

**EAST LYME INLAND WETLANDS AGENCY
SPECIAL MEETING
Wednesday, JUNE 24th, 2015
MINUTES**

FILED IN EAST LYME
CONNECTICUT
June 29, 2015 AT 2:45 AM/PM
Bridget D. Bowen ATC
EAST LYME TOWN CLERK

The East Lyme Inland Wetlands Agency held a Special Meeting on June 24, 2015 at Town Hall, 108 Pennsylvania Ave., Niantic, CT. Chairman Lozanov opened the Special Meeting and called it to order at 7:06 PM.

P PRESENT: Cheryl Lozanov, Chairperson, Chuck Reluga, Vice-Chair, Norm Bender, Phyllis Berger, Harry Clarke, Joe Mingo

ALSO PRESENT: Attorney Edward O'Connell, Town Counsel
Attorney Mark Zamarka, Town Counsel
Gary Goeschel, Inland Wetlands Agent
Marc Salerno, Ex-Officio, Board of Selectmen
Karen Zmitruk, Recording Secretary

ABSENT: Keith Hall

Call to Order

Ms. Lozanov called this Special Meeting to order at 7:06 PM and introduced the members seated, Inland Wetlands Agent and Recording Secretary.

Pledge of Allegiance

The Pledge was observed.

Additions to the Agenda

Mr. Mingo said that you could not add items to a Special Meeting agenda. There were no additions to the agenda.

Zoning Referral

↓ **Petition of Timothy S. Hollister for Landmark Development Group, LLC and Jarvis of Cheshire, LLC under Connecticut General Statutes §8-30g to rezone 123.02 acres from RU-120, its existing zoning designation to Affordable Housing District (Section 32 of the East Lyme Zoning Regulations) and for approval of a Preliminary Site Plan (Section 32.9 of the East Lyme Zoning Regulations) which proposes open space of 87 acres for property identified in the application as Calkins Road, East Lyme, and further identified in Section 9 of said Petition as Boston Post Road, East Lyme Assessor's Map 31.0, Lot 4; 23 Calkins Road, East Lyme Assessor's Map 32.0, Lot 1 and Quarry Dock Road, East Lyme Assessor's Map 27.0, Lot 14.**

Ms. Lozanov called upon Attorney O'Connell.

Attorney O'Connell said that at their last meeting that he had promised them an outline of the procedures for the Zoning Referral that they had received on the Landmark petition. He said that it is important to remember that they have been asked for a report only as to the preliminary site plan as Landmark has not filed an application for an inland wetlands permit. He passed out the information on the process that they would need to follow. (Copy attached)

Attorney O'Connell also noted that Attorney Zamarka from their office has also had involvement with this.

Attorney O'Connell explained that this is before them as Zoning is seeking a report on this preliminary matter - as it is not an application. It is an agenda item before them and not a public hearing nor subject to it. He noted that they had also received disks with all of the environmental information that was

presented by the interveners – Save the River and Fund for the Environment. What they will review do tonight is a 'Standard of Review'.

Attorney Zamarka said that the reason why Zoning saw fit to send this to them for a referral was largely due to the interveners and the information they presented. They are to decide if the preliminary site plan involves regulated activity. If they find that it involves any then Section 10 of their regulations would identify how it relates. If they find that there is insufficient information then they should note that in their report. With regard to the time frame, the Zoning Public Hearing closed last week Thursday, June 18, 2015 and they have 65 days in which to make a decision. The public hearing was closed pending a report from this agency.

Mr. Mingo said that he read their regulations from cover to cover and Section 7 and he used a magnifying glass on the map that was submitted and could not find anything near a wetland. He said that it bothers him that they do not have an application and that they cannot do a site walk of the property. Based on their charge as identified, he said that he finds that there is insufficient information to make a decision.

Mr. Goeschel explained the materials that are on the disk are the information submitted by the interveners as well as the information that they already received. He said that to the extent possible that they should delineate the information that they feel is missing in the report that they send to Zoning if they feel that they have missing information. He added that he had two complete hard copies of everything that was on the disk and that one had to remain as part of the record. The other they could share to review prior to holding another meeting on this if they felt that they could not use the disk. (Boxed copy submitted to Town Clerk as part of the record).

Ms. Lozanov asked if they could ask Landmark for information.
Attorney O'Connell said no – you have to work with what you have and make a report back.

Mr. Mingo said that there is a lot of information and they have a very narrow corridor here as traffic safety and the like is not in their purview however it is in the report that they received. He reiterated that items such as that are not in their purview.

Ms. Lozanov said that she would agree.

Mr. Clarke said that the wetlands are delineated on the map and asked Mr. Goeschel if there is anything on the disk that further delineates what those wetlands are.
Mr. Goeschel said that he did not believe so and asked Attorney O'Connell if he could provide insight.

Attorney O'Connell said that Save the River and the Fund for the Environment make the assertion that activity to develop would disturb the wetlands but they do not say what type of wetlands are there.

Mr. Goeschel added that this is a preliminary application to Zoning and Zoning does not at this stage require a wetlands report.

Mr. Clarke said that he is of the opinion that they do not have enough information now to make a determination.

Ms. Lozanov said that there could potentially be a determination outside of the 100' regulated area.

Mr. Mingo said no, they cannot rule on assumptions.

Mr. Goeschel agreed and said that they would then say that they would have to make a determination that they do not have enough information to make a determination.

Ms. Lozanov said that she had attended one of the public hearings and recalled that there was some information that she thought was brought up there on the area.

Mr. Goeschel said that the preliminary site plan for zoning only requires 10' sloping.

****MOTION (1)**

Mr. Mingo moved to adjourn this Special Meeting.

Mr. Clarke seconded the motion.

Ms. Lozanov said that she would like Attorney O'Connell to complete a comment that he was about to make.

Mr. Mingo said that the motion to adjourn is non-debatable and that they would have to call for a vote on it.

Attorney O'Connell agreed.

Ms. Lozanov called for a vote on the motion.

Vote: 6 – 0 – 0. Motion passed.

Ms. Lozanov adjourned this Special Meeting at 7:30 PM.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

TO: INLAND WETLANDS AGENCY
FROM: WALLER, SMITH & PALMER, P.C.
RE: LANDMARK AFFORDABLE HOUSING APPLICATION – REFERRAL TO IWA

SUMMARY/BACKGROUND

At the public hearing on Landmark's Preliminary Site Plan application ("PSP") held on June 4, 2015, the Zoning Commission ("ZC") voted to refer the PSP to the East Lyme Inland Wetlands and Watercourses Agency ("IWA") for a report. Landmark did not file an application for an IWA permit, although such a permit is listed in the PSP as a necessary coordinate permit.

The referral was occasioned by petitions to intervene filed by Save the River/Save the Hills ("STR") and the Connecticut Fund for the Environment ("CFE"). Both Intervenor contend that the PSP proposes conduct (storm water drains, construction, etc) that will adversely affect wetlands located on the Landmark property, i.e. regulated activities that fall within IWA jurisdiction. CFE and STS submitted an engineering report in support of this claim.

The ZC was advised that referring the PSP to the IWA for a report was proper (1) because Judge Frazzini's decision clearly kept environmental analysis an open issue in the context of a zone change, which is also part of Landmark's application, (2) granting the interventions now obligates the ZC to make relevant findings under CEPA (3) CGS §8-3(g)(1) requires a report from IWA in the context of site plan applications and (4) as the Intervenor allege adverse affects on wetlands it is responsible and prudent for the ZC to hear from the IWA on the issue.

IWA STANDARD OF REVIEW

It is important to remember that the IWA has been asked for a report only as to the PSP, since Landmark has not filed an application for an inland wetlands permit.

* Based on the PSP application, the Intervenor's filings, and the ZC public hearing minutes and exhibits, the IWA must determine, as a **preliminary matter**, if in fact the PSP involves a **regulated activity**. Section 2.1 of the East Lyme IWWA Regulations defines regulated activity as follows:

- any operation within or use of a wetland/watercourse involving the removal or deposition of material or any obstruction, construction, alteration or pollution of wetlands/watercourses;
- any clearing, grubbing, filling, grading ... deposition or removing material and discharging storm water on the land within 100 feet from the boundary of a wetland/watercourse;

- any other activity within the upland review area or in any other non-wetland/watercourse area that is likely to impact or affect wetlands/watercourses and is a regulated activity.

If the IWA finds a regulated activity, its report to the ZC should be based on its decision criteria found in §10 of the IWWA Regulations. Specifically, §10.2 states that the IWA shall take into account all relevant facts and circumstances, including but not limited to:

- the environmental impact of the regulated activity
- whether feasible and prudent alternatives exist
- short and long term impacts
- irreversible or irretrievable impacts
- impacts on wetlands/watercourses outside the area of the regulated activity

If the IWA does not consider that it has been presented with sufficient information to make the above findings or address the above factors it should say so in its report to the ZC. To the extent possible, it should specify the nature of the information it considers to be missing. Again, the agency's findings, if any, should be in the form of a report since Landmark has not filed an application for an IWA permit.