

TOWN OF EAST LYME
ZONING COMMISSION
JUNE 4, 2015
PUBLIC HEARING MINUTES

Members Present:

Matthew Walker, Chairman
William Dwyer
George McPherson
Terence Donovan
Norm Peck
James Liska, Alternate (Sat for Public Hearing)
Peter Lukas, Alternate
Shawn Singer, Alternate

FILED IN EAST LYME
CONNECTICUT
June 10, 2015 AT 11:20 AM PM
Matthew Walker
EAST LYME TOWN CLERK

Members Absent:

Matthew Kane

Also Present:

Mark Nickerson, First Selectman
Attorney Mark Zamarka
Attorney Ed O'Connell
Marc Salerno, Ex-Officio
Gary Goeschel, Town Planner
Rita Franco-Palazzo, Planning Representative

Also Absent:

Bill Mulholland, Zoning Officer

CALL TO ORDER

Chairman Walker called the Public Hearing to order at 7:37 p.m.

PLEDGE OF ALLEGIANCE

Chairman Walker led the assembly in the Pledge of Allegiance.

Chairman Walker thanked everyone for coming. He thanked Lieutenant Colonel Joseph D. Daneao, II on behalf of the Town and the Zoning Commission. This is the second of likely three public hearings on the Landmark application. We are grateful for the use of the facilities at Camp Niantic. There will be a few exhibits tonight that will be need to be entered into the record, but they will be short. Then they will move onto the application. Once Attorney Hollister has completed his presentation we will move onto public comment, then we may take a break then the interevendors will give their presentation, then the applicant will be given an opportunity for rebuttal.

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

PUBLIC DELEGATIONS

There were no public delegations.

Item number 2 on the Agenda was moved up to Item 1.

1. **APPLICATION OF TODD SAKOWSKI TO AMEND THE EAST LYME ZONING REGULATIONS SECTION 1.79, 9.2.10, 20.20.8 AND 25.5 TO PERMIT THE OPERATION OF A TAPROOM BREWERY**

This item was continued to the June 18, 2015 meeting.

2. **CONTINUATION OF 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).**

The following exhibits were entered:

Exhibit 10 - This is an addendum to Exhibit 10, which was previously entered at the May 21, 2015 public hearing, and was inadvertently left out when first entered.

Exhibit 25 - Letter from Friends of Oswegatchie Hills Nature Preserve to Chairman Walker and Cheryl Lozanov, Chair of the Inland Wetlands Agency.

Exhibit 26 - Letter from Steven Trinkaus to the Friends of Oswegatchie Hills Nature Preserve and Save the River Save the Hills.

Exhibit 27 - Letter from Richard Morris

Attorney Tim Hollister stated his client is not here. He believes the form of conduct at the May 21st public hearing was unfair. They took three and a half hours to read 26 exhibits. In thirty years he has never seen a public hearing taken up in that way. It was disrespectful to the public. The documents that were read were somewhat selective, he asked why they didn't read his cover letter and the Judge's decision. The procedure was confusing because the public may not understand the judge's orders. He could take the entire night tonight to give his presentation, but if he did that the public won't be able to speak. He will take about 20 minutes tonight, and he will summarize five items. Then he will let the public speak. His traffic and storm water experts will come to the next meeting for a single response.

He presented the following exhibits:

Exhibit 28 - Applicant's supplemental materials.

Exhibit 29 - Memorandum

He explained that Exhibit 28 is a compilation of information regarding affordable housing, which he has continually updated with data from 2014 and 2015. It explains the need for affordable housing in town. He stated of the 8400 housing units in town, there are only about 400 that are affordable housing. There is room for improvement. The applicant's property is 236 acres; he provided materials showing the owner can develop that land into single family units on 3 acre lots, which illustrates how it could be developed.

Attorney Hollister stated he took over this case about two and a half years ago. He was not involved in the Court case. 85% of this property is modest slope and has no wetlands. The idea that this is swamp or undevelopable is not true. The State had the opportunity to acquire this land as open space; the State had no interest because it was surrounded by residential developments. The sewer shed is at the top of the hill on the property, so it could be connected to the sewer system. The Landmark property being connected to sewers would give the town the opportunity to eliminate septic in the Golden Spur neighborhood. In the 1990's there was a dispute with the Sewer Commission as to whether the land was in the sewer district. The DEP said that part of it was in it. In 2005 the applicant applied for an amendment to the affordable housing regulations to rezone the entire 236 acres to an affordable housing district. There were extensive hearings in 2005. The Zoning Commission denied the application but approved multi-family residential development within the sewer district. Landmark appealed and in 2011 Judge Frazzini issued a ruling. His decision resolved many issues, and framed what they are doing tonight. Landmark has to get the traffic plan approved by the DOT. The Zoning Commission's decision can be conditional on the approval of the Water and Sewer Commission, or by the DEEP. This is on remand from the Superior Court; this is not a new application. No one has the right to reopen issues that have already been decided. The Planning Commission's referral was about 8 years late. Landmark applied to the Water & Sewer Commission in 2012 for up to 118,000 gallons per day. The purpose of that was to secure the capacity to know what Landmark can work with. The Water & Sewer Commission denied that application and said zero capacity. Landmark appealed that and in 2014 the denial was overturned. The Water & Sewer Commission then granted them 14,000 gallons. The Water & Sewer Commission is doing the Zoning Commission's job. Landmark owns property in the sewer district; the town can grant the application and still have capacity for others.

The Affordable Housing District Regulations were revised in 2013, now is the appropriate time to proceed to the next phase. 87 acres of the applicants will not be developed. The development area is entirely outside the coastal zone. They have produced a preliminary plan to show they can establish boundaries, to show the roads, and to show there is no health and safety impact on the Town of East Lyme.

They are proposing a phased plan; they don't know the sewer capacity so they don't know the density. The Zoning Commission and the Town won't be prejudiced by approving this application. If there is any engineering aspect not presented here there won't be a claim later that they waived their opportunity. Approval of this application is not permission to construct anything. This application does not require Inland Wetlands Agency approval; this doesn't give them permission to build anything.

Matt Lebeau of Attorney General Blumenthal's office read a letter from Attorney General Blumenthal into the record – Exhibit 30.

Chairman Walker asked about a CAM review.

Attorney Hollister stated that is not prepared because it is outside of the coastal area.

PUBLIC COMMENT

Richard Jalbert – 23 River Road, East Lyme stated he is the owner of Cozy Nest Cottages, his property is between River Road and Caulkins Road. He rents cottages. This development would destroy his business and destroy the neighborhood. We don't need a traffic engineer to know that if there was an emergency there the residents would be trapped. This makes terrible sense for evacuation, it will be a traffic nightmare. He stated the existing roads may not have a right of way that is 50 feet wide.

Robert Garofalo – 15 Ledge Road, Niantic read a letter into the record to Chairman Walker, and Chairwoman Lozanov – Exhibit 31.

Susan Kraynak – 1 River Road, East Lyme read a letter into the record to Mr. Mulholland and Chairman Walker – Exhibit 32.

Susan Lambert – 10 Oak Hill Road, Niantic read a letter into the record from Attorney Paul Geraghty on behalf of Richard Ford of 26 Hill Road, East Lyme – Exhibit 33 (with attachments, traffic report and I-95 Corridor Study)

Attorney Paul Geraghty stated he represents Richard Ford. In 2005 he was never given notice, regardless of what Judge Frazzini said, his client wasn't notified.

Cordett Grimsey – 35 Oswegatchie Road, Waterford read a letter into the record to Chairman Walker – Exhibit 34

David Karg – 20 Hill Road, East Lyme stated he is against this approval. It will totally ruin Golden Spur. He has lived there 33 years. In 1982 two bridges washed out. The Golden Spur area was isolated. With one way in and one way out it would be very dangerous to funnel that many cars. The members of this Commission should do a site walk. He went to the Planning Commission meeting. They discussed a 2005 traffic study. Do they think that basing this application on a 10 year old traffic study is relevant? There are 8 to 10 deliveries a day into the neighborhood, the traffic is not just cars, but delivery trucks also.

Richard Gallagher – 16 Brainerd Road, Niantic stated he is opposed to this. Attorney Hollister referred to this application as lines on paper. There are 1767 parking spaces, and 840 units. If it is approved 700 of those units won't have a place to flush their sewage. It is very clearly 840 units.

Carol Kruse – 51 Quarry Dock Road, Niantic stated this application is not in the best interest of the East Lyme community. We are responsible as citizens to do no harm or put the environment at risk.

Fred Grimsey – 35 Oswegatchie Road, Waterford asked that materials he submitted be entered as exhibits.

The following exhibits were entered:

Exhibit 35 - Letter to Zoning Commission from Waterford East Lyme Shellfish Commission

Exhibit 36 – Letter to Fred Grimsey from Robert Haskins

Exhibit 37 – Letter from Robert DeSanto to Chairman Walker.

Marvin Schutt – 39 N. Edgewood Road, Niantic stated he has learned a lot. The purpose of affordable housing is to make sure people who can't get housing can. The purpose wasn't to destruct god's creations.

**There was a recess, the Public Hearing resumed at 9:30 p.m.

Roger Reynolds representing the CT Fund for the Environment stated they have over 5000 members. He wanted to address and object to Attorney Hollister's actions at the last public hearing. As he introduced an expert Mr. Hollister jumped up and objected. He objected that they read the exhibits into the record, he did not cite any law in that objection. In fact that was a perfectly reasonable choice and it was highly unjustified for Attorney Hollister to interrupt. They are correct to raise the environmental issues, they have cited law that the Inland Wetlands Agency should see this first. The Zoning Commission should reject this as premature. He asked Attorney Hollister to stop bullying, stop jumping up, and to respect the Zoning Commission. The Zoning Commission has the right to dismiss this or stay until the Inland Wetlands Agency sees this application.

Steve Trinkaus, 114 Hunters Ridge Road, Southbury stated he is certified in erosion and sedimentation controls. He reviewed the application and submitted a letter. He looked at the potential actions. The discharge points are just outside the 100 foot upland area. The discharge will erode a channel into the wetlands, and wind up as sediment in the wetlands. There is no water quality treatment, there are pollutants in the runoff. The problems will be very large, will bury plants and will affect species within them. The storm water management system won't work and they will have to use land that they have stated they intend for open space.

Roger Reynolds stated this will have an adverse impact on the wetlands. It should be referred to the Inland Wetlands Agency. 100 or so units have been approved for sewage. The site plan doesn't show septic. He asked this Commission to refer this to Inland Wetlands and stay or dismiss these proceedings.

Attorney Hollister stated this is a two part application. The first part is to rezone. The Preliminary Site Plan Regulations doesn't say that they need approval from the Inland Wetlands Agency. If they are not asking for permission to build they don't need a wetlands permit. If this application gets approved then they can say they have to get wetlands approval first.

Chairman Walker asked Attorney Zamarka if it is the Zoning Commission's purview to refer this to Inland Wetlands Agency for a report without the applicant applying to Inland Wetlands.

Attorney Zamarka stated the application is for a Preliminary Site and a zone change. Judge Frazzini told the Zoning Commission to determine the environmental issues within the zone change. The Zoning

Commission is not responsible for making an environmental finding without hearing from the Inland Wetlands Agency. They can refer this to the Inland Wetlands Agency for a report and hold this open until the June 18th meeting.

Motion (1) Mr. Donovan moved to refer this to the Inland Wetlands Agency for a report to the Zoning Commission at the Public Hearing on June 18th.

Seconded by Mr. Liska.

Motion Passed 6-0.

Roger Reynolds stated he hasn't seen an application with this level of disregard for the law and the environment. This originally started out as a golf course, then the affordable housing applications began. The rules don't seem to apply. The Inland Wetlands Agency, the CAM Act, and the Zoning Regulations say what is required. They were granted 14,000 gallons of sewer, they don't believe they need to comply. Sewage treatment is not included in this application. It is necessary to protect the environment and that outweighs the need for affordable housing. 8-30g doesn't apply to the Water and Sewer Commission. This will have a devastating impact on the wetlands.

Exhibit 28 was entered into the record by Attorney Paul Geraghty - What's Legally Required

Attorney Geraghty stated the document that Attorney Hollister submitted tonight shows a proposed 60 lot subdivision, even though that is not something that is automatically granted. The court found this property environmentally significant. The record supports this Commission's findings that the public interest in open space outweighs the public interest in affordable housing. It is a unique environmental site, there is evidence of the environmental harm if this is approved. The applicant always seems to do less than required of him, and the applicant continues to fail to follow the rules that Judge Frazzini set up. The applicant has the burden of submitting evidence. Landmark has refused to provide proper evidence.

Attorney Hollister stated he prefers to respond on June 18th.

Attorney Zamarka stated if the Inland Wetland report is pending, the Zoning Commission decision will be due 35 days after the report is issued.

Mr. McPherson asked Attorney Zamarka to look into the ownership of the roads.

Attorney Zamarka stated he will do that and report back to them.

Chairman Walker asked if they have 35 days to make a decision from when Inland Wetlands submits their report.

Attorney Zamarka stated that yes.

Attorney Hollister stated they have 65 days after the Public Hearing to make a decision, he hopes they aren't adding another 35 days onto that. The Inland Wetlands Agenda for Monday the 8th has already been filed. He has nothing to present to the Inland Wetlands Agency.

Motion (2) Mr. McPherson moved to continue the Public Hearing to June 18, 2015.

Seconded by Mr. Donovan.

Motion Passed 6-0.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Karen Miller Galbo".

**Karen Miller Galbo
Recording Secretary**