

25. At a meeting held December 11, 2012, the defendant Commission denied Landmark's sewer capacity application, declining to allocate a single gallon of capacity to the property or the Residential Development Area, see Exhibit B.

26. The defendant Commission's denial resolution, Exhibit B, asserts among other claims that "[the] Commission has wide discretion in connection with the decision to supply sewer service to particular properties"

27. The Commission's denial resolution also claims that the remaining sewer capacity is "between 130,000 and 225,000 gallons per day"; and such capacity "must be made available to the areas of Town already designated to receive sewer service and to those customers who have the option to connect to the sewer system as a result of assessments levied on their properties."

28. The defendant Commission published notice of its denial in the *New London Day* on December 18, 2012.

29. The defendant Commission's denial is illegal, *ultra vires*, and unsupported by substantial evidence in the record in one or more of the following respects:

a. Because the Residential Development Area is within the Town's sewer service area, ample capacity exists, no system extension is needed, and all technical requirements can be satisfied, the Commission had a non-discretionary / ministerial obligation to approve the capacity determination;

b. The Commission's calculation of available capacity uses improper and indefensible statistics, such as using maximum daily flow when average daily flow is the accepted engineering standard, and using six year averages that do not reflect current or expected sewer system conditions;

c. The denial resolution does not identify, specify, quantify, or provide a recent or current schedule for connecting properties that have been subject to assessments;

d. The Commission's denial is not based upon any objective, written criteria that a water pollution control authority is legally authorized to apply to a sewer application, but instead is based on its subjective preference for certain uses of land; and

e. The Commission acted in excess of its statutory authority and outside the scope of its jurisdiction in basing its decision on zoning considerations and land use preferences, thereby usurping the exclusive authority of the Town's Zoning Commission.

30. Plaintiffs Landmark Development Group LLC and Jarvis of Cheshire LLC are statutorily aggrieved as they are the owners of the subject property and applicants for the sewer capacity determination that was denied.

WHEREFORE, plaintiffs Landmark Development Group LLC and Jarvis of Cheshire LLC respectfully request the following relief:

1. That this appeal be sustained and the actions of the East Lyme Water and Sewer Commission on December 11, 2012, denying the application of Landmark for approval of a sewer capacity determination, be reversed;
2. That the East Lyme Water and Sewer Commission be ordered to approve Landmark's application; and
3. Such other relief at law or in equity as the Court deems appropriate.

PLAINTIFFS,
LANDMARK DEVELOPMENT GROUP LLC
AND JARVIS OF CHESHIRE LLC

By Timothy S. Hollister

Timothy S. Hollister
thollister@goodwin.com
Commissioner of the Superior Court
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103-1919
PHONE: (860) 251-5000
FAX: (860) 251-5318
Juris No. 057385

Please enter the appearance of
Shipman & Goodwin LLP for
plaintiffs Landmark Development
Group LLC and Jarvis of Cheshire LLC

Shipman & Goodwin LLP
Shipman & Goodwin LLP

EXHIBIT B

LANDMARK DEVELOPMENT GROUP, LLC APPLICATION FOR DETERMINATION OF SEWER CAPACITY

December 11, 2012

WHEREAS, on June 1, 2012, Landmark Development Group, LLC and Jarvis of Cheshire ("Applicant") filed with the East Lyme Water and Sewer Commission ("Commission"), acting as the East Lyme Water Pollution Control Authority, an application "pursuant to §7-246a(1) of the General Statutes, seeking confirmation of the availability of 237,090 gallons per day of sewage disposal capacity in the Town's sewer system to serve Landmark Development's proposed residential development adjacent to Caulkins Road"; and

WHEREAS, at the public hearing on the application held on August 24, 2012, the Applicant amended its application to request availability of 118,000 gallons per day of sewage disposal capacity in the Town of East Lyme's ("Town") sewer system; and

WHEREAS pursuant to General Statutes §7-246a(1), the Commission is required to determine the adequacy of sewer capacity related to a proposed use of land; and

WHEREAS, the Commission held three public hearings on the application and listened to hours of testimony during those hearings. Numerous exhibits were submitted by the Applicant, the Commission, and individuals for consideration during the hearing process. In making its decision the Commission is considering and taking into account all of the testimony and exhibits submitted at the three hearings; and

WHEREAS, the Commission has wide discretion in connection with the decision to supply sewer service to particular properties; and

WHEREAS, the Commission finds that less than 60% of the Applicant's proposed residential development is located within the Town's sewer service district; and

WHEREAS, the Town's Facilities Plan provides for sewers to be constructed in other areas of the Town which are wholly located within the Town's sewer service district and upon which assessments have been levied; and

WHEREAS, the Town has supplied sewer service to areas of the Town where customers have the option to connect to the sewer system as a result of assessments levied on their properties but have not yet connected; and

WHEREAS, the Town's Facilities Plan provides for sewers to be constructed in other areas of the Town which are wholly located within the Town's sewer service district and to which sewers are not presently available; and

WHEREAS, the Town's Facilities Plan, as amended by a report prepared by Fuss & O'Neill, Inc., entitled "Wastewater Collection System Capacity Analysis Planning Report", dated September, 2007, estimates that a full build-out of all the areas designated for sewer service, including those to which sewer service is presently provided, will require approximately 3,645,000 gallons per day of sewage treatment capacity; and

WHEREAS, pursuant to an agreement with the Town of Waterford and the City of New London ("Agreement"), the Town is entitled to make use of 15% of the treatment capacity of the Piacenti Facility (the New London Waste Water Treatment Facility); and

WHEREAS, the current treatment capacity of the Piacenti Facility is 10,000,000 gallons per day; and

WHEREAS, pursuant to the Agreement, the Town is currently entitled to 1,500,000 gallons per day of sewage treatment capacity at the Piacenti Facility; and

WHEREAS, pursuant to orders from the Connecticut Department of Energy and Environmental Protection, the Town is required to reserve 478,000 gallons per day of its available sewage treatment capacity for the benefit of various state facilities located in the Town, and this amount is not available to the Town or any other customers of the Town; and

WHEREAS, the Commission finds that the Town has between 130,000 and 225,000 gallons per day of remaining sewage treatment capacity; and

WHEREAS, the 118,000 gallons per day of sewage capacity requested by the Applicant represents between 52% and 90% of the Town's remaining sewage treatment capacity; and

WHEREAS, the 118,000 gallons per day of sewage capacity requested by the Applicant represents more than 10% of the Town's current daily sewage flow; and

WHEREAS, the remaining sewage treatment capacity must be made available to the areas of the Town already designated to receive sewer service and to those customers who have the option to connect to the sewer system as a result of assessments levied on their properties; and

WHEREAS, the Commission finds that the capacity requested in the application is a disproportionately large allocation of the Town's remaining sewage treatment capacity, and that there is not adequate sewer capacity related to the proposed use of land;

BE IT THEREFORE RESOLVED, that the East Lyme Water and Sewer Commission, acting as the Town's Water Pollution Control Authority, hereby DENIES the application of Landmark Development Group, LLC, and Jarvis of Cheshire, for confirmation of availability of 118,000 gallons per day of sewage disposal capacity in the Town's sewer system, for the reason that the capacity requested in the application is a disproportionately large allocation of the Town's remaining sewage treatment capacity, and that there is not adequate sewer capacity related to the proposed use of land.