

TOWN OF EAST LYME
ZONING COMMISSION
JULY 30, 2015
SPECIAL MEETING MINUTES

Members Present:

Matthew Walker, Chairman
William Dwyer
Terence Donovan
Norm Peck
George McPherson (Entered at 6:10 p.m.)
James Liska, Alternate (Sat for Special Meeting)

FILED IN EAST LYME
CONNECTICUT
AWG 2015 AT 8:40 AM PM
EAST LYME TOWN CLERK

Members Absent:

Matthew Kane
Peter Lukas, Alternate
Shawn Singer, Alternate

Also Present:

Mark Nickerson, First Selectman
Rita Franco-Palazzo, Planning Representative (left at 7:15 p.m.)
Attorney Mark Zamarka

CALL TO ORDER

Chairman Walker called the Special Meeting to order at 6:05 p.m.

PLEDGE OF ALLEGIANCE

Chairman Walker led the assembly in the Pledge of Allegiance.

Mr. Liska sat in Mr. Kane's absence.

PUBLIC DELEGATIONS

There were no public delegations.

- 1. PETITION OF TIMOTHY S. HOLLISTER FOR LANDMARK DEVELOPMENT GROUP, LLC AND JARVIS OF CHESHIRE, LLC UNDER CONNECTICUT GENERAL STATUTES SECTION 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).

Chairman Walker stated this meeting will be a discussion as we move toward a decision. We recognize the need for affordable housing in East Lyme. Tonight we will focus on the proposed zone change and the Preliminary Site Plan. We will put our specific findings on the record. If we make a decision to approve with conditions or to deny, our reasons must be supported by sufficient evidence in the record, must be related to a substantial public interest in health and safety, the need to protect that public interest must clearly outweigh the need for affordable housing, and it must be shown that reasonable changes to the application cannot protect the substantial public interest. Under the Connecticut Environmental Protection Act (CEPA) we must determine whether the activity resulting from approval of this application is reasonably likely to unreasonably adversely affect the public trust in land, air, water of other natural resources and if feasible or prudent alternatives exist. We have a daunting task in front of us. We can approve, approve with conditions, or deny. Either of these should have very specific reasons.

There was discussion on where to start, and it was decided to discuss the application in its entirety.

Mr. Donovan stated the Inland Wetlands Agency said an application to them was needed.

Chairman Walker entered a letter from Cheryl Lozanov, Chair of the Inland Wetlands Agency as Exhibit 1.

Mr. Donovan stated in order for the Inland Wetlands Agency to properly evaluate our request they need an application submitted. Therefore, they need that in order to proceed. There are quite a bit of Wetlands on the property.

Chairman Walker stated there are significant environmental concerns for those wetlands. The Inland Wetlands Agency came to the conclusion a permit was necessary.

Mr. Donovan stated they need a wetlands permit. We also didn't hear a septic proposal, the Inland Wetlands Agency has a say in that.

Mr. McPherson stated they are banking on getting the gallons through the lawsuit.

Mr. McPherson asked Attorney Zamarka what constitutes a complete Preliminary Site Plan.

Attorney Zamarka stated Section 32.9.1 of the Zoning Regulations spells out what they need.

Mr. McPherson stated we got Mr. Goeschel's letter saying there are questions as to the accuracy of the location of the wetlands on the site.

Attorney Zamarka stated that was the Inland Wetlands Agency letter we received.

Chairman Walker stated our first concern is the Inland Wetlands Agency report and that they require an application. There are no septic proposals in the existing Preliminary Site Plan.

Mr. Liska stated one person showed photos that clearly showed wetlands where a building would be. The letter from the Inland Wetlands Agency calls into play the wetlands boundaries.

Chairman Walker stated there is one building within the wetlands based on everything in the record.

Chairman Walker stated we should cite what exhibit that information is in.

Mr. Donovan stated there is a concern about water runoff into the river and the wetlands.

Mr. Liska stated wetlands and septic have to come into play as a safety concern.

Mr. Donovan stated in Exhibit 26 Mr. Trinkaus stated the storm water plan will not work as presented.

Chairman Walker stated there was no water runoff proposal that was adequate for mitigating runoff.

Mr. McPherson stated the Preliminary Site Plan showed the extent of the watershed and someone mentioned that was inaccurate. What is the truth or not?

Mr. Donovan stated the Trinkaus report mentioned the pollutants during and after rain, fertilizer, oil drips, and salt in the winter.

Chairman Walker stated we were tasked with reviewing the environmental consequences by Judge Frazzini.

Mr. Dwyer led a review of the entire Section 32.9.1 as to the requirements within a Preliminary Site Plan. The Commission agreed there were problems with Section C, Section D, Section F, Section G, Section H, Section I, Section J, Section L, Section N and Section O.

Mr. Liska mentioned the fire concerns.

Mr. Donovan stated there is one access in there. Attorney Hollister said they can enter from Deerfield. The Fire Marshal said there was one access way, it is also in the area of 100 year storm. If something happened there would be no access.

Mr. Peck stated he cannot think of another development with 840 units and one way in. There are a lot of things that could happen. This is human life, the environment is important, but human life is crucial.

Mr. Liska asked about the possibility of a second access point.

Chairman Walker stated it is no secret that there are issues going in and out.

Mr. Liska stated Route 1 is backed up on a good day if that is the only way out.

Mr. Donovan stated even when they applied for the 60 lot subdivision they had two ways in.

Mr. Dwyer stated he doesn't think Caulkins Road can handle that much traffic.

Mr. Peck stated we have been through this before and every time there is more evidence against the development of this land. The Trinkaus Report, The Friends letter Exhibit 25, The Trinkaus Report Exhibit 26 with the resume. They all detail what is likely going to happen, there is a lot of evidence in opposition of such a massive development.

Chairman Walker stated there are a lot of concerns.

Mr. Liska stated he is concerned about the building on the wetlands and the wetlands being so close to the septic.

Chairman Walker stated it was stated on record by Mr. Trinkaus that once the sediment from the runoff goes to the wetlands there is irreparable damage.

Mr. McPherson stated this is an incomplete Preliminary Site Plan.

Mr. Dwyer stated those are swamps, not just wetlands.

Mr. Peck stated the photos were not a certified report, but it did draw questions to the applicant's presentation.

Mr. Liska stated there was a photo with a ribbon and then the map marked where the ribbon was.

Mr. Peck stated the surveyor could not walk on the applicants property so he couldn't do soil testing.

Mr. Peck asked if the survey shows the delineation of the wetlands.

Mr. Donovan stated the wetlands were viewed from the Friend's land and the Woodridge boundary. He did not go on the applicant's property. There are 11 photos along the Woodbridge/Landmark boundary by John Ianni. The map shows where the photos were taken from. Building 5 is in the middle of it.

Mr. Peck asked if that is cause to deny.

Chairman Walker stated there is a lack of fully engineered plans.

Mr. Peck stated we could put on a condition of moving that building.

Mr. McPherson stated the wetlands should have been on the Preliminary Site Plan.

Mr. Liska stated there are two wetlands reports, one that says the building is fine and one that says the building is going to be in wetlands.

Mr. Peck stated according to our Zoning Regulations they are supposed to have the location of the wetlands on the Preliminary Site Plan.

Attorney Zamarka stated if there is conflicting evidence then it is the Zoning Commission's discretion to decide, but there has to be evidence supporting that in the record.

Mr. Liska stated if these buildings are going to be built and have septic, and they are in the wetlands and there is a chance the septic will be in the wetlands and the runoff won't drain adequately. What is the motivation to approve this zone change?

Mr. Donovan stated they are counting on sewers.

Mr. Liska stated even with sewers they can't build in the wetlands.

Chairman Walker stated Judge Frazzini's decision stated it was the applicant's burden to provide information that the Preliminary Site Plan would have minimal effect on the wetlands.

Mr. Peck stated we may not even have enough information to even put a condition on the wetlands. The applicant's wetlands map has been proven wrong. Now we are thinking where are the wetlands? How can we tell them to move a building as a condition if we don't know where the wetlands are?

Mr. Donovan stated they were granted 14,434 gallons of sewer, and they need 118,000.

Mr. Donovan stated the traffic study was conducted in February and one was done in August. He would like to see one done at the height of traffic.

Chairman Walker stated that could be a condition.

Mr. Liska stated traffic is a two part concern. It is less of a concern on a normal day, but on an abnormal day or during an emergency could people get out if everyone needed to leave at once.

Mr. Dwyer stated the map stopped at the property line and didn't show the tiny roads.

Mr. Liska stated the bridge that flooded was not on their property.

Mr. Donovan stated the report on June 18th stated traffic hasn't changed significantly since 2005.

Chairman Walker stated he thinks they need a new study done 10 years later.

Attorney Zamarka stated traffic could be conditioned on DOT approval. Attorney Geraghty did contend that Mr. Ford did not receive notice.

Chairman Walker stated traffic should be looked at as a condition for DOT's approval.

Mr. Liska stated he thinks we could add in a storm.

Mr. Donovan stated we are not against affordable housing.

Chairman Walker stated we have to be very detailed and specific. He has been writing down everyone's concerns and issues, but they need to be linked to where they originated.

Mr. Peck stated he screened all of the documents and how he came up with his concerns. The DEEP May 26th letter regarding coastal impact Exhibit 10. The Trinkaus June 16th letter, the Niantic River Watershed letter dated May 7th Exhibit 21, Exhibit 25 Friends letter dated May 11th, Exhibit 26 Trinkaus

letter dated May 2nd, and the May 21st Trinkaus letter. There is a tremendous amount of information in those documents.

Chairman Walker stated the applicant scaled back from the previous application. There are significant changes from the previous ones. They are 1500 feet from the River, it is a phased planning of development, and they have argued the Preliminary Site Plan for Darrow Pond was a similar application. Most of the public comment was traffic and environmental impact. We have a lot of work to do. There have been various issues raised.

Mr. Dwyer stated if they have to use wells what is the amount of water they can supply.

Attorney Zamarka stated how and what percentage of water and sewer is part of the Final Site Plan and not the Preliminary Site Plan.

Chairman Walker stated Water and Sewer did approve a tie in from Route 1. That is out of our purview and shouldn't factor into our decision making process.

Attorney Zamarka stated at this stage that is not proper.

Mr. Peck asked if they can put a condition on that there be no engineered septic.

Attorney Zamarka stated one thing that can be done to help is to draft resolutions and set the framework for the approval, approval with conditions, or denial.

Chairman Walker stated that is a wise course of action.

Chairman Walker stated we have a good starting point for next week. We have to be concrete in our language and findings. He will discuss the time of next week's meeting with Mr. Mulholland.

Motion (1) Mr. Donovan moved to adjourn the meeting at 7:30 p.m.

Seconded by Mr. McPherson.

Motion Passed 6-0.

Respectfully Submitted,



**Karen Miller Galbo
Recording Secretary**

Town of

P.O. Drawer 519
Inland Wetlands Agency



East Lyme

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Niantic, Connecticut 06357
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July 27, 2015

Mathew Walker, Chairman
East Lyme Zoning Commission
P.O. Box 519
108 Pennsylvania Avenue
Niantic, CT 06357

RE: 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).

Chairman Walker,

Based on the filings of the Intervenors', the Friends of the Oswegatchie Hill Nature Preserve/Save the River Save the Hills and the Connecticut Fund for the Environment/ Save the Sound, there is sufficient evidence within the record for the Inland Wetlands Agency to determine that the proposed Preliminary Site Plan (PSP) involves regulated activities that require a permit from the Inland Wetlands Agency.

More specifically, a report from Steve Trinkaus, PE, CPESC, CPSWQ to Ms. Kristen Lambert and Mr. Fred Grimsey dated May 2, 2015 (Trinkaus report), an inland wetlands delineation performed by John Ianni of Highland Soils, Inc., the plan entitled "Perimeter Survey prepared for Friends of Oswegatchie Hills, on Property of the Town of East Lyme, East Lyme, Connecticut, Assessors Map Id: 26.0/4, Scale 1"=100', dated June 2, 2015 revised to June 15, 2015" prepared by John Paul Mereen, L.S. of Gerwick-Mereen, LLC, and the plan entitled Compilation Plan prepared for Friends of Oswegatchie Hills, on Property of the Town of East Lyme, and Landmark Development Group, LLC, Showing Existing Wetlands and Approximate Locations of Proposed Buildings, East Lyme, Connecticut, Scale 1"=100', dated June 2, 2015 revised to June 15, 2015" prepared by John Paul Mereen, L.S. of Gerwick-Mereen, LLC, identifies the approximate location of proposed building #4 and the installation of roof drain drywells within 100-feet of an inland wetland (WF#140). As such, the construction of both the building and the installation of roof drain drywells within 100-feet of inland wetlands are regulated activities. Mr. Ianni's delineation is cause to question the accuracy of the PSP and the wetlands delineation provided by the applicant and whether the applicant has shown all the wetlands on site.

In addition, based on the above report from Steve Trinkaus, PE, CPESC, CPSWQ the PSP also involves activities that are likely to adversely impact or affect on-site wetlands or watercourses such as the substantial pollutant loads generated by approximately 36-acres of impervious surface during every rainfall which, according to the PSP will be collected in four water quality basins; whose outlet pipes discharge on moderate to steep slopes which are not directed to a stabilized location thus, concentrating flow and resulting in erosion that will be conveyed and discharged into down gradient wetlands. According to the Trinkaus report there is no assessment that the four water quality basins will adequately reduce pollutant loads for total suspended sediments, total phosphorus, total nitrogen, petroleum hydrocarbons, and metals. Further, the Trinkaus report indicates that the storm water report submitted states that the proposed water quality basins are located in "moderate to moderately rapid permeable soils with a deep groundwater table that will drain any surface water in the basin to below the bottom of the basin between storm events." However, if the soils types in the area of the proposed development are Charlton and Hollis as identified by Mr. Trinkaus based on the Natural Resource Conservation Service (NRCS) web soil survey and that bedrock will likely be encountered well before design depths are achieved and therefore infiltration of storm water will not occur, thus resulting in increased runoff volumes directed toward the down gradient wetland areas, then the discharge of this storm water would be considered a regulated activity.

The Trinkaus report also identifies the sources of pollutants the proposed development will generate that will exacerbate the adverse impacts to wetlands and watercourses. The pollutants are:

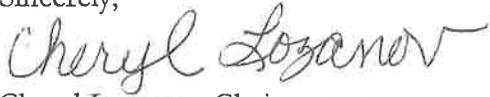
- sand and salt used in winter maintenance operations on driveways, sidewalks and parking areas,
- nutrients from fertilizers used on grass and landscaped areas,
- metals from vehicle brake pads, hydrocarbons from inadvertent gasoline spills and vehicular oil drips on impervious surfaces, and;
- atmospheric deposition on impervious surfaces.

The Trinkaus report indicates that atmospheric deposition is a significant contributor to non-point source pollution citing research from North Carolina State University that indicated 91% of nitrate loads and 38% of total nitrogen load found in runoff was the result of atmospheric deposition directly on impervious surfaces. The Trinkaus report further cites research from Charlotte, North Carolina that found between 10-13% of phosphorous and total suspended solids along with 30-50% of copper and lead and 70-90% of nitrogen in runoff was also the result of atmospheric deposition. As such, if bedrock is encountered before design depths are achieved for each of the water quality basins and the infiltration of storm water does not occur then the proposed development may have adverse impacts to on site inland wetlands and watercourses.

Further, the PSP, the Intervenor's filings, and the Zoning Commission public hearing minutes and exhibits do not provide sufficient information regarding the affect these pollutant loads would have on any of the on-site inland wetlands. Additionally, the PSP, the Intervenor's filings, and the Zoning Commission public hearing minutes and exhibits do not provide sufficient information regarding the affect of the identified on-site regulated activities would have on the on-site inland wetlands. As such, in order to evaluate the environmental impact, the short and long term impacts, irreversible or irretrievable impacts of the regulated activities and the impacts on wetlands or watercourses outside the area of the regulated activity as well as evaluate whether any feasible and prudent alternatives exist, additional information is necessary.

Therefore to properly evaluate the above, the Inland Wetlands Agency would need an application for an inland wetlands permit to be submitted with all the applicable information as required by Section 7 of the East Lyme Inland Wetlands and Watercourses Regulations to conduct regulated activities.

Sincerely,



Cheryl Lozanov, Chairwoman
Inland Wetlands Agency

cc: William Mulholland, Zoning Official
Ed O'Connell, Esq.
Mark Zamarka, Esq.
Timothy Hollister, Esq.
Roger Reynolds, Esq.
Jason Westcott, Esq.
Paul Geraghty, Esq.