

Water & Sewer October 28th, 2025
Public Hearing Minutes

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TOWN CLERK

Minutes of East Lyme Water and Sewer Commission Public Hearing - 10/28/25

Date and time: 10/28/25 6:30 PM to: 10/28/25 8:10 PM

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

CC: Joe Blanchard, Utility Engineer, Ben North, Chief Operating Officer, Tracy Collins, Town Attorney, Joe Bragaw, Director of Public Works

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

Topics

1. Call to Order / Pledge of Allegiance

Note Chairman Cunningham called the Public Hearing to order at 6:30 p.m. and led those assembled in the Pledge of Allegiance. A quorum of Commission Members was present.

2. Presentation on the Determination of Capacity for Landmark LLG and Jarvis LLC Concerning a Development on Caulkins Rd

Note The Recording Secretary received a USB drive containing all exhibits and literature supplied for the record from Glenn Russo (288 Margaret Road, Middletown).

Note 2014:

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Note attachment #2

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Note attachment #35

 [24-09A_Water-Sewer-September-24-2024-Public-Hearing-Minutes_part_1.pdf](#)

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Note attachment #42

 [Water-Sewer-March-25-2025-Minutes.pdf](#)

Note attachment #43

 [East Lyme Oct28 Presentation with Exhibits part 1.pdf](#)

Note attachment #44

 [East Lyme Sewer Letter Presentation with exhibits Sept 23 2025 part 1.pdf](#)

Note Mr. Russo continued his presentation from the previous meeting and provided five recap points:

1. Significant background was covered at the prior meeting.
2. He disputes the sewer capacity crisis narrative and asserted that it's not based in fact.
3. East Lyme officials made inaccurate statements during public hearings.
4. The Commission has abused discretion regarding sewer allocation decisions which was backed by the court's decision.
5. East Lyme developed a strategy to block affordable housing applications by leveraging sewer allocation authority rather than zoning.

Note Mr. Russo explained that Landmark prepared an analysis using the Town's own data -not engineering models or projections, to ensure transparency. Although they dispute the Town's reported numbers, for the purposes of this presentation, town numbers were utilized.

Note A chart showing town sewer data across multiple time spans was presented:

- *2012–2025 (13.5 years)- Average annual increase of approximately 2,000 gallons per year.
- *2019–2025 (6.5 years)- Average annual increase of 138 gallons per year.
- *2021–2025 (4.5 years)- Town capacity increased by roughly 12,555 gallons per year.
- *2023–2025 (2.5 years)- Town capacity gained approximately 50,015 gallons per year.

Note The following was also noted:

- *Landmark has reduced its application from 125,000 gallons per day to 95,000 gallons per day.*
- *Based on the Town's reported available capacity of 119,000 gallons, subtracting 95,000 leaves 24,000 gallons remaining.*

Note Based on the long-term trends, the sewer system has sufficient capacity to accommodate the Landmark allocation. The 13.5-year trend suggests about 10 years of remaining capacity after the allocation, while the 6.5-year trend indicates roughly 7.6 years of remaining capacity. Shorter-term trends (4.5 to 2.5 years) show that capacity growth during those periods actually exceeded the amount Landmark requested.

Note The graphical data provided shows that the total system flow has slightly declined over the past 13.5 years, driven in part by a reduction in the State of Connecticut's share and although East Lyme's flow slightly increased over 6.5 years, the overall system capacity is stable or improving, with East Lyme's use trending efficiently in the shortest time frame.

Note This increase in available capacity is attributed to the widespread adoption of water-saving plumbing and appliances (such as modern toilets using 1.3 gallons per flush vs. 7 gallons previously), improved metering accuracy, and efforts to reduce groundwater infiltration. These factors combined have led to gradual capacity gains despite any population increase.

Note Mr. Russo introduced legal and procedural objections to the sewer regulations, arguing that the current rules are both unlawful and financially prohibitive for large-scale development. He asserted that expert testimony supports this claim, and he focused primarily on two requirements, the 48-month completion deadline and the 12-month application filing window.

Note Mr. Russo cited Mary Beth Marr, the CEO of Alogio Consulting Group and a development finance expert. He detailed how she stated that the 48-month completion requirement acts as a "structural impediment" to project financing. Financial institutions will not fund massive projects, like the 864-unit Landmark proposal, which inherently take longer than four years to complete, if the Town has the right to revoke sewer capacity mid-development. Ms. Marr has noted that this rule is inconsistent with Connecticut State norms, which typically allow 10-year allocation periods with extension options.

Note Mr. Russo also discussed how a letter from the development/engineering firm Heska, which has worked on the Landmark project since 2013, deemed the 12-month application filing rule "unachievable." The extensive pre-application steps (such as feasibility studies, wetlands delineation, and conceptual layouts) consume several months before a developer can even request an allocation.

In addition, securing the allocation often necessitates a complete site redesign before tackling the subsequent mandatory steps, including environmental impact studies, detailed land surveys, traffic studies, and obtaining approvals from various bodies like Inland Wetlands, Planning & Zoning, and the State DOT (for projects over 100 units). The time required for these regulatory and engineering steps makes compliance with both the 12-month and 48-month deadlines practically impossible and the Town's regulations create structural barriers to development that conflict with the state housing policy.

Note He argued that the Landmark project is legally exempt from the Town's current sewer regulations, including the new 12-month application filing and 48-month completion deadlines. This exemption stems from the project's original 2007 application, which remains pending and active in court. Any attempt by the Commission to apply the newer time limits would be inconsistent with this legal doctrine and the project's established procedural history.

Note Mr. Russo argued that the Commission's actions contradict its own internal discussions regarding the availability of sewer capacity. He cited internal discussions where Commissioners acknowledged a surplus of available capacity (at one point up to 100,000 gallons) and noted that system efficiency gains over time have increased capacity. Figures show that annual usage trends were minimal (2,000–3,000 gallons), leaving hundreds of thousands of gallons unused, which undermines the need for a moratorium.

Note He cited how Commissioners like Mr. Bond and Mr. Zoller had previously affirmed that capacity should be maximized for development and that the system was being used efficiently with no risk of overloading the treatment plant (Exhibit 2-11).

Note Mr. Russo then argued that the Town's sewer policy is deliberately used as a barrier to affordable housing. He pointed out that regulations were structured to exempt all projects except high-density multi-family proposals, effectively targeting and restricting those developments.

Since East Lyme requires both a zone change and a special exception for multi-family housing giving the Zoning Commission full discretionary power, the system was intentionally crafted to fail. He added that the recently enacted sewer moratorium was not based on any real capacity shortage but rather was intended to protect the town from lawsuits over rejected applications; the moratorium was based on a manufactured crisis.

Note Citing more than one hundred pages of supporting documents, he argued that East Lyme had more than sufficient capacity to accommodate his 95,000-gallon request. He emphasized that the town had recently approved a 75,000-gallon allocation under conditions of lower reserve, suggesting that granting the current request should be straightforward since it represents only a modest increase.

Note Attorney Tim Hollister, representing Landmark, then addressed the Commission. He presented a binder for the record which contains responses to recent Freedom of Information Act requests.
binder part 1:

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Note see attachment.

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Note Mr. North noted that that the Applicant has reduced its sewer capacity request from 123,000 to 95,000 gallons. However, he expressed concern because the Applicant did not provide any updated documentation to support this new figure. Without data on the number of housing units, the formulas used, or any supporting calculations, he cannot properly evaluate if the reduced 95,000-gallon request was reasonable or achievable. He will defer to the Commission's upcoming discussion and emphasized that his role remains strictly that of engineer, and his focus is on providing accurate data and ensuring the responsible management of the town's sewer resources.

Note Mr. North explained that the Town cannot realistically obtain additional sewer capacity by buying or borrowing from neighboring towns like Waterford or New London. Because that option is off the table, the Town is focused on internal efforts to find capacity. These include reducing infiltration and inflow (water leaking into sewer lines), optimizing the existing system, and investigating the State's potential reserve through the Department of Energy and Environmental Protection (DEEP).

Note Town Attorney Collins clarified that the current regulations remain in effect until the appellate court issues a decision. This means that even if the Commission were to approve a new capacity allocation, that approval would be governed by the new regulatory framework—including deadlines and usage requirements—while Mr. Russo's prior allocation remains grandfathered.

Note Mr. Hollister argued that the Commission must approve the 95,000-gallon request because sufficient sewer capacity clearly exists and the Commission must not consider zoning issues. He cited a New Jersey legal decision to show that the Town cannot legally withhold capacity that is contracted but unused. Mr. Hollister also emphasized that the 95,000-gallon request was already a 20% reduction from the project's original size.

Note Mr. Russo responded by stating that while he understands the legal procedure, he believes the new regulations were improperly applied to his project and were deliberately designed to make development impossible. The project's long delays were due to the town constantly enacting new rules that push the goalposts back every time a resolution was near.

Note Mr. Hollister stated that Landmark's application was grandfathered and protected from the new sewer moratorium because it was filed immediately after the moratorium was announced, a status confirmed by the Town's Attorney. He then showed that the Town's own data indicated declining overall sewer use, even with recent developments like the Gateway Apartments. He further noted the Town had already reclaimed tens of thousands of gallons in unused allocations and identified an additional 137,000 gallons of reserved but unused capacity, proving there was no practical shortage.

Note Mr. Russo clarified that the 119,000 gallons he referenced represents the remaining, available capacity after accounting for all existing commitments, including prior allocations to projects such as his. He interpreted the Town's own reports and flow data, the 6 1/2-year trend, which suggests that there remains usable capacity for the Town to assign. He argued that if the Town claims the 118,000 gallons already allocated to Landmark must be subtracted from the 119,000, it will incorrectly suggest there is almost no capacity left. Instead, he maintained that the 119,000 gallons is currently uncommitted and supported by stable or slightly declining overall town flow due to system improvements.

Note Citing the New Jersey precedent, Mr. Hollister urged the Commission to formally reclaim approximately 250,000 gallons of capacity that has been dormant for over a decade under the Tri-County agreement with New London. He reasoned that since this large volume of capacity is unused, the Town should take it back to meet immediate, legitimate demands like the Landmark proposal. He said that if the application were denied, the Town must explicitly state how much capacity remains and why that capacity cannot be allocated despite the evidence of sufficient capacity.

Note Mr. North emphasized the critical difference between observed flow reductions (which may be temporary) and the fixed, permitted capacity. He noted that even if average daily flow appears down, the Town's contract with New London sets a fixed limit, and allocations must be based on that contractual cap, not recent usage reductions.

Note Mr. Cunningham asked if there were further comments and Mr. North from the East Lyme Water and Sewer Department, came forward to address the Commission and to clarify several points raised earlier in the Hearing by both Mr. Russo and Attorney Hollister.

Note Ms. Collins added that legally, the Town cannot exceed the capacity authorized under its agreement with New London, regardless of short-term data trends, and that this legal agreement is the standard the Commission is bound by when making allocation decisions. She added this is Connecticut and not New Jersey, and that the Commission should only be considering what is permissible here.

Note Mr. North acknowledged that the total available sewer capacity is approximately 250,000 gallons but emphasized that much of this capacity was already reserved or committed. Around 118,400 gallons has been allocated to Landmark's existing development, approximately 23,000 gallons are tied to active construction projects, and about 137,000 gallons are reserved for ticket holders who have paid assessments or hold rights to future use. He stressed that these reserved amounts had long been treated as a priority by the Commission and that true discretionary capacity was therefore far more limited than the developers suggested.

Note Mr. Hollister and Mr. Russo outlined the method for calculating the available sewer capacity: start with the total capacity allowed by DEEP, subtract the Town's legal obligations (the 118,000 gallons court allocation), and then deduct capacity granted to projects that are not yet built. Using this method, they recently calculated that 119,000 gallons remain available.

Note Mr. North stated that while the data used by Landmark reflected official town numbers, the interpretation failed to consider ongoing and court-ordered projects that could impact system demand. He noted that until those developments proceed and actual usage can be measured, the town cannot confidently determine how much capacity remains.

To address this uncertainty, Mr. North's recommendation is that the Water and Sewer Capacity Subcommittee engage an independent engineering firm to conduct a full capacity and reserve analysis. The goal would be to establish scientifically supported allocations and to determine what must be kept in reserve for wet-weather years or unforeseen conditions. He cautioned against over-allocation, reminding the Commission that East Lyme does not operate its own treatment plant and must coordinate with Waterford, New London, and State authorities before any expansion.

Note Mr. North agreed that the Applicant's method aligns generally with the Town's approach- starting with about 250,000 gallons total, subtracting the 118,000-gallon legal obligation and 23,000 gallons allocated to other projects, which leaves roughly 137,000 gallons. The main disagreement centers on ticket holders—property owners who have paid for future capacity rights. The Town argues this capacity must be reserved for them because of their legal right to connect later, making the true capacity much smaller.

Note Mr. North referenced Mr. Russo's claim that sewer use had recently decreased but clarified that fluctuations of up to 50,000 gallons per year were normal and are often associated with precipitation levels. He cited data showing that 2024 saw roughly 61 inches of rainfall compared to only 33 inches so far in 2025, projecting a total of about 45 inches—12 inches below average. He urged further study of precipitation's effect on flow volumes through the proposed engineering review. He also submitted additional exhibits into the public record, including sewer and precipitation data for 2024 and early 2025, to provide a clearer picture of long-term patterns.

Note Mr. Russo countered that the court previously rejected the argument for reserving capacity for future users when the 118,000-gallon allocation was decided. He maintained that based on current trends, the Town would still have at least 7 to 10 years of available capacity, noting that system improvements like water conservation and reduced infiltration could further increase the usable amount.

Note Ms. Russell argued that future connection by ticket holders is unpredictable and therefore must remain reserved.

Note Mr. North reiterated that the Town is currently reassessing the 137,000-gallon total, updating parcel data, and planning to hire an engineering firm to develop a better forecasting and allocation plan for future sewer capacity.

Note Mr. North discussed how it's a mistake to assume that current connection rates for sewer tie-ins will remain steady, emphasizing the need for a buffer because factors like aging septic systems could cause fluctuations in demand.

Note Mr. North repeated that they lack specific information regarding the 95,000-gallon figure and were unsure how many housing units that amount would support.

Note Mr. Russo clarified that their submitted site plan demonstrated the project's buildings could fit on the property and would require 124,000 gallons of sewer capacity, in compliance with regulations.

Note Mr. North raised two main objections to the SLR capacity analysis:

*It's from a 2012–2016 survey and is likely inaccurate. It estimated occupancy based on rental prices, a method that may no longer be valid.

*He prefers using DPH standards or the town's own data from recent developments.

*He questions the assumptions used to justify the 25% (123,000 to 95,000 gallon) reduction.

Note Ms. Russell asked for clarification and Mr. Russo defended his analysis, explaining it used the same method as a previous, court-approved application and had been deemed complete by the town. He argued that reducing the project size should not create new issues and that the Commission's role is limited to capacity, not zoning matters like unit counts.

Note Mr. North clarified he did not object to the reduced capacity, only to the unconventional SLR calculation method.

Note Mr. Russo verified that the project's unit count would be reduced proportionally with the capacity.

Note The conversation then shifted back to the Commission's obligation to ticket holders (those already allocated capacity). Ms. Collins advised that the Commission's legal obligation is to consider these existing ticket holders when determining if capacity is available for the new project. She warned that if these ticket holders demand their capacity in the future, the Commission will be obligated to give it to them.

Note After confirming no further evidence was to be presented Mr. Cunningham then announced the presentation would be closed.

Decision MOTION (1)

Mr. Spencer moved to close the Public Hearing at 8:15 p.m.

Ms. Royce Williams seconded the motion.

Motion carried, 8-0-0.

3. Presentation on the Determination of Capacity for Dan Trakas Et Al, Concerning a Development on 202 Pennsylvania Avenue

Note Mr. Murphy read a letter from the developer requesting a continuance to the November meeting. The letter stated he could not attend the October 28th, 2025, Public Hearing and that he needed more time to submit required information for the application.

Decision MOTION (2)

Mr. Bond moved to continue this item to the November 18th, 2025, Meeting.

Mr. Zoller seconded the motion.

Motion carried, 8-0-0.

4. Public Comment

Note Roger Reynolds (Save the Sound) attempted to comment on the closed Landmark LLC application.

Note A member of the audience clarified that public comment is listed on the agenda after the presentation of both Landmark and Dan Trakas Et Al, and prior to adjournment.

Note Ms. Collins added that remarks should not address Mr. Russo's application since that hearing is no longer open.

Note Mr. Reynolds maintained that the Chairman asked whether there was further evidence to be introduced into the record and did not invite public comment. He added that that several others have also come prepared to speak on this matter.

Note Mr. Cunningham asked for legal advice on whether the hearing could be reopened. Ms. Collins advised that it could not be reopened, as the Applicant's Attorney has already departed and added that there is no procedural requirement for public comment.

Note Mr. Reynolds expressed frustration, arguing the agenda's layout was confusing and led several people to believe they could speak on the Landmark application during this period.

Note While acknowledging the misunderstanding, Ms. Collins confirmed that the process had been properly followed.

5. Adjournment

Decision MOTION (3)

Mr. Murphy moved to adjourn the Public Hearing portion of the meeting at 8:22 p.m.

Mr. Spencer seconded the motion.

Motion carried, 8-0-0.

Note A Regular Meeting of the Water & Sewer Commission immediately followed.

Note Respectfully Submitted,
Brooke Stevens,
Recording Secretary

Next Meeting

Meeting title:	East lyme water and sewer commission regular meeting
Date and time:	10/28/25 08:24 pm to: 10/28/25 09:25 pm
Location:	East Lyme Town Hall, Upper Conf. Room, 108 Pennsylvania Ave., Niantic, CT, 06357