary to the town plan, as noted by the supervisory sanitary engineer for the water management bureau of the Department of Environmental Protection.[26]

In its modified application, Landmark in the alternative, proposed on-site water supply wells and sewer. The commission found that such systems are rarely allowed by the State Health Department or the Department of Environmental Protection, and only when there is clear evidence that such systems can be supported by the site and function properly. There is substantial evidence in the record from which the Commission could properly conclude that the site's topography and soil conditions made a community septic system not feasible.[27] The director of the Office of Long Island Sound Programs reported that the modified application was "inconsistent with the policies and standards of the Connecticut Coastal Management Act based on the severe development constraints, the potential for adversely impacted resources and water quality, inconsistent with water dependent use policies, the Towns' Plan of Development, the Municipal Coastal Program and the Harbor Management Plan."[28] In addition, a soil survey of New London County shows severe constraints to such a system in that "[o]ver 60% of the site is encumbered by wetlands and/or steep slopes."[29]

Landmark maintains that it is physically possible to connect the property to the public water and sewer and that the Town has excess capacity. Furthermore, it maintains that the nearby Deerfield development was connected to the public sewer in 1992, demonstrating that where the Commission wishes to take such action, it will find the means to do so. It also challenges that there is evidence of fragile soil conditions. It states that it presented evidence that soil conditions on the property were actually favorable for the development of community septic systems. In addition, Landmark claims that there is water available from New London, which could supply this area.

While this court agrees that Landmark presented some evidence of the matters it argues, the question is whether or not there is substantial evidence in the record supporting the commission's decision. As noted in *Samperi v. Inland Wetlands Agency,* 226 Conn. 579, 588, 628 A.2d 1286 (1993): "the possibility of deriving two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." The court concludes that there is substantial evidence in the record to support the commission's decision.

***12** As to the court's own independent review, there are a number of Superior Court decisions which, in the context of affordable housing appeals, have found limited water and sewer resources to represent "a substantial interest in health safety or other matters which the Commission may legally consider." *Greene v. Ridgefield Planning and Zoning Commission,* Superior Court judicial district of New Britain at New Britain, Docket No. CV 90-0442131S (January 6, 1993, Berger, J.) (8 Conn. L. Rptr. 137), re sewers, see *D'Amato v. Orange Planning and Zoning Commission,* Superior Court,

judicial district of Hartford at Hartford, Docket No. CV 92-0506426S (February 5, 1993, Berger, J.) (10 Conn. L. Rptr. 444). Having determined that the Commission has adequately demonstrated that there are limited sewer and water resources for this site and that community systems are not feasible, the court concludes the public's interest in the adequate provision of such services in this instance clearly outweighs the need for affordable housing. Again, because of the site-specific nature of this application, there were no specific modifications that could be made to accommodate these public interests and provide affordable housing at this site.

The court has carefully scrutinized the record concerning the remaining reasons for the denial stated by the commission. The court concludes that the commission has sustained its burden of proof with respect to the remaining reasons articulated. Nonetheless, the court will not discuss these issues in detail, having already determined that two of the reasons cited are clearly and adequately supported by the evidence in the record. As noted in *Mackowski v. Planning & Zoning Commission,* 59 Conn.App 608, 757 A.2d 1162 (2000), citing *West Hartford Interfaith Coalition, Inc. v. Town Council,* 228 Conn. 498, 513, 636 A.2d 1342 (1994), "an affordable housing land use appeal, as in a traditional zoning appeal ... must be sustained if even one of the stated reasons is sufficient to support it."

For all of the foregoing reasons, the appeal is dismissed.

Footnotes

1 Return of Record, Exhibit 2.

2 Return of Record, Exhibit 61, Tab A.

3 Return of Record VII.

4 Return of Record IX.

5 Return of Record VII.

6 Return of Record, Exhibit AA. The defendant correctly notes that because the application was filed within 15 days of the publication of the notice of denial, the application is treated as an amendment to the previous application. § 8-30(g)(h).

7 Return of Record 63 contains a full summary of the changes made.

8 Return of Record XVII.

9 Return of Record XVI.

10 Plaintiff's Exhibit A, certified copy of a deed recorded in Volume 510 at page 289 of the Town of East Lyme Land records, dated October 2, 2000, was admitted at the court hearing.

11 Not raised by either party is whether Jarvis is an applicant who may appeal pursuant to 8-30(f). The court, having found from the evidence that Landmark had permission to act in Jarvis's stead, will treat each as an applicant for these purposes.

12 Defendant's Exhibit A, the purchase and sales contract with significant provisions (not relevant to the court's consideration) redacted, but including an amendment, providing that proceeding to an affordable housing application and acquisition and development of the land for such purpose are in the purchaser's sole discretion. See also language regarding inverse condemnation on the fourth from the last page of the exhibit. This exhibit was admitted at the court hearing.

13 Return of Record, Exhibit VI at pages 224-25.

14 Return of Record Exhibits II, V at page 3, and VI.

15 See Paragraph 15 of the complaint.

16 See 8-30(g)(c) which states that "Any commission, by regulation, may require that an affordable housing application seeking a change of zone shall include the submission of conceptual site plan describing the proposed development's total number of residential units and their arrangement on the property and the proposed development's roads and traffic circulation, sewage disposal and water supply."

17 Return of Record Exhibit 4, Exhibit II at page 11.

18 Return of Record 6. The plan specifically states that "[t]he Oswegatchie Hills area represents a scenic hilltop with vistas of the ocean and the Niantic River worthy of protection. The area from the Connecticut Turnpike south to Pennsylvania Avenue and from the banks of the Niantic river to the crest of Oswegatchie Hills should be maintained as open space to provide a space for passive recreation consisting of hiking trails, picnic areas, nature paths and camping areas."

19 Return of record 6, 16, and 17.

20 Return of Record 6.

21 Return of Record 10.

22 This reason is intertwined with reasons 1, 3 and 4, which are all tied to the severe development constraints to which the tract is subject, due to its physical characteristics and the bodies of water on which it borders.

23 Return of Record 6.

24 Return of Record, IV, and Transcript, pp. 172-74.

25 Return of Record 6.

26 Return of Record 10.

27 See DEP report of April 24, 2003, Return of Record 10.

28 Return of Record 62, September 18, 2002, Department of Environmental Protection Report.

29 Return of Record 6.

End of Document

2008 WL 544646

Superior Court of Connecticut,
Judicial District of New Britain.

LANDMARK DEVELOPMENT GROUP et al.
v.
EAST LYME ZONING COMMISSION.

No. CV054002278. | Feb. 2, 2008.

Attorneys and Law Firms

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Geraghty & Bonnano LLC, New London, for Friends of Oswegatchi Hill Nature Preserve and Save the River/Hills.

Opinion

PRESCOTT, J.

*1 This affordable housing administrative appeal highlights the sometimes competing public policies of developing and maintaining affordable housing and preserving and protecting Connecticut's fragile natural resources. In this case, the public policy of encouraging the development of affordable housing must yield in light of the unique and important environmental setting of the property sought to be developed.

The appeal was brought by the plaintiffs, Landmark Development Group, LLC ("Landmark") and Jarvis of Cheshire, LLC ("Jarvis") (collectively, the "plaintiffs" or "applicants"), from a decision by the defendant, East Lyme Zoning Commission ("Commission"), denying their affordable housing application to construct 352 condominium units on a large tract of land in East Lyme that borders the Niantic River near Long Island Sound. Two hundred thirty-two of the proposed units would be market rate condominiums and 120 units would be designated affordable housing rental units. Two intervening parties, Save the River, Save the Hills, Inc. and Friends of Oswegatchie Hills Nature Preserve, Inc. (hereinafter the "intervenors") also participated in these proceedings.

For the reasons set forth below, the court dismisses the plaintiffs' appeal.

I. FACTS AND PROCEDURAL HISTORY

This case has a lengthy and complicated procedural history.[1] The property involved in this appeal consists of approximately 236 acres of land in the Oswegatchie Hills area of East Lyme. The property is a steep, rocky and largely undeveloped expanse of land bordered by the Niantic River on the east; Interstate Route 95, Latimers Brook and residences on Calkins and River Roads to the north; residences and other large undeveloped tracts to the west; and Smith Cove, residences and other undeveloped portions of Oswegatchie Hills to the south. The property has scenic vistas of the Niantic River and of Long Island Sound. It is a rugged, hilly property with many mature trees and is one of the last undeveloped areas in the Town of East Lyme. A portion of the property is designated as "proposed open space" in the Town's Plan of Development. The property is located in a low-density, single-family residential zone, now requiring three-acre lots. Municipal water and sewer are not available to most of the site. There are no plans to extend such services to the property or surrounding area in the foreseeable future.

In December 2001, Landmark simultaneously applied for a text amendment to the East Lyme zoning regulations to create a new Section 32 in the zoning regulations titled "Affordable Housing District" and for a zone change of the property to a new "Affordable Housing District" (hereinafter collectively referred to as "Application I"). The regulations proposed by the plaintiffs in Application I would have permitted a maximum density of 10 units per acre, 50 percent lot coverage with no setbacks from waterways nor provision for open space. Application I proposed that the site be served by municipal water and sewer. Thirty percent of the dwelling units would be required to be deed restricted to ensure affordability. In addition, the plaintiff included an affordability plan in Application I to govern the administration of its commitment, as required by statute, to provide affordable housing on the property.

*2 Hearings on Application I were held in the Spring of 2002, during which the Commission considered testimony presented by the applicants and others including the town planner, planning consultants, state officials, the East Lyme

Water and Sewer Commission, municipal officers, and concerned citizens and residents. It also considered reports and written statements.

On June 26, 2002, the Commission denied Application I. Notice of its decision was published in the *New London Day* on July 3, 2002. The Commission provided five principal reasons for its denial: (1) the proposal was not compatible with local and state plans of development for the area, which included protecting Oswegatchie Hills as open space; (2) the proposed dense development of the site was not feasible because of inadequate water and sewer capacity; (3) the development proposed could result in substantial damage to the ecosystem of Long Island Sound and the Niantic River; (4) similar damage could occur to Latimers Brook; and (5) traffic generated by the development could cause unsafe conditions for motorists and exceed current roadway capacity because of restricted access to the site.

Landmark did not appeal the Commission's June 26, 2002 decision. Instead, on July 17, 2002, Landmark amended its application to attempt to address the Commission's reasons for denying the initial application. The modified application, among other things, (1) reduced the maximum allowable density, (2) proposed onsite sewer and water (through community wells and septic systems) as an alternative to municipal water and sewer services, (3) added 100-foot setbacks from the potentially impacted waterways, (4) decreased the maximum lot coverage from 50 percent to 30 percent, and (5) set aside a minimum of 20 percent of the site as open space.

The Commission held additional public hearings of the revised application on September 19, 26 and 30, 2002. Additional evidence was presented by the applicant, the planning commission, intervenors and others.

On October 3, 2002, the Commission denied the revised application, concluding that the modifications did not satisfactorily resolve the fundamental, site-specific problems with the proposed development that it had previously found when it rejected the initial application. Notice of the Commission's decision was published on October 17, 2002.

On October 29, 2002, Landmark and Jarvis filed an appeal to the Superior Court from the Commission's decision denying the revised application for a proposed amendment to the East Lyme zoning regulations and a zone change.

While that appeal was pending in the Superior Court, the plaintiffs filed, on May 12, 2004, a second application with the Commission (hereinafter "Application II"). The precise nature of Application II has been a point of vigorous dispute by the parties from the outset. The new application, at least by its terms, does not seek a text amendment to East Lyme's zoning regulations or any zone changes.[2] Instead, Application II seeks approval of a specific plan of development for the property. The plaintiffs characterize Application II as an affordable housing application brought pursuant General Statutes § 8-30g. Application II seeks approval to construct 352 units of housing on one portion of the property. Two hundred thirty-two of the units are proposed as market rate condominiums, while 120 units are proposed as affordable housing rental units. The proposed development in Application II differed in some respects to the project originally outlined in Application I (as revised), presumably because the plaintiffs had attempted to address some of the ongoing concerns about the project that were expressed in the Commission's rejection of Application I (as revised). These changes are discussed at greater length below.

*3 The Commission treated Application II, despite protestations by the plaintiffs, as an application for a text amendment and zone change. Hearings were held by the Commission on Application II on August 5, 2004, August 19, 2004, September 2, 2004, November 4, 2004 and November 8, 2004.

On September 7, 2004, while the hearings on Application II were ongoing, the Superior Court, Quinn, J., dismissed the plaintiffs' appeal from the Commission's decision on Application I, concluding that substantial evidence in the record supported the Commission's decision. Specifically, Judge Quinn held that the Commission's decision was "based on the substantial public interests in preserving the Oswegatchie Hills area as open space, protection of the public's health due to the limited facilities for water and disposal of sewage, the adverse traffic conditions, protection of area waters from the fallout of dense development on the slopes and thin top soil of the area as well as protection of the Oswegatchie Hills' fragile ecosystem. The commission properly concluded that these public interests clearly outweighed the need for affordable housing at this location. Because the reasons are site-specific, there were no reasonable changes that could have been made to accommodate the other adversely impacted public interests found." *Landmark Development v. East Lyme Zoning Commission,* Superior Court, judicial district of New Britain,

Docket No. CV 02 05204475 (Sept. 7, 2004, Quinn, J.). Accordingly, Judge Quinn dismissed the plaintiffs' appeal from the Commission's decision regarding Application I. The plaintiffs subsequently sought certification to appeal from the Appellate Court, which was denied on November 17, 2004.

On January 6, 2005, the Commission denied Application II. Because the Commission treated Application II as including an application for a text amendment and a zone change, the Commission's decision is divided into three parts. First, the Commission concluded that any text amendment would be inadequate to protect the substantial public interests in health and safety and inadequate to promote affordable housing. Among other things, the Commission determined that the type of high density development contemplated by the application could only be supported by public water and sewer.

Second, the Commission concluded that the application for any zone change contravenes substantial public interests in health and safety. The Commission's principal reasons for its conclusion can be summarized as follows: (1) the proposal is incompatible with the local and state plan of development and the preservation of Oswegatchie Hills as open space; (2) the site is unsuitable for high-density multi-family housing because it (a) lacks infrastructure and capacity to provide adequate water and sewer, (b) has poor soil characteristics and (c) no motor vehicle access; (3) the proposal would adversely impact Long Island Sound, the Niantic River and surrounding woodland habitats; and (5) the affordable housing units are not comparable to the market-rate units.

*4 Finally, the Commission addressed the applicants' specific affordable housing plan. Recognizing that the proposed development need not be in strict compliance with East Lyme's existing zoning regulations, the Commission nevertheless concluded that the proposal must be denied for numerous reasons. These reasons included, by specific incorporation, each of the Commission's findings articulated in the portion of its decision denying a zone change. Additionally, the Commission concluded that the application does not comply with Section 32 of East Lyme's affordable housing regulations because it lacks necessary information required by the regulations. Accordingly, the Commission denied the applicants permission to proceed with its development plan. This appeal, brought pursuant to General Statutes § 8-30g, followed.

Further findings are set forth below as necessary to address the claims of the parties.

II LEGAL ANALYSIS

A. Aggrievement and Jurisdiction

1. Aggrievement

"[P]leading and proof of aggrievement are prerequisites to a trial court's jurisdiction over the subject matter of an administrative appeal ... It is [therefore] fundamental that, in order to have standing to bring an administrative appeal, a person must be aggrieved." (Citation omitted; internal quotation marks omitted.) *Bongiorno Supermarket, Inc. v. Zoning Board of Appeals,* 266 Conn. 531, 537-38, 833 A.2d 883 (2003).

An appeal brought pursuant to § 8-30g, challenging the denial of an affordable housing application, requires proof of aggrievement. *Trimar Equities, LLC v. Planning & Zoning Board,* 66 Conn.App. 631, 638-39, 785 A.2d 619 (2001). Under § 8-30g, only an affordable housing applicant may initiate an appeal from the decision of a commission. *Ensign-Bickford Realty Corp. v. Zoning Commission of Simsbury,* 245 Conn. 257, 267, 715 A.2d 701 (1998). It is well established that an owner of property that is the subject of the application is aggrieved. See, e.g., *Quarry Knoll II Corp. v. Planning & Zoning Commission,* 256 Conn. 674, 703, 780 A.2d 1 (2001).

In this case, the parties stipulated, and the court finds proven, that both Landmark and Jarvis are the applicants and currently own the property. Accordingly, the plaintiffs are aggrieved.

2. Timeliness and Service of Process

Pursuant to General Statutes § 8-8(b), (f), and (g), an appeal shall be commenced by service of process within fifteen days from the date that the commission's notice of decision is published. It shall be commenced by leaving two copies of the process with the clerk of the municipality. See General Statutes §§ 8-8(f) and 52-57(b)(5). Notice of the Commission's denial of Application II was originally published in the *New London Day* on January 13, 2005. The plaintiff served the Commission on January 27, by

