

EAST LYME PLANNING COMMISSION  
WORKSHOP MEETING  
Tuesday, FEBRUARY 21st, 2012  
MINUTES

FILED Feb 28, 2012  
AT 10:00 AM.  
J. Blais, ATC  
TOWN CLERK

PRESENT: Mike Bowers, Chairman, Brian Schuch, Secretary, Joan Bengtson,  
Carolyn Nee, Rita Palazzo, Ernie Covino, Alternate

ALSO PRESENT: Attorney Edward O'Connell, Town Counsel  
Gary Goeschel, Planning Director

ABSENT: Jean DeGrowth, Francine Schwartz, Alternate, Frank Balantic,  
Alternate

Chairman Bowers called this Workshop Meeting of the Planning Commission to order at 7:05 PM.

**Pledge of Allegiance**

The Pledge was observed.

Mr. Bowers noted that he had seated Mr. Covino, Alternate at the table this evening.

**I. Additions to the Agenda**

Mr. Bowers asked if there were any additions to the agenda.

Mr. Goeschel said no.

**II. Public Delegations**

*Public Delegations is the time when members of the public are invited to speak to the Commission about certain matters. Issues or concerns related to approved subdivisions under construction (Item VI) and in-house proposals or general topics of discussion (Item VIII) are open to comment. Items, referrals, or applications subject to a decision by the Commission, a public hearing, or in litigation may not be discussed. The members of the Commission will not directly answer questions or make comment during delegations.*

Mr. Bowers called for Public Delegations.

There were none.

**III. Town Attorney – Land Use Procedures**

Mr. Bowers turned over the meeting to Attorney O'Connell.

Attorney O'Connell said that he had been asked by Mr. Goeschel to give an overview of the duties of Planning. He started by stating that two-thirds of the municipalities have combined Planning & Zoning Commissions – so we are in the minority with a separate Planning Commission. They are guided by Section 8-23 of the Statutes.

There are three to four functions of a Planning Commission –

- To enact and periodically update a Plan of Conservation & Development (POCD)
- To review proposed municipal improvements
- To review, enact and update Subdivision Regulations - (can ask input from Zoning)
- By Statute – the Town has to update its POCD every ten (10) years. This is what keeps the Town active for grant eligibility.

Essentially the POCD is a generalized policy statement of what the Town should look like and is useful in CGS 8-24 Zoning reviews for consistency or inconsistency. For example, they might also look at the POCD when determining the location of a school. A negative recommendation from Planning means that the proposal must be approved by a super majority of members from the Board recommending the change or concept. The job of Planning members here is not to decide if the idea is a good or bad idea or if it costs too much – but only if it is consistent or inconsistent with the POCD goals and objectives.

From time to time, Section 8-24 Municipal Improvements come before Planning for review – a recent example would be the proposed Athletic Complex. There is also a mandatory referral from Zoning that must be done when there are separate Planning and Zoning Commissions. (The function of Zoning is to decide if it is a good or bad idea). However, the ‘meat’ of what Planning does is the subdivision regulations which are a two-step process:

- Enact, adopt and amend as necessary subdivision regulations which is acting in its’ legislative (enabling act Section 8-23) capacity as a Planning Commission.
- Application of those regulations to the particular application(s) that come before them which is its administrative function. The purpose is to see if the application fits with the regulations as adopted.

The definition of a subdivision is the division of a parcel of land into two (2) or more parts for the purpose of sale immediately or in the future.

A subset of a subdivision is a re-subdivision of a large tract of land with ten (10) lots and a large parcel stated as ‘reserved for future use’. This type of item would require a mandatory public hearing on the re-subdivision. Section 8-25 allows you to have in your regulations items such as regulations on traffic, public safety, drainage, lot size and slope. The over-riding factor is that they must comply with the Zoning regulations so when there are split Commissions, both bodies will generally adopt similar regulations – an example of which would be the cluster subdivision.

Currently there are some big changes coming on Bonding of public improvements. A developer is not allowed to sell a subdivision lot to a customer unless the road as depicted on the plan is completed. The developer must post a bond to insure that any municipal improvements to be taken over by the Town will be turned over in good condition. If they are not done, then the Town ‘calls’ the bond and uses the money to bring the item up to standard and completion. Currently the discretion on what type of bond to post is up to the developer however it is under modification on what for to accept. The bonds are for public improvements. Erosion and Sediment control bonds are not included in this.

The following are considered Disqualifications –

- Conflict of Interest – this is in the statutes and states that if a member has a personal, legal, for financial interest in the subject matter before them that they should step down. An example would be that your brother in law owns the property next door to the banker who lends the developer money for the project.
- Predetermination (not open minded) – if a member has already made up his or her mind before the application is heard then they should step down. A member cannot be unwilling to listen to the information being presented.
- A member is not familiar with the record – An example would be if a public hearing was held open and the members seated were different – if the newly seated member is not familiar with the record – and has not listened to the tapes and reviewed the materials submitted then they can compromise the case.

Appeals go to the Superior Court and are heard on the record. Most appeals are decided against Commissions when they ignore the procedural requirements however, if they are followed, a judge rarely overturns the decision. It is important to keep the record straight. If someone does not like what the Superior Court says their only other appeal is by certification of the Appellate Court which is only granted if something new was missed or the matter is one of great public interest.

When a public hearing is held, members can only consider evidence that is submitted on the record. No further public evidence can be accepted one the public hearing is closed. Once delegations are over, the only people talking are the members who are seated.

Mr. Bowers asked with the separation of Planning and Zoning functions that East Lyme has, how sharply they should stay separate from each other.

Attorney O'Connell said that no member of any land use agency can appear before any other land use agency for any particular outcome. He said that it is a fine line. If the Chair of one Commission is going before the other to report the finding on a referral that would be okay however what is usually done is to send a written report to the Commission who requested the referral.

Ms. Bengtson asked if she, as a taxpayer and member of the northern end of the Town could speak up on something.

Attorney O'Connell said that becomes a touchy situation and that it would be hard to find the line to draw on it.

Ms. Bengtson asked if she could send a family member to speak on her behalf.

Attorney O'Connell said that also would be a touchy situation and that unfortunately that is something that is given up when serving on such Commissions.

Mr. Bowers asked about bonds citing for example that the Town Engineer determines the cost to rebuild a road at \$100,000 and the bond gets posted – what happens with inflation during the years that are allowed for an extension on the application – at what point could you say that the \$100,000 is not enough –

Mr. Goeschel noted that the Town Engineer currently adds in an inflation factor in his figures.

Mr. Bowers and the Commissioners thanked Attorney O'Connell for coming and for his presentation.

#### **IV. POCD Chapter 8 – Circulation and Transportation and**

#### **V. POCD Chapter 4 – Economic Development**

Mr. Bowers recommended that they send their comments on these Chapters to Mr. Goeschel. He noted that Chapter 4 has already been done however they are giving it a 'last look'.

Mr. Goeschel explained that his goal has been to update sections periodically rather than to have to try to do it all at the same time. He said that he currently does not find the document to be 'user friendly' and that he is looking to stream line it so that others can look at it and better understand and utilize it.

### **ADJOURNMENT**

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

**Mr. Schuch moved to adjourn this Workshop Meeting of the East Lyme Planning Commission at 8:10 PM.**

**Ms. Bengtson seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary