

EAST LYME BOARD OF SELECTMEN  
PUBLIC HEARING OF SEPTEMBER 3, 2025  
MINUTES

PRESENT: Board of Selectmen Members Dan Cunningham, Rose Ann Hardy, Candice Carlson, Jason Deeble and Don MacKenzie

EXCUSED: Ann Cicchiello

ALSO IN ATTENDANCE: Chief Operating Officer Water & Sewer Ben North, Public Works Director Joe Bragaw, Town Attorney Tim Beasdale

Mr. Cunningham opened the Public Hearing at 7:00 p.m., led the Pledge of Allegiance, and then read the Public Hearing Notice into record.

Attorney Beasdale explained that this is a continuation of the August 6, 2025, public hearing to discuss the proposed sewer moratoria ordinance. At the public hearing on August 6<sup>th</sup>, the Board of Selectmen directed him to review the time limits imposed by other municipalities and come back with some options as they were not in agreement with leaving the ordinance duration open ended. After some research and consulting with Water & Sewer staff, the town attorney is proposing a three-year limit on this ordinance, suggesting an expiration date of December 31, 2028. He also noted that this would theoretically bring us midway through the anticipated time frame of expanding the New London plant. The Water & Sewer department has been tasked with reporting to the Board of Selectmen by October 31, 2026, their progress and any anticipated plans for the expansion of the New London plant. Attorney Beasdale further explained that should the Board of Selectmen decide to extend the moratoria beyond the set date of December 31, 2028, a public hearing would need to be called to get the public's feedback before an extension would be considered.

Glenn Russo, Landmark Development, spoke in opposition of the Town enacting a sewer moratorium. He reviewed his history with the Town spanning over 20 years, and which is detailed in the attached Exhibit #1.

Mr. North explained that he understands Mr. Russo's frustration, but that this is a new administration and new Water & Sewer staff, and he and the Commission are looking to concentrate on the present-day capacity issue and actions that can be taken to improve said situation for the future. He explained that the Town has reached out to both the State and New London to ask if they would consider giving up some of their allotment, to no avail. He noted that a good portion of the allocation that Mr. Russo mentioned is earmarked for State properties; York Correctional Institute, Rocky Neck State Park and Stone Ranch, and that the Town cannot touch this portion of allotment. With recently built affordable housing units in both Rocky Neck Village and on N. Bridebrook, the town is clearly not trying to hinder such projects, but would simply like to take an opportunity to work on solid future plans for expansion.

To watch the full meeting and to find a full transcript using the Town of East Lyme YouTube channel, please go to <https://eltownhall.com/government/videos/>

**MOTION (1)**

Motion by Ms. Hardy to close the Public Hearing and adjourn at 7:53 p.m.  
Seconded by Ms. Carlson. Motion passed 5-0.

Respectfully Submitted,



Sandra Anderson  
Recording Secretary



**Exhibit 1**

Exhibit #1

BOS Public Hearing  
Sept. 3, 2025

Landmark/Glenn Russo

MINUTES FROM PHONE CONFERENCE WITH ATTY. FULLER  
FEBRUARY 1, 2001

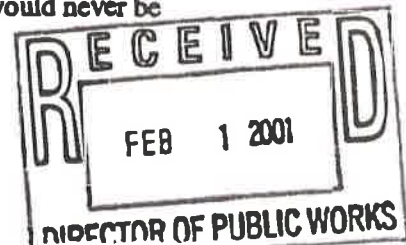
Mr. Fraser suggested that a review of the regulations and proposals be made by staff and an agreement should be reached on what can be built in Oswegatchie Hills. He added that he would then have Waterford, Regional Planning, State Highway, and an independent engineer come to a fair and honest proposal about what can be done. He stressed staff should only consider and review the 230 acres, not the entire parcel. He added that this small parcel abuts Route 1 and there is approximately 85 feet on Boston Post Road, so the frontage is very limited. It was his understanding that the applicant owns approximately 80 acres and has options on the remaining 150 acres. He added the frontage is very steep and runs along Latimer Brook and the rest of the property is landlocked.

First Selectman Wayne Fraser, Director of Public Works Fred Thumm, Town Planner Jean Davies, and Zoning Official Bill Mulholland were in attendance for a phone call placed at 9:00 a.m. to Atty. Fuller.

Fred Thumm noted that this property was outside the sewer shed and would never be watered or sewerd.

Jean Davies stated that there were three items in question:

- the appraisal
- the zone change AFD
- the appeal - zoning.



Atty. Fuller inquired what the real likelihood of the State coming up with money to purchase this land was.

Mr. Fraser responded the change was very good due to the open space funding that was available and the State was making this a major priority. He has been informed by the State that the money is not the problem, but a fair appraisal is.

Atty. Fuller noted that an evaluation would be made to determine the highest and best use of a property and therefore, the stage of development on this parcel is important. He added that a parcel with an approved subdivision is worth much more than raw land and if DEP condemned it would be our best bet. He added that there is a big difference between filing conceptual plans and an approval.

Staff agreed that there is no approved application or significant one underway.

Mr. Fraser noted that David Leff of DEP was fully supportive of the Town's actions however, there was never any talk of condemnation.

Atty. Fuller stated that even if the 5-acre zoning does not stand up, you still have 3-acre zoning and you cannot get that much out of it.

Fred Thumm noted that the Facilities Plan in 1981 excluded this portion of land from the sewer shed. East Lyme has purchased 1.5 million gallons per day and we are presently at 55% usage. The ultimate build out of the sewer shed will take up all of the capacity.

Atty. Fuller stated that Affordable Housing cannot override sewer and the Water and Sewer Commission does not have to accommodate.

Mr. Fraser inquired about another proposed development in this vicinity of Boston Post Road. He noted that the pipe size would be controlled however, the pipe would pass in front.

Atty. Fuller stated that this would be defensible and there would still be a capacity problem and in a sewer shed area, capacity is taken into account.

Mr. Thumm noted that this area is isolated by I-95 and abuts Waterford. Waterford had been contacted to supply water and they will not allow more than 50,000 per day additional.

Atty. Fuller suggested getting all documentation from Water and Sewer for the public hearing.

#### TRAFFIC:

Atty. Fuller stated that if a study is submitted that states that this development will not adversely affect present traffic conditions. The Zoning Commission could request a traffic study by the applicant or do one itself. He added that Bill Mulholland could ask them if they are going to do a traffic study. He noted that traffic could be a reason to deny the Zoning application.

Atty. Fuller stated that the Town could adopt their own affordable housing regulations but it does not mean that a developer has to follow them. The developer could submit their own.

Atty. Fuller noted that the Zoning Commission should treat both items together, but notice separately.

It was agreed that the next conference call with staff would occur on February 9 at 9:00 a.m.

The call ended at 10:30 a.m.

Mr. Thumm and Ms. Davies were to check on traffic studies regarding time needed to perform and review.

Ms. Davies would check with DEP to have them inquire if DOT would perform traffic study.

Write memo to Bill M. asking about traffic study

## **POTENTIALS**

### **1. NO AVAILABILITY FOR WATER AND SEWER**

- Not in sewer shed, commitment elsewhere for availability. This plan would consume a lot of sewer and would require an extension.
- Without water and sewer, cannot get affordable housing project through.
- WATER AND SEWER COMMISSION HAS NO OBLIGATION TO EXTEND TO PROPERTY - DOES NOT FALL UNDER AFFORDABLE HOUSING ACT.

### **2. RECOMMENDATION IN PLAN OF DEVELOPMENT AS OPEN SPACE SUPREME Court DECISION - CHRISTIAN ACTIVITIES VS. GLASTONBURY RE OPEN SPACE.**

-Parcel always recommended for open space in Plan of Development.  
Supreme Court said this was a viable reason to deny.

### **3. TRAFFIC CONSIDERATIONS**

Mr. Fraser noted this proposed development would enter and exit on Boston Post Road within ¼ mile of I-95 and within 300 feet of Route 1. He added there were severe site line issues.

Atty. Fuller inquired about a traffic report. He added that we need to resolve the question if they have submitted enough or if the Zoning Commission can request more. He added that Mr. Fraser should not appear on the record or before the Commission in this matter. He stated that the Planning Commission could take an official position. He suggested that an official booklet be set up utilizing the chronology as an index and passed as an Exhibit to the Zoning Commission, noting it was important to get this information into the record. He added that all evidence should be offered at public hearing, adding that the only exception to this was consultants to the commission could submit data to explain things - reports could be submitted later. He stressed whatever we submit, submit it at the public hearing - this gives the other side the opportunity to comment.

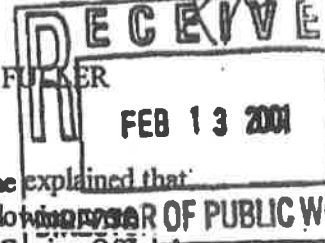
### **4. ECOLOGICAL:**

Atty. Fuller noted that an environmental consultant could be hired to discuss what extent this proposed development might adversely impact. Review archeological and wetlands.

Bill Mulholland noted he would circulate the conceptual plans to other departments, as is custom, to gather comments.

Atty. Fuller stated that the Zoning Commission needs a basis for denial. He suggested including the water and sewer report, addressing traffic and environmental, and the Planning Commission's report in the record.

MINUTES FROM PHONE CONFERENCE WITH ATTY. FULLER  
FEBRUARY 9, 2001



A phone call was placed by Jean Davies to Atty. Fuller at 9:10 a.m. She explained that Mr. Fraser was in Hartford testifying before the Legislature, so the following were present: Director of Public Works Fred Thumm, Planner Jean Davies, Zoning Official Bill Mulholland, Sanitarian George Calkins.

It was decided that a set of minutes would be sent to Atty. Fuller.

STATUS UPDATE:

Ms. Davies noted that she had spoken with DEP and they felt the negotiations were not working and were considering notifying Landmark that they would be withdrawing their proposal. She explained that the problem is not the concept, but the price. It is believed that Landmark does not want to build this, he is trying to "jack up" the price with the highest and best use of the property.

Wayne Fraser has been actively talking with Glen Russo of Landmark. Russo's Attorney has contacted Bill Mulholland about potentially withdrawing. We submitted a request to go on to the property to perform an environmental review (free to the Town by the County Soil and Conservation through USDA). They then started talking more aggressively about withdrawing. We have not received a withdrawal notice. As of yesterday, we are still moving ahead with the defense of the application and he is still moving ahead regarding issues of appraisal – what are the potential options for this property. Friends of Oswegatchie Hills contacted the Town yesterday, making a plea on the part of Russo and Landmark noting that there actually might be two points of access. If you want to go in for subdivision, are you willing to sit down with them....

We will be talking to Waterford – the neighboring town within 500 feet of the border. Water and Sewer will be coming across from Waterford.

Atty. Fuller inquired what the Regional Planning agency say about this?

Bill Mulholland noted that all the referrals are out to the appropriate agencies, but we have not had responses. He has talked to all of them and they are very supportive.

Wayne talked with DOT re: getting an STC evaluation on Route 1. Preliminary feedback so far is: definitively a stoplight and most probably with the volume of traffic extra turning lanes needed.

Atty. Fuller inquired of any indication of level of service at the present time.

Ms. Davies responded that they had not gotten back to Wayne on that.

Fred Thumm stated that the sewer capacity is not there – not even a close call. The last time the sewer shed was adjusted (it was extended for another subdivision) which was

two years ago, we did the capacity analysis at that time. They said if we make any further adjustments in the sewer shed, we would have to take out properties from the sewer shed that have been promised sewer availability in the future. These statements were in the record.

Atty. Fuller requested a copy of this information.

Mr. Thumm talked to a traffic-reporting firm about cost and to review someone else's report would cost \$5000, to perform one for us would cost \$10,000 - \$12,000.

Atty. Fuller stated that the Commission should require a traffic study - they should definitely do one. My initial reaction is that they would do the report. At that point it should be reviewed and make sure that they can tell from their review if they need to go further with a full study.

Atty. Fuller noted that if you do not have the requirement for a traffic study in the regulations, you cannot compel them to perform one however, it is not unreasonable to request one. He added that they are trying to sell to the Zoning Commission that this property can handle this development. Even if they do not intend to build, they should agree to do it. He added he assumed that they would automatically perform a traffic study.

Mr. Mulholland inquired if they do not submit a traffic study and the Zoning Commission denies the application, can the Board cite the traffic concerns as a reason.

Atty. Fuller responded in the affirmative. You can get the basic data from the DOT. They can tell you what your level of service is and give you some input. They talked about a traffic light so they're talking about some change here. If they don't provide the information, as long as you document with some more specifics besides just saying they did not provide it, I think you definitely have a point here. I would be surprised if they did not do a traffic study.

Ms. Davies noted we are concerned with getting permission from them to access property. She inquired what fall back we have.

Atty. Fuller responded that you cannot force them. You have to have some basis to say why you really have to do this. There is a difference between knowing there is a real, potential problem and therefore having to have the information and or just going out there to find something wrong with the property. Generally I do not want the opposition or the Town doing studies on my clients property for a number of reasons. They may very well tell you you cannot do it and you cannot force them to do it. If you are going to raise that as a point, you should have something preliminary to suggest that there might be a problem that you want to investigate. If they say no, they say no. You may have something here about environmental constraints on the property - and you may have this somewhat on the record from this 5-acre zone business. I assume the zone thing was done with a purpose.

The Conservation Commission as part of their application for a permit, has a waiver at the bottom that says when you sign this permit you are allowing us to get on the property to do inspections and to look at property. If it gets there....

Atty. Fuller inquired what does the Conservation Commission do – conserve or...

Ms. Davies replied they are our wetlands agency – going on the property to do a site survey.

Atty. Fuller noted that if the Commission members want to go out to the property I would say that's ok, I would assume they would not object to that. That does not mean you go out with backhoes and do test holes. – a non-invasive study. He added that the environmental group could not go in with the wetlands group. You cannot do full blown environmental study.

Bill Mulbolland inquired at the public hearing if we have the regulation amendment change first and the commission denies it and they choose to go to a subcommittee to write their own regulations.....

Atty. Fuller responded that they could propose their own regulations irregardless if the Town has their own or not. The applicant does not have to go under those, he can go under his own – the two are really independent of one another. You can do your own regulations anyway.

Ms. Davies noted that we had reviewed density – they can propose their own regulations but if the density is not right for the property, it won't carry it.

Atty. Fuller responded that you want to propose a set of regulations that fit your property and make sense. You have in there that water and sewer has to be available and the lot size is whatever, and so on.

Atty. Fuller continued that you need to look at their regulation in addition to the zone change – you have to act on both. The regulation should tie in with what they are proposing for their land. Your reasons for denial might be the regulation in abstract without dealing with the specifics of the property, the regulations in the abstract are too problematical because of — and you have to have decent reasons for it.

Ms. Davies noted the Town does not want to appear exclusionary because we are not.

Atty. Fuller stated if it is unreasonable you can turn it down – you need good reasons to deny the regulation change to – the fact that you have your own is not in and of itself an automatic reason to deny, but certainly worth mentioning.

Ms. Davies said she was thinking the opposite – we do not have a regulation to promote affordable housing – we do have some affordable housing in town. When they met with

me they noted that since the Town did not have any affordable housing regulations they said they were coming in to provide us with this benefit and the town has been so exclusionary (we have approximately 4.3% - our quota is 10%) he would complete our quota.

Atty. Fuller stated that if the development of the property is unreasonable you can turn them down - you just need good reasons. He added that it is not a question of whether or not you are exclusionary, it's a question of if you are meeting the goal. Has to be a suitable project.

Ms. Davies noted that Wayne has requested staff not to talk to Russo and Landmark about any other potential development. If they come in and want to talk subdivisions that can be allowed on the property currently.....

Atty. Fuller stated there is no reason not to talk to him. Let them come in like anybody else.

Ms. Davies stated that a future meeting would be at the discretion of Mr. Fraser.

Atty. Fuller responded we will see what happens - see if they withdraw. Wayne can call when he wants and we will go from there.

The call ended at 9:40 a.m.

## Exhibit 2

Nickerson How?

Bellis Because it said, 'it's especially true' of that particular site.

Nickerson Okay, we'll move on. Sir.

Bulmer Mr. Bellis, I have some questions. I'd like to refer to the letter that you just read. No page numbers here, but.....Oh, okay, page 7, third reason, well let me back up a few sentences so I don't lose the gist of this. Starting right in the middle. See that 'Moreover, the Niantic River'? Middle of the first paragraph. "Moreover the Niantic River in the area of the applicant's property has been acknowledged to be polluted by failing septic systems in the Golden Spur area." Now, this is the sentence I want to call your attention to. 'The applicant's willingness to pay for the extension of sewer lines to its property through Golden Spur area would actually provide the means to correct, not add to that pollution'. We had a rather animated discussion last week about sewer lines coming out. You had your expert, Mr. Jason Sarojak, who spoke to sewer lines and water lines last week. And I kept trying to push him on the issue of where to connect the sewer lines and water lines to the point where Mr. Zizka jumped in to save him because he didn't come up with a good answer. But, let me quote you a few lines.

Bellis I don't agree with that characterization.

Bulmer I understand. But this is my point that I'm making. And you can respond to it when I'm finished please. Let me quote to you some items from prior testimony. "Lack of public sanitary sewers: The statutory report of the Planning Commission, Exhibit 6, (this was back in the initial testimony before the appeal) and supporting documents and testimony of the Planning Director and Director of Public Works- Exhibit 13- the testimony of the 1<sup>st</sup> Selectman and Chairman of the Water & Sewer Commission-Exhibit 11 (these three pieces of testimony) reference report from the State of CT Office of Long Island Sound Programs -Exhibit 10-(there's four different people testifying) has provided sufficient evidence that public sewers are not available and that the subject area is outside the sewer shed boundary". You heard additional testimony tonight to that effect from both the 1<sup>st</sup> Selectman and from the Office of Long Island Sound Programs. So, I ask you again, where are you going to connect your sewer lines?



**STATE OF CONNECTICUT**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**



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

### Exhibit 3

DOCKET NO: HHD CV-15-6056637-S : SUPERIOR COURT  
LANDMARK DEVELOPMENT GROUP, LLC Et Al : JUDICIAL DISTRICT OF  
V. : HARTFORD  
EAST LYME WATER & SEWER COMMISSION : JULY 6 2016

#### MEMORANDUM OF DECISION

Prior to the commencement of the present action, the plaintiff, Landmark Development Group, LLC, brought an appeal against the defendant, East Lyme Water and Sewer Commission, regarding a sewer capacity determination. Before rendering a decision, the court reviewed the record, including the methodology for the grant of capacity. On June 26, 2014, the court ruled that the defendant must reconsider the allocation of sewer capacity in the amount of 13,000 gallons per day to the plaintiff, Landmark Development Group, LLC. See *Landmark Development Group, LLC v. East Lyme Water & Sewer Commission*, Superior Court, judicial district of Hartford, Docket No. CV-13-6040390-S (June 26, 2014, *Cohn, J.*). In so ruling, the court indicated that the defendant must consider the *Forest Walk, LLC v. Water Pollution Control Authority*, 291 Conn. 271, 968 A.2d 345 (2009) factors. More specifically, in regard to capacity, the defendant must "consider the remaining capacity for the entire town, the land area represented by the property versus the available land area in the town, the safe design standards

HARTFORD J.D.  
SUPERIOR COURT  
OFFICE OF THE CLERK

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FILED

mailed to all counsel & OCR 7/6/16 ab/co

for the public sewer, and the percentage of the allocation versus the total remaining capacity.” *Landmark Development Group, LLC v. East Lyme Water & Sewer Commission*, supra, Superior Court, Docket No. CV-13-6040390-S. On July 29, 2014, the court denied the defendant’s motion to reargue. See *Landmark Development Group, LLC v. East Lyme Water & Sewer Commission*, Superior Court, judicial district of Hartford, Docket No. CV-13-6040390-S (June 29, 2014, *Cohn, J.*).

In the present action, which was commenced on November 24, 2014, the plaintiffs, Landmark Development Group, LLC, and Jarvis of Cheshire, LLC, ask the court to review a grant of capacity of 14,434 gallons per day to the plaintiffs by the Board. On February 19, 2015, the plaintiffs filed their appeal brief. On March 16, 2015, the defendant, East Lyme Water and Sewer Commission, filed its appeal brief.<sup>1</sup> On March 30, 2015, the plaintiffs filed a motion for permission to supplement the record in administrative appeal. The court heard oral argument on April 2, 2015. On the same day, the court granted the plaintiffs’ request, but only as to exhibit C, a letter from Mark S. Zamarka.

On July 23, 2015, the plaintiffs filed a motion to conduct further discovery/deposition, and to supplement the record. Specifically, the plaintiffs asked the court for permission to take

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<sup>1</sup> The two intervening entities, Friends of the Oswegatchie Hills Nature Preserve, Inc., and Save the River-Save the Hills, Inc., have also filed briefs in this action.

the deposition of the Board's administrator, Bradford Kargl, regarding approval of the connection application by Gateway (a similarly-situated apartment complex being developed) where over 160,000 gallons per day capacity was contemplated. The motion was granted by the court on September 8, 2015. The deposition revealed that although Kargl was aware of the Gateway capacity need (Plaintiffs' Exhibit 1, Deposition of Kargl, pp. 39-42/A28-A31, 52/A41, 62/A50), and had the duty to monitor this need (Plaintiffs' Exhibit 1, pp. 15/A9, 17/A10, 61-63/A49-51, 69/A57), he approved the connection application without making a capacity determination (Plaintiffs' Exhibit 1, pp. 33/A23, 66-71/A54-58, 74/A62), and without further reference to the Board (Plaintiffs' Exhibit 21).<sup>2</sup>

The court, as indicated in prior rulings, does not believe that a capacity determining action is ministerial, but is instead a matter of discretion for the Board. See *Forest Walk, LLC v. Water Pollution Control Authority*, supra, 291 Conn. 282 ("[A] municipality has wide discretion in connection with the decision to supply sewerage. . . . Although this discretion is not absolute, [t]he date of construction, the nature, capacity, location, number and cost of sewers and drains are matters within the municipal discretion with which the courts will not interfere, unless there appears fraud, oppression or arbitrary action." [Internal quotation marks omitted.]); see also

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<sup>2</sup> The fact that Kargl failed to even review capacity as to Gateway distinguishes this case from the *Forest Walk* factors which have guided the court to this point.

*Straw Pond Associates, LLC v. Water Pollution Control Authority*, Superior Court, judicial district of Waterbury, Docket No. CV-08-4015126-S (March 8, 2011, *Gallagher, J.*) (discretionary standard of review applied to determination of availability of sewer capacity). The defendant's actions are discretionary even where there is a request for a sewer extension permit. See *Landmark Development Group, LLC v. East Lyme*, 374 Fed. Appx. 58, 60 (2d Cir. 2010) ("Plaintiffs had no legitimate claim of entitlement to a sewer-extension permit. Defendants plainly have discretion to deny such permits.").

In light of the supplemental evidence, the court concludes that there is at least 200,000 gallons per day capacity (358,000 gallons per day less 160,000 gallons per day to Gateway) for the entire sewer system.<sup>3</sup> The defendant had broad discretion in determining capacity, but the defendant was obligated to consider capacity when it approved the connection application for Gateway. As to the plaintiff, the court finds that with the large amount of capacity remaining,

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<sup>3</sup> In its prior June 26, 2014 decision, this court noted that, as to remaining capacity, "[t]he record before the court shows a range of 130,000 gpd to 225,000 gpd. At the meeting of the commission on February 25, 2014, the figure of 177,000 gpd was used as a compromise. In court on May 27, 2014, the commission's attorney conceded that the commission would not object to a figure of 250,000 gpd. Finally, Landmark points to a reduced usage by the town and state facilities so that the correct figure is between 308,000 gpd and 358,000 gpd." *Landmark Development Group, LLC v. East Lyme Water & Sewer Commission*, supra, Superior Court, Docket No. CV-13-6040390-S. More recently, during the commission's October 2014 remand proceeding and resolution, the commission applied the plaintiff's figure of 358,000 gallons per day. (Amended Return of Record, Exhibit D, Postproceeding Exhibits 2, 3).


the capacity figure of 14,434 gallons per day is excessively low. There is an abuse of discretion<sup>4</sup> that the Board must correct. Although the Board is not required to grant the plaintiffs their request for 118,000 gallons per day, the capacity figure of 14,434 gallons per day is insufficient in view of the present remaining capacity of at least 200,000 gallons per day, and in view of the 160,000 gallons per day that was approved for Gateway. In reconsidering the allocation of the sewer capacity, the Board must comply with applicable sewer statutes, regulations and ordinances, and the Board should take into account the demands of the plaintiffs' sewer project and the effect on remaining capacity. Nevertheless, the Board must provide the plaintiffs with sufficient capacity to further the development of their project, and, as such, the Board may not settle on a figure for capacity that would completely foreclose the development of the plaintiffs' project.

This matter is remanded to the Board for a further ruling and is a final decision for purposes of appeal.

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<sup>4</sup> "When a water pollution control authority performs its administrative functions, a reviewing court's standard of review of the [authority's] action is limited to whether it was illegal, arbitrary or in abuse of [its] discretion . . . . Moreover, there is a strong presumption of regularity in the proceedings of a public agency, and we give such agencies broad discretion in the performance of their administrative duties, provided that no statute or regulation is violated." (Citation omitted; internal quotation marks omitted.) *Forest Walk, LLC v. Water Pollution Control Authority*, *supra*, 291 Conn. 285-86.

SO ORDERED,

A handwritten signature in dark ink, appearing to read "Henry S. Cohn". The signature is written in a cursive style with a large, stylized "H" and "C".

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COHN, JTR

Exhibit 4



# Appellate court rules against East Lyme in sewage capacity case

Published September 06, 2018 7:40PM | Updated September 06, 2018 8:21PM

By **Martha Shanahan** (/apps/pbcs.dll/personalia?ID=m.shanahan) Day staff writer

m.shanahan@theday.com (mailto:m.shanahan@theday.com) martha\_shan (http://www.twitter.com/martha\_shan)

In the latest step of a protracted legal battle (<http://civilinquiry.jud.ct.gov/CaseDetail/PublicCaseDetail.aspx?DocketNo=HHD CV156056637S>) between East Lyme's Water and Sewer Commission and the developer of a proposed housing development, an appellate court in Hartford has ruled (<http://civilinquiry.jud.ct.gov/DocumentInquiry/DocumentInquiry.aspx?DocumentNo=15246021>) that the commission must grant the developer more access to the town's sewer system than the commission wants to give it.

The town's lawyers plan to petition the state Supreme Court to appeal the Aug. 21 ruling, which affirms a state Superior Court judge's 2016 order (<https://www.theday.com/local/20160724/judge-says-east-lyme-commission-must-reconsider-sewage-capacity-for-oswegatchie-hills-development>) that the commission must reconsider the amount of sewage capacity it is willing to grant for a proposed 840-unit residential development adjacent to the Oswegatchie Hills Nature Preserve along the Niantic River.

Over more than a decade, Landmark Development has sought to develop houses on the 236 acres it owns in the Oswegatchie Hills.

The plan has generated local opposition (<http://www.theday.com/local/20160609/group-seeking-to-prevent-oswegatchie-hills-development-rallies-for-support>), which in recent years has taken the form of a coalition between Connecticut Fund for the Environment and two local groups arguing that the development would pollute the Niantic River and degrade wetlands on the property.

Landmark Development and its president, Glenn Russo, also have hit speedbumps before the town's Water and Sewer Commission, which regulates new connections to the pipes and pumps that bring sewage from East Lyme buildings through Waterford to a sewage treatment plant in New London.

A deal between East Lyme, Waterford and New London allows each town to send a certain amount of sewage to the New London sewage treatment plant — 15 percent of the plant's capacity, or about 1 million gallons a month in East Lyme's case — and limits the towns' ability to grant permission to build new sewer lines or allow new developments to connect to the existing ones.

In 2014, the Water and Sewer Commission denied Landmark's request for a guaranteed 118,000 gallons of sewage capacity per day for the development.

Nickerson said he is confident in the town's appeal.

The commission should have the ability to oversee management of its sewage systems without court interference, he said.

"The judges can't force us to put the sewer in there," he said.

He added that the extension of the sewer lines to the Oswegatchie Hills would constitute an unsuitable use of the town's increased capacity the town is saving for other neighborhoods where the houses still use septic systems.

Nickerson said he is confident in the town's appeal.

The commission should have the ability to oversee management of its sewage systems without court interference, he said.

"The judges can't force us to put the sewer in there," he said.

He added that the extension of the sewer lines to the Oswegatchie Hills would constitute an unsuitable use of the town's increasingly limited capacity for adding new inputs to the sewer system and would eat up sewage capacity the town is saving for other neighborhoods where the houses still use septic systems.

The Department of Energy and Environmental Protection has put pressure on the town to expand sewer capacity to those neighborhoods to alleviate pressure on aging septic systems, which takes priority over development proposals like the Landmark plan, Nickerson said.

"If we had unlimited capacity and unlimited funds, we would give out all sorts of capacity," he said.

Exh. 37  
9/2/04

**RESOLVED:** The East Lyme Board of Selectmen desires to state as a matter of public record that it is worthwhile to remind the Zoning Commission that the Oswegatchie Hills is especially suitable for preservation as open space, and that the public interest is best served by insuring that this property remain in it's present undeveloped state for use by future generations of the public. The Board of Selectmen urges the Zoning Commission to take this into consideration as it makes its decision on Landmark Investment Groups' application.

9/2/04

Rose Ann Hardy  
read - resolved for  
Board of Selectmen

Exhibit 6

**Evaluation of Capacity at the  
Thomas E. Piacenti Wastewater  
Treatment Plant  
New London, Connecticut**

**Prepared for:**

**PUBLIC UTILITIES  
CITY OF NEW LONDON, CONNECTICUT**

**May, 2012**

**Prepared by:**



**AECOM**

**500 Enterprise Drive, Suite 1A  
Rocky Hill, Connecticut 06067  
(860) 263-5800**

The State of Connecticut has an agreement with East Lyme to allocate a portion of East Lyme's sewer capacity to State facilities. This reserved capacity serves the Governor's State Camp, Rocky Neck State Park and the Gates and York Correctional Facilities. According to the 2007 Report, the existing flow from the State facilities in 2004 was 249,000 GPD.

### 3. Existing Wastewater Flows from Old Lyme

In the spring, 2010, construction of a low pressure sewer system was completed to serve the Point O' Woods Beach Association. The wastewater from this area connects to the New London regional system in East Lyme. The homes in this area are in the process of connecting to the sewer system, therefore the flows are low at this point in time. For the time period that is used to evaluate current flows and loads (March '08 to August '10), Old Lyme did not contribute any wastewater. There is a flowmeter to monitor the flows and flow recording just began in March, 2011.

### 4. Existing Septage Quantities

Septage is generated from New London, East Lyme and Waterford residents. East Lyme and Waterford are permitted to discharge septage based on the intermunicipal agreements with New London. On average, the treatment plant receives 12,800 gallons of septage each day with a maximum monthly average of 19,300 gallons per day. Based on treatment plant records, peak day septage delivery over the time period was 34,200 gpd.

### 5. Existing Wastewater Flows from New London

To determine the existing wastewater flow from New London, the existing flows from the contributing towns described above were subtracted from the total flows at the treatment plant. Table III-3 presents a breakdown of existing flows for each municipality.

Table III-3: Current Flows New London WWTF

	Annual Average (GPD)	Maximum Monthly Average (GPD)	Hydraulic Peak (GPD)
New London	4,837,000	7,809,000	
Waterford	2,370,000	3,826,000	
East Lyme	1,100,000	1,206,000	
Septage	12,800	19,300	
Total Flows	8,320,000	12,860,000	25,500,000

#### a) Infiltration and Inflow:

To determine the amount of infiltration and inflow (I/I) in the New London system, water consumption data for New London was reviewed from the "New London Water

# **EAST LYME SEWER FLOWS - HISTORY**

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	% +/- Prev. Yr.	Precip. 2025 (in.)
JAN.	787,646	747,284	784,837	781,519	1,090,311	849,497	938,302	942,646	1,029,157	1,177,819	832,968	-29.28%	1.45
FEB.	832,681	809,701	765,648	865,263	842,611	859,175	911,422	988,646	997,413	912,457	836,250	-8.35%	3.88
MAR.	1,017,280	790,851	777,452	927,771	893,805	832,803	886,441	948,873	984,116	1,048,941	875,581	-16.53%	4.72
APR.	938,861	796,611	897,161	778,780	918,456	885,983	962,591	965,456	1,015,438	1,066,788	912,157	-14.50%	3.68
MAY	913,816	777,446	872,268	746,049	947,042	900,485	951,501	922,857	1,061,763	989,756	1,001,494	1.19%	8.74
JUN.	880,190	815,281	849,504	906,535	875,000	882,463	976,981	989,299	984,241	966,701			
JUL.	1,048,427	879,952	883,851	1,026,307	977,552	853,930	1,047,771	995,433	1,086,674	991,582			
AUG.	977,543	868,636	873,017	905,718	932,181	911,419	978,158	1,000,871	1,063,381	955,027			
SEPT.	878,563	762,544	769,493	875,918	833,237	823,590	1,051,008	921,227	1,020,678	851,600			
OCT.	861,521	738,247	752,273	903,915	806,576	812,506	917,384	905,482	1,053,620	813,935			
NOV.	803,842	709,481	732,848	871,111	815,129	786,482	937,414	864,223	954,365	787,600			
DEC.	788,121	728,649	728,437	894,050	927,335	896,694	895,121	950,524	1,057,605	853,600			
AVG	894,041	785,390	807,232	873,578	904,936	857,919	954,508	949,628	1,025,704	951,317	891,690	-13.49%	4.49
												Precip. Total	22.47

Exhibit 7

EAST LYME SEWER FLOWS - HISTORY

	2010 <sup>(1)</sup>	2011	2012	2013 <sup>(2)</sup>	2014	2015	2016	2017	% +/- Prev. Yr.	Precip. 2017 (in.)
JAN.	1,037,939	918,818	956,431	975,330	1,011,343	787,646	747,284	784,837	5.03%	3.87
FEB.	1,001,694	959,700	912,442	1,010,626	994,771	832,681	809,701	765,648	-5.44%	2.05
MAR.	1,424,903	1,001,537	886,778	1,139,232	1,026,812	1,017,280	790,851	777,452	-1.69%	3.89
APR.	1,341,021	938,509	915,628	1,042,500	1,126,058	938,861	796,611	897,161	12.62%	7.34
MAY	1,119,627	1,046,507	1,016,580	1,057,182	1,145,107	913,816	777,446	872,268	12.20%	6.03
JUN.	1,067,205	1,017,256	996,993	1,243,099	1,007,792	880,190	815,281	849,504	4.20%	4.83
JUL.	1,117,893	1,027,843	1,026,063	1,217,939	1,038,583	1,048,427	879,952	883,851	0.44%	2.23
AUG.	1,040,808	970,097	1,018,439	1,203,763	999,147	977,543	868,636	873,017	0.50%	2.79
SEPT.	932,705	1,167,520	912,093	1,288,056	837,706	878,563	762,544	769,493	0.91%	2.42
OCT.	928,254	966,767	949,719	1,020,390	852,281	861,521	738,247	752,273	1.90%	7.22
NOV.	869,937	983,082	963,598	928,615	787,769	803,842	709,481		-100.00%	
DEC.	882,347	1,133,107	983,849	944,611	835,260	788,121	728,649		-100.00%	
AVG.	1,063,694	1,010,895	961,551	1,089,279	971,886	894,041	785,390	822,550	3.07%	

Precip. Total 42.67

(1) March 30, 2010 storm event - 8.88 inches of rain/16.43 inches of rain for the month (Well 3A/3B rain gauge)

(2) 10.65 inches of rain for June 2013 (Well 3A/3B rain gauge)

7.18 inches of rain for July 2013 (Well 3A/3B rain gauge)

# **EAST LYME SEWER FLOWS - HISTORY**

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	% +/- Prev. Yr.	Precip. 2025 (in.)
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MAY	913,816	777,446	872,268	746,049	947,042	900,485	951,501	922,857	1,061,763	989,756	1,001,494	1.19%	8.74
JUN.	880,190	815,281	849,504	906,535	875,000	882,463	976,981	989,299	984,241	966,701			
JUL.	1,048,427	879,952	883,851	1,026,307	977,552	853,930	1,047,771	995,433	1,086,674	991,582			
AUG.	977,543	868,636	873,017	905,718	932,181	911,419	978,158	1,000,871	1,063,381	955,027			
SEPT.	878,563	762,544	769,493	875,918	833,237	823,590	1,051,008	921,227	1,020,678	851,600			
OCT.	861,521	738,247	752,273	903,915	806,576	812,506	917,384	905,482	1,053,620	813,935			
NOV.	803,842	709,481	732,848	871,111	815,129	786,482	937,414	864,223	954,365	787,600			
DEC.	788,121	728,649	728,437	894,050	927,335	896,694	895,121	950,524	1,057,605	853,600			
AVG	894,041	785,390	807,232	873,578	904,936	857,919	954,508	949,628	1,025,704	951,317	891,690	-13.49%	4.49
												Precip. Total	22.47

## EXHIBIT 8

East Lyme Sewer Department						
Sewer Capacity Allocations - October 2024 Update						all figures in gallons
Average Daily Flow Capacity Allocation						1,022,000
Average Daily Flow - 2 Year Average						806,000
Average Daily Flow Remaining - 2 Year Average						216,000
A	Applicant/Development	Type of Use	Additional Project Description		Sewer Capacity Requested or Need Anticipated	Sewer Capacity Allocated and Anticipated
	1 Landmark Dev. Group	Residential	Apartments		118,400	118,400
	2 Nehantic Village	Medical / Residential			75,000	75,000
	Subtotal Gallons Per Day (Group A)					193,400
	B Prior Approved Projects Under Construction (>5,000 gpd and greater)					
				Original Capacity Requested	Construction Completion to date %	
1	Village Crossing (Not Updated)	Residential	Condominiums	14,400	66%	4,752
2	Orchards Subdivision (Not Updated)	Residential	Single Family	42,600	81%	8,307
3	183-185 Main St (ZDM)	Residential	Condominiums	3,600	0%	3,600
4	Brookside Apartments - About 1/3 Occupied	Residential	Multi-family	35,400	31%	24,600
Subtotal GPD (Group B)						41,259
C	Estimated Future Development Needs Based on Previously Assessed Properties Not Presently Connected (Last Updated 2/2023)					
	1 Existing Buildings Assessed but not Connected	Res/ Comm/ Ind	Sewer		76,300	76,300
	2 Vacant Properties in Assessed Areas	Res/ Comm/ Ind	Sewer		60,700	60,700
	3 Pennsylvania Ave Sewer Area	Res/ Comm/ Ind	Area to be		37,347	37,347
	Subtotal GPD (Group C)					174,347
D						
	Total Sewer Capacity Allocated, Anticipated, and Requested (A+B+C+D)					409,006
	Average Daily Flow Remaining 2 Year Average					216,000
	Sewer Capacity Remaining					-193,006

*all figures in gallons*

	Average Daily Flow Capacity Allocation					1,022,000
	Average Daily Flow - 2 Year Average					770,000
	Average Daily Flow Remaining - 2 Year Average					252,000
<b>A</b>	<b>Applicant/Development</b>	<b>Type of Use</b>	<b>Additional Project Description</b>		<b>Sewer Capacity Requested or Need Anticipated</b>	<b>Sewer Capacity Allocated and Anticipated</b>
1	Landmark Dev. Group	Residential	Apartments		118,400	118,400
	<b>Subtotal Gallons Per Day (Group A)</b>					<b>118,400</b>
<b>B</b>	<b>Prior Approved Projects Under Construction (&gt;5,000 gpd and greater)</b>			<b>Original Capacity Requested</b>	<b>Construction Completion to date %</b>	
1	Village Crossing (4/2025 Update)	Residential	Condominiums	14,400	75%	3,600
2	Orchards Subdivision (4/2025 Update)	Residential	Single Family	42,600	90%	4,260
3	183-185 Main St (ZDM, not started yet)	Residential	Condominiums	3,600	0%	3,600
4	Brookside Apartments (4/2025 Update)	Residential	Multi-family	35,400	90%	3,540
	<b>Subtotal GPD (Group B)</b>					<b>15,000</b>
<b>C</b>	<b>Estimated Future Development Needs Based on Previously Assessed Properties Not Presently Connected (Last Updated 2/2023)</b>					
1	Existing Buildings Assessed but not Connected	Res/ Comm/ Ind	Sewer		76,300	76,300
2	Vacant Properties in Assessed Areas	Res/ Comm/ Ind	Sewer		60,700	60,700
	<b>Subtotal GPD (Group C)</b>					<b>137,000</b>
<b>D</b>	<b>Sewer Capacity Requested by Parkers Place LLC (Group D)</b>					<b>8,124</b>
	<b>Total Sewer Capacity Allocated, Anticipated, and Requested (A+B+C+D)</b>					<b>278,524</b>
	<b>Average Daily Flow Remaining 2 Year Average</b>					<b>252,000</b>
	<b>Sewer Capacity Remaining</b>					<b>-26,524</b>

EXHIBIT 9

**EAST LYME WATER & SEWER COMMISSION  
REGULAR MEETING  
TUESDAY, MARCH 28, 2023  
MINUTES**

The East Lyme Water & Sewer Commission held a Regular Meeting on Tuesday, March 28, 2023. Chairman Seery called the Regular Meeting to order at 7 PM.

**PRESENT:** Kevin Seery, Chairman, Dave Bond, Steve DiGiovanna, Dave Murphy, Carol Russell, Roger Spencer, Dave Zoller, Ken Roberts

**ALSO PRESENT:** Joe Bragaw, Public Works Director  
Attorney Edward O'Connell, Town Counsel  
Ben North, Municipal Utility Engineer  
Atty. Theodore Harris, Representing the Applicant  
Robert Pfanner Sr., Representing the Applicant

**ABSENT:** No One

RECEIVED FOR RECORD  
EAST LYME, CT  
2023 APR - 4 A 9:40  
TOWN CLERK

**1. Call to Order / Pledge of Allegiance**

Chairman Seery called the Regular Meeting of the East Lyme Water & Sewer Commission to order at 7:00 PM and led the assembly in the Pledge.

Mr. Seery noted that Mr. North wanted to add an item to the agenda and suggested that it be added as Item 5A.

**\*\*MOTION (1)**

Mr. DiGiovanna moved to add Item 5A to the agenda – Discussion/Action - CT DOT I-95 Interchange Improvements at Rte 161 Construction Phase Services.

Mr. Murphy seconded the motion.

Vote: 8 – 0 – 0. Motion passed.

Mr. Seery introduced Ken Roberts to the Commissioners as he had recently been appointed to replace Mr. Mingo on the Commission.

**2. Approval of Minutes**

▪ **Regular Meeting Minutes – February 28, 2023**

Mr. Seery called for a motion or any discussion on the Regular Meeting Minutes of February 28, 2023.

**\*\*MOTION (2)**

Mr. DiGiovanna moved to approve the Regular Meeting Minutes of February 28, 2023 as presented.

Mr. Murphy seconded the motion.

Vote: 6 – 0 – 2. Motion passed.

Abstained: Mr. Zoller, Mr. Roberts

▪ **Public Hearing Minutes – March 2, 2023**

Mr. Seery called for a motion or any discussion on the Public Hearing Minutes of March 2, 2023.

**\*\*MOTION (3)**

Mr. DiGiovanna moved to approve the Public Hearing Minutes of March 2, 2023 as presented.

Mr. Murphy seconded the motion.

**Vote: 6 – 0 – 2. Motion passed.**  
**Abstained: Mr. Zoller, Mr. Roberts**

### **3. Delegations**

Mr. Seery called for delegations.  
There were none.

### **4. Discussion and Possible Action on Nehantic Village Capacity Request**

Mr. North recalled that the applicant had requested 110,000gpd of capacity and that he had noted that they have limited capacity available and wanted to hear discussion on what the Commission had to say.

Attorney O'Connell said that they had some housekeeping with respect to some Commissioners who were not at the last meeting and asked that they establish their familiarity with the record and tape of that meeting for the record.

Mr. Zoller said for the record that he had read the minutes and reviewed the tape of the previous meeting and felt comfortable in being able to vote this evening.

Mr. Roberts said that he had read the minutes but had not seen the tape and was prepared to abstain from the vote this evening on that issue.

Attorney O'Connell then passed out two different potential motions on the item for the Commissioners to review. He noted that one was to deny and one was to approve and that while the core of them was the same, the final decision was not. He said that they had learned from a past case that it is a must to be thorough in the delivery of the motion which is why they are so lengthy.

Mr. Seery opened the floor for discussion.

Mr. North explained what would be necessary for those already sewer assessed areas (76,000 gpd for the opt-ins and 60,000 gpd for the vacant properties' in the area) a total of 136,000 gpd.

Ms. Russell noted that there was a more recent two-year average that would actually show a negative number and those most recent two-years is more in line with where the trend is going. She said that they should be more seriously looking at that trend.

Mr. North said that they wanted it to reflect the five-year cycle – where we really do not have enough for a project of this size.

Attorney O'Connell elaborated that the 882gpd they like to keep for those who come so that there is 'some' remaining capacity.

Mr. Bond said that they have never exceeded their capacity and that the sewer goes by his house but he has not tied into it yet – perhaps in five years – however the benefit assessment has never been paid. He asked why that capacity is not available to others.

Attorney O'Connell said that they use them as examples of the 'ticket holders' who have a right to hook up and while it is not a hard and fast number it has to be kept in mind that it has to be available to that per/property when they need to or look to connect. You cannot put a precise number on it.

Mr. Bond countered that they then are not making any money from this.

Attorney O'Connell said that it is a matter of sound business practices and you have to have it available to them should they want it. He added that it is also a Commission decision.

Mr. Zoller said that Mr. Bond is driving at a gap between capacity and actual usage. He said that he thinks that we have to be concerned with actual usage and also with seeking more capacity.

Mr. DiGiovanna said that he agrees with both Mr. Bond and Mr. Zoller. He recalled that when the Orchards was approved that running the line up Rte 1 was a benefit to the Town. Likewise, he thinks that running the sewer main up Pennsylvania Avenue would also be a benefit to the Town.

Ms. Russell said that she is concerned with what we are seeing in terms of actual usage over the last two years and feels that we are in serious territory and that we should be looking into acquisition of additional capacity. But – at this time we do not know if/when any is available or what it would cost and we also do not have the funds for it. She said that her thoughts are that this request should be put in a 'delay or hold' status until we have the information that we need. We need to be more thoughtful about this and not approve something that we do not know enough about or where the revenue would come from for it.

Mr. Seery said that Ms. Russell does bring up a lot of good points but we cannot ask a developer with a request to wait while we gather information. He noted that we would be getting a sewer line installed from approximately Oswegatchie Hills down to Main Street. However he said that he is a bit uncomfortable with the full capacity request.

Mr. Spencer asked about the number that they would have in mind.

Mr. North said that they felt that half – 55,000 gpd would be in line and that it would enable them to do the project. He added that he would also love to see them review some re-use brown water system which the DPH would have to review.

Mr. Murphy said that he thinks that a brown water system would be good. It would have to be very well-engineered. He noted that the difference between the five-year and two-year look back is the 55,000 gpd

Ms. Russell said that she is deeply concerned because they do not know what capacity is available for sale. At the very least they should find out what/if there is capacity available for them to purchase and at what cost that would be, especially in light of all of the building going on in Waterford and New London.

Mr. Seery said that he does not think that it is within the next six months to a year that we would have an issue and we also have not discussed anything with the State.

Mr. Bond said that with a safety factor – what is the worst that could be used – 75,000 – 80,000 gpd.

#### **\*\*MOTION (4)**

Mr. Bond moved that WHEREAS, on January 19, 2023, Pelletier-Niantic, LLC ("Applicant") filed with the East Lyme Water and Sewer Commission ("Commission") an application for determination of sewer capacity pursuant to General Statutes 7-246a(a)(1) and the East Lyme Regulation entitled "Applications for Determination of Sewer Capacity Pursuant to General Statutes §7-246a(a)(1)" ("Regulation"), seeking an allocation of 110,000 gallons per day ("gpd") of sewer capacity for a proposed multi-building designed for assisted living and associated medical facilities to be located on property at 200 Pennsylvania Avenue ("Application"); and

WHEREAS, the Regulation sets forth the information that must be included in an application for determination of sewer capacity, as well as the duration of a capacity allocation and the factors that the Commission may consider in reaching a decision on such an application; and

WHEREAS, the Application contains the information required by the Regulation, including a contingency, which is an integral part of the proposed project, that the Applicant will design, construct and install a sewer service main conforming to the Commission's design criteria leading from Main Street in and along Pennsylvania Avenue to the site of the proposed project; and

WHEREAS pursuant to the Regulation and General Statutes §7-246a(a)(1), the Commission is required to decide on an application within 65 days of receipt as that term is defined in General Statutes §8-7d, and that the decision is due on or before March 30, 2023; and

WHEREAS, the Commission held a public hearing on the Application on March 2, 2023. Numerous exhibits were submitted by the Applicant and the Commission's staff, and the Commission heard

testimony from the Applicant, staff and the public. In making its decision the Commission is considering all of the testimony and exhibits submitted at the public hearing; and

WHEREAS, the Commission has wide discretion in connection with the decision to supply sewer service to particular properties; 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 contracts with various State of Connecticut agencies, 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, East Lyme's sewer treatment capacity is limited and finite; and

WHEREAS, based sewer flow data in the Record, and accounting for prior allocations, and approved projects under construction, East Lyme has approximately 137,000 gpd of available sewer treatment capacity (Exhibit 11); and

WHEREAS, the Regulation sets forth a non-exclusive list of criteria that the Commission may consider in deciding on capacity applications, including other areas in town designated for sewer service and the effect of the allocation on remaining capacity; and

WHEREAS, the evidence shows that the amount of capacity requested in the Application exceeds the Town's available capacity; and

BE IT THEREFORE RESOLVED, that the East Lyme Water and Sewer Commission, acting as the Town's Water Pollution Control Authority, pursuant to the Regulation and based on a review of evidence in the record, hereby GRANTS to the Application of Pelletier-Niantic, LLC 75,000 gallons per day of sewage treatment capacity pursuant to its Application dated January 19, 2023 seeking 110,000 gallons per day of sewer capacity for a proposed multi-building development designed for assisted living and associated medical facilities to be located on property at 200 Pennsylvania Avenue. The duration of said grant shall be as set forth in section II of the Regulation.

Mr. DiGiovanna seconded the motion

Mr. Spencer said that he prefers the lower amount and feels that 55,000 gpd is good.

Mr. Murphy said that he thinks that there are a lot of things that we should have been investigating however we need to give them an answer and try to work with the developer be it the 55,000 or 75,000 gpd.

Ms. Russell said that she agrees that we have work to do but feels that we are setting a dangerous precedent when we do not know what is available or how much the cost would be. Also with respect to the treatment plan in New London – if it expands we would have to absorb Point O Woods and Pine Grove into our allotment which is around 150,000 gpd.

Mr. Bond said he thinks that we should max out our capacity as we are a business.

Mr. Spencer –

Mr. Zoller called the motion –

Mr. DiGiovanna seconded the call -

**Vote: 6 – 1 – 1. Motion passed.**

**Against: Ms. Russell**

**Abstained: Mr. Roberts**

**5. Set Public Hearing Date for Sewer Assessments**

Attorney O'Connell said that some are residential and some commercial and that the 185 Main is still another type that is included here.

**\*\*MOTION (5)**

**Mr. DiGiovanna moved to set the Sewer Assessments Public Hearing for April 25, 2023 commencing at 6:30 PM.**

**Mr. Spencer seconded the motion.**

**Vote: 8 – 0 – 0. Motion passed.**

**5. A. Discussion/Action - CT DOT I-95 Interchange Improvements at Rte 161 Construction Phase Services**

Mr. North said that he needs to put a PO together on the project work that will be done for us. This is already approved by the State – we just have to secure an account. It is paid for by the State.

**\*\*MOTION (6)**

**Mr. Murphy moved to appropriate and transfer \$12,600 in Sewer Assessment Fund 3 from resources available to the account titles, "DOT Construction Phase Engineering Services" to fund on-going engineering services and inspection work.**

**Mr. DiGiovanna seconded the motion.**

**Vote: 8 – 0 – 0. Motion passed.**

**6. Billing Adjustments/Disputes**

There were none.

**7. Approval of Bills**

There were none.

**8. Finance Director Report**

Mr. Gervais was in attendance at another meeting. There was no report.

**9. Discussion on Water & Sewer Budgets FY 23-24**

Mr. Bragaw noted the following on the sewer side –

- Revenue worksheet – proposing bringing \$176,360 from sewer assessment to help offset capital costs in the operating budgets.
- The back of the revenue sheet shows the calculations of estimated revenue as well as a potential rate increase on the sewer side of 5% across the board on all rates.
- Suggested changing the regulations to allow for a minimum usage charge as there are a number of customers who do not use any sewer so they do not pay any usage fees although they are hooked up to the system and have the ability to use it. (some 300+ customers)

Mr. Bond asked if they could use this between both water and sewer

Mr. Bragaw said no as there are far more water customers than there are sewer.

- On the expenditure side they are proposing a 10% budget increase.
- There is a new line item for capital projects of \$1000,000 to cover all kinds of smaller capital projects that come up during the year that are not maintenance.
- He is proposing to change the names of two line items – Professional Development to Training; and New Services/Projects to Meter Usage Payment
- They are not proposing any new trucks in this budget.

Ms. Russell said that given the capacity discussion that the inflow line has \$1000 in it – she asked if that was a placeholder as it seems that they could be doing more with that.

Mr. North said that he is working on a project similar to that which potentially has grants.

Mr. Bragaw noted the following on the water side –

- They are showing a need to pull from their retained earnings \$229,733.
- Water flows and therefore revenue (prisons) seem to be dropping which is putting more strain on bringing in revenue from the Town side.
- On the back of the revenue sheet are calculations for estimated revenue along with a potential rate increase for the water side of 8% across the board on all rates.
- They are proposing a \$200,000 line item for capital projects as right now they have no mechanism to pay for capital costs in the water operating budget.
- They need to discuss the bonds/principal line at an upcoming meeting.
- They are proposing one new truck in this budget

Ms. Russell said that she was not sure of exactly how to put this – but it seems that they are also putting in part of Mr. Seery's First Selectman's salary into this budget. (Water – \$8,300)

Mr. Seery said yes as he is spending some 3 to 4 hours per week on this so his salary is being reduced by that from the Selectman's Office.

Ms. Russell said that this is the first time that it has ever been done and it is only on the water side and not the sewer side and she does not think that it is fair to the water customers.

Mr. Seery said that it is by Ordinance that he wears this hat also and that he would welcome an ordinance change as it does become difficult to do both no matter how you divide the hats. He added that he thinks that it is only fair that it gets billed to where the time is being spent.

#### **10. Project Updates**

##### **▪ Meter Replacement Project**

Mr. North said that they average 225 per month and hopes that by the next read in the fall that they will be around 90% done.

##### **▪ Boston Post Road Tank Rehabilitation Project.**

Mr. North said that the contractor is starting the sandblasting.

#### **11. Correspondence Log**

There were no comments.

#### **12. Chairman's Report**

Mr. Seery said that the Rte 161 project has begun and that 4.5 years from now we will be happy that it was done.

Mr. Murphy asked about the Rocky Neck pump house.

Mr. Seery said that he has not heard any more on it but would love to have them put some money towards it.

Mr. Seery said that tomorrow at Rosa Negra they would be holding a women's recognition event as it is women's recognition month.

#### **13. Staff Updates**

##### **a. Water Department Monthly Report**

Mr. Murphy asked when the Boston Post Road hydrant would be fixed.

Mr. North said that they are still waiting on the parts.

Ms. Russell asked the cost for a hydrant.

Mr. North said about \$5 - 6,000.

Mr. DiGiovanna asked about the replacement of meters for the schools.

Mr. Bragaw and Mr. North said that they have determined the types and that the schools will have to pay for them over a period of years. They will know soon and should be able to put them in over the summer months.

**b. Sewer Department Monthly Report**

There were no comments.

**14. Future Agenda Items**

**a. Homeowner Water Line Leak Insurance**

**b. Irrigation Sub-metering Policy**

Under discussion.

Add – look into potential for additional capacity acquisition

**15. ADJOURNMENT**

Mr. Seery called for a motion to adjourn.

**\*\*MOTION (7)**

Mr. Murphy moved to adjourn this Regular Meeting of the East Lyme Water & Sewer Commission at 8:40 PM.

Mr. DiGiovanna seconded the motion.

Vote: 8 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary

<b>East Lyme Sewer Department</b>								
<b>Sewer Capacity Allocations - Current As of December 2022</b>								
<b>A</b>	<b>Applicant/Development</b>	<b>Date of Request</b>	<b>Type of Use</b>	<b>Additional Project Description</b>	<b>Methodology Used to Determine Capacity</b>	<b>Sewer Capacity Requested or Need Anticipated</b>	<b>Sewer Capacity Allocated</b>	
1	Buildings Constructed in Sewered Areas but Not Connected	Existing Buildings	Res/ Comm/ Ind	Sewer Assessments Previously Levied	CTDPH	76,300	76,300	
2	Undeveloped Properties in Sewered Areas	Unbuilt Lots	Res/ Comm/ Ind	Sewer Assessments Previously Levied	CTDPH	60,700	60,700	
3	Landmark Dev. Group		Residential	Apartments		118,400	118,400	
4	Pazz & Construction		Residential	Multi-family		35,400	35,400	
	<b>Subtotal GPD</b>						<b>290,800</b>	
<b>B</b>	<b>Prior Approved Projects Under Construction (~5,000 gpd and greater)</b>				<b>Original Capacity Requested</b>	<b>Construction Completion to date %</b>		
1	Village Crossing		Residential	Condominiums	14,400	66%	4,752	
2	Orchards Subdivision		Residential	Single Family	42,600	81%	3,307	
3	183-185 Main St		Res/Comm	Comm/Condos	3,600	10%	324	
4	159 Boston Post Rd		Residential	Condominiums	5,150	0%	4,635	
	<b>Subtotal GPD</b>						<b>20,934</b>	
	<b>Total GPD Capacity Currently Allocated (A+B)</b>							<b>311,734</b>
<b>D</b>	<b>East Lyme Average Monthly Allocation Remaining GPD - 4 years and 12 months Average (D)</b>							<b>313,131</b>
	<b>East Lyme Total Allocation Remaining ((A+B)-D)</b>							<b>1,397</b>
<i>Note: All capacities expressed in gallons per day (GPD)</i>								

**Note:** All capacities expressed in gallons per day (GPD)

**EXHIBIT 10**

# **Minutes of East Lyme Water and Sewer Commission Regular Meeting - 05/27/25**

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**Date and time:** 05/27/25 7:00 PM to: 05/27/25 8:24 PM

**Present:** Brooke Stevens, Recording Secretary, Commission Members:, David B. Bond, Carol Russell, Dan Cunningham, Chairman, David J. Murphy, David R. Zoller, Michelle Royce Williams, Absent:, Ken Roberts, Lindsay Bollenbach, Roger L. Spencer

**CC:** Ben North, Municipal Utility Engineer, Mark Zamarka, Town Attorney

**Location:** East Lyme Town Hall, Upper Conf. Room, 108 Pennsylvania Ave., Niantic, CT, 06357

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## **Topics**

### **1. Call to Order**

**Note** Chairman Cunningham called the May 27th, 2025, Regular Meeting of the East Lyme Water & Sewer Commission to order at 7:00 p.m. and led those assembled in the Pledge of Allegiance. A quorum of Commission Members were present.


### **2. Additions to the Agenda**

**Note** There were none.

### **3. Approval of Minutes**

#### **3-1. April 22nd, 2025, Public Hearing Minutes**

**Note** see attachment.

 [Minutes of East Lyme Water and Sewer Commission Public Hearing 04 22 25.pdf](#)

**Decision** MOTION (1)

Mr. Zoller moved to approve the Public Hearing Minutes of April 22nd, 2025, with no changes or adjustments.

Mr. Bond seconded the motion.

Motion carried, 6-0-0.

#### **3-2. April 22nd, 2025, Regular Meeting Minutes**

**Note** see attachment.

 [Minutes of East Lyme Water and Sewer Commission Regular Meeting 04 22 25.pdf](#)

**Decision** MOTION (2)

Mr. Zoller moved to approve the Regular Meeting Minutes of April 22nd, 2025, with no changes or adjustments.

Mr. Murphy seconded the motion.

Motion carried, 6-0-0

### **4. Delegations**

**Note** There were none.

## 5. Correspondence Log

**Note** see attachment.

 [Correspondence Log May.pdf](#)

**Note** Mr. Cunningham identified the items on the correspondence log for the record.

## 6. Executive Session- Pending Litigation RE Parker's Place

**Decision** MOTION (3)

Mr. Bond moved to enter Executive Session at 7:02 PM for the purpose of discussing pending litigation, and Staff and the Town Attorney were invited to join the Executive Session.

Mr. Spencer Murphy the motion.

Motion carried, 6-0-0.

**Note** The meeting resumed at 7:37 PM, following an Executive Session that concluded at 7:36 PM, during which no action was taken.

## 7. Discussion & Possible Action RE Settlement of Pending Litigation- Parkers Place

**Decision** MOTION (4)

Ms. Royce Williams moved to authorize the Town Attorney to offer a settlement through stipulated judgment, allocating 8,124 gallons, subject to the same timeline terms as regular allocation approval. The offer will be presented to the Commission for final approval, the timelines should align with the Board's regulations, and the Board will review the language before proceeding.

Mr. Murphy seconded the motion.

Motion carried, 6-0-0.

## 8. Billing Adjustments/Disputes

### 8-1. 15 Freedom Way, Unit #55

**Note** Mr. North noted that he has made contact, and the issue is still being worked out. It will be discussed further at the next meeting.

## 9. Approval of Bills

**Note** see attachment.

 [Approval of May Bills.pdf](#)

**Decision** MOTION (5)

Mr. Murphy moved to pay Weston & Samson \$1,900 for Sewer Conflict Resolutions, Project Eng21-0356, Invoice 5250180.

Mr. Zoller seconded the motion.

Motion carried, 6-0-0.

## 10. Finance Director Report

**Note** Mr. North noted that the Finance Director was unable to attend, but a written report was provided to the Commission Members, which he briefly discussed:

\*Sewer expenditures are at approximately 76% of the budget, and water expenditures are at about 57%.

\*Water is lower due to bond principal payments, but encumbrances for well rehabilitation work will increase this.

\*Both accounts are currently comfortably under budget.

\*Billing is ongoing, and revenue is slightly lower due to timing.

\*Staff is currently dual accounting, using both the old and new utility billing software, causing a slight delay.

## 11. Project Updates

**Note** There were none.

## 12. Discussion & Possible Action to Create a Special Project titled "Sewer Pump Station Communications Upgrade" in the Sewer Capital Projects Fund & to be funded from Sewer Operations

**Note** A project to upgrade communication systems at several sewer pump stations with line-of-sight issues was discussed. The plan is to move to a cellular-based system, leveraging the town's agreement with ATT FirstNet for priority communications and discounted rates, and project will span two fiscal years.

**Note** see attachment.

 [Special\\_Project.pdf](#)

**Decision** MOTION (6)

Mr. Murphy moved to create a "Sewer Pump Station Communication Upgrade" project within the sewer construction fund and transfer \$35,000 from the sewer operating budget to fund the upgrades.

Ms. Russell seconded the motion.

## 13. Discussion on Sewer Capacity Subcommittee Action Items

**Note** Mr. North and the Commission reviewed possible Sewer Capacity Subcommittee Action items and some of the following was highlighted:

\*One initial item identified was to re-evaluate sewer needs for ticket holders, including those with developed but unconnected properties, and undeveloped properties.

\*It was suggested to use water bills to estimate sewer flow for connected properties.

\*For undeveloped properties, estimates could be based on zoning (e.g., assuming a four-bedroom house in single-family zoning).

\*The discussion touched on the Plan of Conservation and Development (a 10-year plan updated in 2020) and how it should be part of the capacity study.

\*The idea of updating the 2007 facilities plan to identify areas at risk of pollution due to failing septic systems was raised.

\*The need to determine actual available capacity was emphasized.

\*The Subcommittee will work on bringing forward the capacity allocation spreadsheet.

\*The Board discussed the possibility of a limited moratorium on new sewer connections, possibly for six months to a year, to allow time for strategic planning.

\*Legal counsel will be consulted regarding the process for a moratorium, including potential public hearings.

\*The potential implications of a moratorium on previous representations made to Landmark in court were raised.

\*The importance of correlating sewer capacity with the town's development plan was further emphasized.

**Note** Mr. Bond expressed frustration that the Commission cost themselves money by not approving a past decision. He drew a parallel to Old Lyme, who has reportedly decided against further growth, effectively imposing a moratorium on building if properties cannot support a septic system. It was argued that the Commission eventually becomes the first line of defense in refusing people, despite not having the authority to enact a building moratorium. This led to a question about how the Commission can justify asking ratepayers to fund more capacity if it's not going to be used.

**Note** Having served on this Commission for 22 years, Mr. Bond said he's repeatedly heard discussions about future needs but feel little progress has been made. He argued that the Commission has missed opportunities to expand the ratepayer base and improve the town by extending sewer lines, instead burdening current ratepayers for capacity that remains unused. He highlighted the 100,000 gallons of available capacity is sitting there and not being utilized. Mr. Murphy added that this issue has been debated for decades.

**Note** Ms. Russell emphasized the need to address potential water pollution issues from existing developed areas currently on septic systems, rather than focusing solely on new development. She highlighted the importance of having reserved sewer capacity to proactively manage such risks, citing areas like Dodge Pond as an example where sewers could be beneficial for pollution control.

Questions were also raised the question of whether community subsurface systems or other alternative methods could address potential pollution if current sewer capacity is insufficient. The lack of data on specific problem areas and the amount of reserve capacity needed for these purposes was noted.

**Note** Mr. North summarized the proposed next steps for the sewer capacity issue. He observed that the immediate priority is to establish the current available capacity by updating the capacity allocation spreadsheet. This update would also include a discussion on the metrics used to evaluate unknown factors in the assessment. The completed information would then be presented to both the Subcommittee and the full Board before moving on to other related tasks.

**Note** Mr. Bond inquired about the possibility of implementing a legal limit on new sewer applications, specifically for those requesting more than 5,000 gallons. Ms. Royce Williams proposed exploring a temporary moratorium (e.g., six months to a year) with periodic reviews, allowing the Commission to assess its effectiveness. Mr. Russell said she thinks this is an excellent idea.

**Note** Ms. Russell detailed how sewer capacity is hard to pin down because it depends on two main things: our needs and how much sewage actually flows. Factors like droughts or heavy rains make the available capacity a moving target. Available capacity was 189,000 in one recent year, but a four-month average for 2025 shows 338,000. It's also unclear how much capacity is needed for pollution risks or how much reserve capacity is already set aside.

**Note** Mr. Cunningham outlined a plan to develop specific language for proposed actions. This will allow the Board to decide whether to proceed directly or hold a public hearing. Once these initial tasks are set, the Subcommittee will delve into the details, exploring various approaches and presenting the most viable options back to the Board. The goal is to embark on a strategic planning process.

**Task**  Action Items:

- \*Staff will compile a list of potential action items for the Sewer Capacity Subcommittee.
- \*The Board will aim to finalize the Subcommittee's agenda at the next meeting.
- \*The Board will discuss and consider a potential limited moratorium on sewer connections.
- \*The Board will work to determine the actual available capacity.
- \*The Board will discuss how to standardize the sizing and determination of sewer capacity for empty lots.
- \*Staff will prepare a description of the envisioned upgrade to the plant.

## 14. Chairman's Report

**Note** Mr. Cunningham delivered his report, highlighting the successful passing of the town budget as positive news. He observed a significant increase in activity and visitors on Main Street over the weekend. This surge in interest, he stated, underscores the urgency for the Commission to intensify its future planning efforts.

**Note** He emphasized the importance of getting the Subcommittee up and running and focusing on the most important issues first. Mr. Cunningham believes the current period demands critical decision-making to ensure the town continues to thrive and be enjoyed by everyone, and that they're moving in the right direction.

## 15. Staff Updates

### 15-1. Water Department Monthly Report

**Note** Mr. North reported that the Water Department's activities are progressing as expected for this time of year. Hydrant flushing is going really well. The team is also actively working on Well 4A, performing redevelopment work and a SCADA upgrade to bring it back online. This is a significant effort, as the well has been out of service since around March 20th, and its return will be beneficial for summer operations.

**Note** see attachment.

 [Water\\_Report\\_Monthly\\_Report.pdf](#)

**Note** Mr. North added that water usage is seeing a slight uptake, likely due to recent precipitation and the upcoming summer season bringing more visitors to town. He expects usage numbers to increase.

### 15-2. Sewer Department Monthly Report

**Note** The Commission briefly discussed sewer tie-in requirements and extensions. A key discussion point was whether properties are required to tie into the sewer system if it becomes available. Currently, only Pine Grove was mandated to tie in due to a consent order.

**Note** The conversation then shifted to funding sewer extensions. It was noted that 90% of past sewer extensions have been paid for by developers, indicating that the commission currently lacks the capital and budget to undertake widespread sewer extensions to neighborhoods. This brought the discussion back to who should bear the cost of increasing capacity – current ratepayers or those seeking new connections.

**Note** The Commission wondered what the common practice in other towns might be, and if ordinances require properties to connect to sewers if available, prohibiting septic system repairs at that point. This concept was deemed a great thing for the capacity Subcommittee to look at.

## 16. Future Agenda Items

### 16-1. Sewer Capacity Subcommittee

### 16-2. Capital Projects Subcommittee

## 17. Adjournment

**Decision** MOTION (7)

Mr. Murphy moved to adjourn the May 27th, 2025, Water & Sewer Commission Meeting at 8:24 p.m.

Mr. Zoller seconded the motion.

Motion carried, 6-0-0.

**Note** Respectfully Submitted,  
Brooke Stevens,  
Recording Secretary

## Task Summary

### New Tasks

#### **Task** ☐ Action Items:

- \*Staff will compile a list of potential action items for the Sewer Capacity Subcommittee.
- \*The Board will aim to finalize the Subcommittee's agenda at the next meeting.
- \*The Board will discuss and consider a potential limited moratorium on sewer connections.
- \*The Board will work to determine the actual available capacity.
- \*The Board will discuss how to standardize the sizing and determination of sewer capacity for empty lots.
- \*Staff will prepare a description of the envisioned upgrade to the plant.

# EAST LYME MULTIFAMILY DEVELOPMENT SITE

Niantic  
River

233+/- Acre  
Coastal Multifamily Development Site  
in East Lyme, CT

**CBRE**

CAPITAL MARKETS | INSTITUTIONAL PROPERTIES

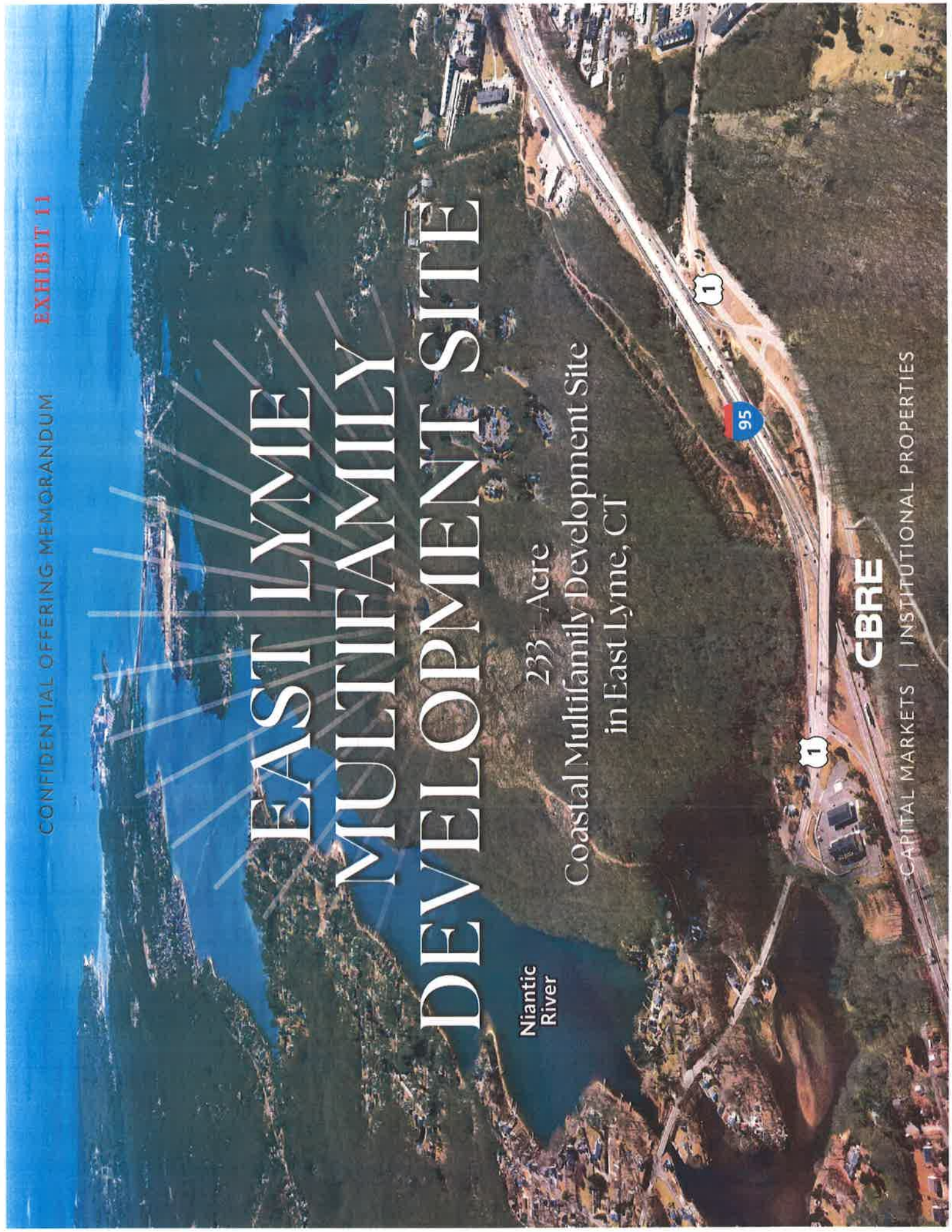


Exhibit 5

Exh. 37  
9/2/04

RESOLVED: The East Lyme Board of Selectmen desires to state as a matter of public record that it is worthwhile to remind the Zoning Commission that the Oswegatchie Hills is especially suitable for preservation as open space, and that the public interest is best served by insuring that this property remain in it's present undeveloped state for use by future generations of the public. The Board of Selectmen urges the Zoning Commission to take this into consideration as it makes its decision on Landmark Investment Groups' application.

9/2/04

Rose Ann Hardy  
read - resolved for  
Board of Selectmen

## **POTENTIALS**

### **1. NO AVAILABILITY FOR WATER AND SEWER**

- Not in sewer shed, commitment elsewhere for availability. This plan would consume a lot of sewer and would require an extension.
- Without water and sewer, cannot get affordable housing project through.
- **WATER AND SEWER COMMISSION HAS NO OBLIGATION TO EXTEND TO PROPERTY - DOES NOT FALL UNDER AFFORDABLE HOUSING ACT.**

### **2. RECOMMENDATION IN PLAN OF DEVELOPMENT AS OPEN SPACE SUPREME Court DECISION - CHRISTIAN ACTIVITIES VS. GLASTONBURY RE OPEN SPACE.**

-Parcel always recommended for open space in Plan of Development.  
Supreme Court said this was a viable reason to deny.

### **3. TRAFFIC CONSIDERATIONS**

Mr. Fraser noted this proposed development would enter and exit on Boston Post Road within ¼ mile of I-95 and within 300 feet of Route 1. He added there were severe site line issues.

Atty. Fuller inquired about a traffic report. He added that we need to resolve the question if they have submitted enough or if the Zoning Commission can request more. He added that Mr. Fraser should not appear on the record or before the Commission in this matter. He stated that the Planning Commission could take an official position. He suggested that an official booklet be set up utilizing the chronology as an index and passed as an Exhibit to the Zoning Commission, noting it was important to get this information into the record. He added that all evidence should be offered at public hearing, adding that the only exception to this was consultants to the commission could submit data to explain things - reports could be submitted later. He stressed whatever we submit, submit it at the public hearing - this gives the other side the opportunity to comment.

### **4. ECOLOGICAL:**

Atty. Fuller noted that an environmental consultant could be hired to discuss what extent this proposed development might adversely impact. Review archeological and wetlands.

Bill Mulholland noted he would circulate the conceptual plans to other departments, as is custom, to gather comments.

Atty. Fuller stated that the Zoning Commission needs a basis for denial. He suggested including the water and sewer report, addressing traffic and environmental, and the Planning Commission's report in the record.