

TOWN OF EAST LYME  
ZONING COMMISSION

FILED IN EAST LYME  
CONNECTICUT  
Aug 25 2015 AT 8:30 (AM/PM)  
*Cesley Blair*  
EAST LYME TOWN CLERK

AUGUST 20, 2015

SPECIAL MEETING MINUTES

Members Present:

Matthew Walker, Chairman  
Norm Peck  
George McPherson  
William Dwyer  
Terence Donovan

Members Absent:

Matthew Kane  
James Liska, Alternate  
Peter Lukas, Alternate  
Shawn Singer, Alternate

Also Present:

Ed O'Connell, Town Attorney  
Mark Nickerson, First Selectman  
Holly Cheeseman, Ex-Officio  
Rita Franco-Palazzo, Planning Representative

Also Absent:

Bill Mulholland, Zoning Officer

CALL TO ORDER

Chairman Walker called the Special Meeting to order at 6:32 p.m.

PLEDGE OF ALLEGIANCE

Chairman Walker led the assembly in the Pledge of Allegiance.

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 is a Special Meeting for the Landmark application. There will be no public comments. They plan to complete their deliberations tonight given the timeline. They held three public hearings at Camp Niantic, and have had several meetings here at the Town Hall on this application. From the onset they have known there would be three possible outcomes, approval, approval with conditions, or denial. At the end of the last meeting they tasked Attorney O'Connell to come up with a final draft that would meet all of the Commission's concerns.

Attorney O'Connell stated per the direction of this Commission he amended the draft resolution to include the Trinkaus and Highland Soil concerns. He passed out the amended draft (**Attached**) to the Commission members. In addition he provided copies to representatives of all parties. He discussed the changes that he made to the draft. He incorporated all of the provisions from the Highland Soil report and the Trinkaus report.

Chairman Walker stated the mapping that was discussed was more of a construction issue and will be taken up by the Inland Wetlands Agency.

Attorney O'Connell stated that will come to them by way of a condition, and also the same issue would be resolved in an Inland Wetlands report.

Mr. Peck asked about three questions pertaining to storm water, septic and sewer that he had at the last meeting. Whether they could have an independent licensed engineer review their plan, a perpetual bond guaranteeing the maintenance of the system, and if the storm water plan could be built for a 100 year storm.

Attorney O'Connell stated they are all good points, but they don't have Regulations that require that they be built for a 100 year storm, that would be difficult when they don't require other applicants to do that. It is also difficult to require a perpetual bond as the Statutes have recently changed on bonds. As far as the independent engineer, that is a matter for the Final Site Plan, the town has its own engineers.

Mr. Peck stated we put conditions on special permits all the time that are not in the Regulations. We require things that are specific to certain sites to avoid problems. This is a rare site.

Attorney O'Connell stated the town engineering staff can determine if it needs expert review.

Mr. Peck asked about the perpetual bond, they can build the project, form an association and then forget about the system. How do we guarantee maintenance?

Attorney O'Connell stated that is a consideration for all projects. If they are going to have public improvements the town has to make sure they are properly constructed.

Chairman Walker stated the meat and potatoes of their concerns are found in this document. There are very stringent conditions with this application.

Mr. Peck asked about the mention at one of the public hearings about Native American occupation in the hills. Have they requested an archeological survey?

Attorney O'Connell stated he would have to check the Regulations. The Preliminary Site Plan part of the Regulations does not require it.

**Motion (1) Mr. Donovan moved to approve the following:**

The Commission hereby APPROVES the application of Landmark Investment Group, LLC to re-zone the Applicant's property to an Affordable Housing District, subject to the following CONDITIONS:

1. The change of zone shall apply only to that portion of the Applicant's Property that is located within the East Lyme Sewer Service District as determined by the Water and Sewer Commission on January 28, 2003, as shown on a map entitled "Sewer Service District Boundary Comparison East Lyme Connecticut", dated August 31, 2005 by Fuss & O'Neill, Inc. Consulting Engineers (Exhibit 17 submitted at 2005 public hearing, incorporated herein by referenced).
2. The Applicant shall, prior to (or contemporaneous with) applying for Final Site Plan approval pursuant to §32.9.2 of the Regulations, apply for and receive an Inland Wetlands Permit from the East Lyme Inland Wetlands Agency. Said application and approval shall accurately depict the location of all wetlands in relation to the proposed development and shall also depict the location of any septic fields or system;
3. The Applicant shall, prior to (or contemporaneous with) applying for Final Site Plan approval pursuant to §32.9.2 of the Regulations, also submit an application for coastal site plan review pursuant to General Statutes §22a-105(b)
4. The Applicant shall, at the time it applies for Final Site Plan approval pursuant to §32.9.2 of the Regulations, provide the Commission with the information necessary for the Commission to assess the environmental and coastal impacts of the proposed change of zone, including but not limited to:
  - A. A stormwater management plan which shall, at a minimum, address and resolve the following aspects:
    1. The Applicant shall conduct test borings in the area of each detention basin to determine the presence of bedrock and whether it would be encountered before design depths are achieved for each of the water quality basins as it may impact the infiltration of storm water thus, adversely impacting on site inland wetlands and watercourses.
    2. 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. The Applicant should submit an assessment that the four water quality basins will adequately reduce pollutant loads for total suspended sediments, total phosphorus, total nitrogen, petroleum hydrocarbons, and

metals, and will not result in concentrated runoffs and discharges of eroded materials into down gradient wetlands.

3. Sources of pollutants the proposed development will generate that will exacerbate the adverse impacts to wetlands and watercourses. The pollutants are:

- i. Sand and salt used in winter maintenance operations on driveways, sidewalks and parking areas,
- ii. Nutrients from fertilizers used on grass and landscaped areas,
- iii. Metals from vehicle brake pads, hydrocarbons from inadvertent gasoline spills and vehicular oil drips on impervious surfaces, and
- iv. Atmospheric deposition on impervious surfaces.

The Applicant shall address and resolve the effect that the foregoing pollutants and loads would have on any of the on-site inland wetlands.

B. The Applicant shall address and resolve the following concerns regarding drainage discharges along the proposed access driveway:

- i. The three discharges from the access driveway will convey runoff from the proposed impervious area discharge directly onto upland soils and not into an existing stabilized location.
- ii. The discharge of flow onto this slope for a length in excess of 300 feet will cause a channel to be eroded in the upland area as the natural slope does not currently experience concentrated runoff. The concentrated flow being discharged here will result in eroded sediments then being conveyed and potentially discharged into the Niantic River as no wetland areas are located down gradient of this point. A small riprap pad or plunge pool will only initially slow the velocity of the discharge and the continuous discharge or runoff will concentrate and cause the erosion.
- iii. There is no water quality treatment proposed for these three discharge points, so pollutants found in the on-point source will be discharged directly into the Niantic River.

**Seconded by Mr. Peck.**

**Motion Passed 5-0.**

**Motion (2) Chairman Walker moved to approve the following:**

The Commission hereby APPROVES the application of Landmark Investment Group, LLC for a Preliminary Site Plan, subject to the following MODIFICATIONS:

1. The Applicant shall, prior to (or contemporaneous with) applying for Final Site Plan approval pursuant to §32.9.2 of the Regulations, apply for and receive an Inland Wetlands Permit from the East Lyme Inland Wetlands Agency. Said application and approval shall accurately depict the location of all wetlands in relation to the proposed development;
2. The Applicant shall, prior to (or contemporaneous with) applying for Final Site Plan approval pursuant to §32.9.2 of the Regulations, also submit an application for coastal site plan review pursuant to General Statutes §22a-105(b)
3. The Applicant shall, prior to (or contemporaneous with) applying for Final Site Plan approval pursuant to §32.9.2 of the Regulations, demonstrate that public water and sewers can be provided to all of the development, or to the extent that relevant state agencies have approved community septic or water for the portions of the development not served by public water or sewer, that a combination of public water and sewer and onsite water and waste disposal can serve the entire development. The Applicant shall also describe the location, ownership, operation and maintenance of said systems.
4. The Applicant shall, at the time it files for Final Site Plan approval pursuant to §32.9.2 of the Regulations, demonstrate that the access roadway to the proposed development, known as Calkins Road, shall have an unobstructed vertical clearance of not less than thirteen feet, six inches, pursuant to the National Fire Prevention Association and the Connecticut State Fire Prevention Code ("CSFPC") §18.2.3.4.1.1 and shall have an unobstructed width of not less than twenty feet pursuant to CSFPC §18.2.3.4.1.2
5. The Applicant shall, at the time it files for Final Site Plan approval pursuant to §32.9.2 of the Regulations demonstrate that the proposed development has a second point of exit that meets CSFPC §18.2.3.3 Multiple Access Roads,
6. The Applicant shall, at the time it applies for Final Site Plan approval pursuant to §32.9.2 of the Regulations, provide the Commission with the information necessary for the Commission to assess the environmental and coastal impacts of the proposed change of zone, including but not limited to:
  - A. A stormwater management plan which shall, at a minimum, address and resolve the following aspects:
    1. The Applicant shall conduct test borings in the area of each detention basin to determine the presence of bedrock and whether it would be encountered before design depths are achieved for each of the water quality basins as it may impact the infiltration of storm water thus, adversely impacting on site inland wetlands and watercourses.
    2. 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. The Applicant should submit an assessment that the four water quality basins will adequately reduce pollutant loads for total suspended sediments, total phosphorus, total nitrogen, petroleum hydrocarbons, and metals, and will not result in concentrated runoffs and discharges of eroded materials into down gradient wetlands.

3. Sources of pollutants the proposed development will generate that will exacerbate the adverse impacts to wetlands and watercourses. The pollutants are:
  - i. Sand and salt used in winter maintenance operations on driveways, sidewalks and parking areas,
  - ii. Nutrients from fertilizers used on grass and landscaped areas,
  - iii. Metals from vehicle brake pads, hydrocarbons from inadvertent gasoline spills and vehicular oil drips on impervious surfaces, and
  - iv. Atmospheric deposition on impervious surfaces.

The Applicant shall address and resolve the effect that the foregoing pollutants and loads would have on any of the on-site inland wetlands.

- B. The Applicant shall address and resolve the following concerns regarding drainage discharges along the proposed access driveway:
  - i. The three discharges from the access driveway will convey runoff from the proposed impervious area discharge directly onto upland soils and not into an existing stabilized location.
  - ii. The discharge of flow onto this slope for a length in excess of 300 will cause a channel to be eroded in the upland area as the natural slope does not currently experience concentrated runoff. The concentrated flow being discharges here will result in eroded sediments then being conveyed and potentially discharged into the Niantic River as no wetland areas are located down gradient of this point. A small riprap pad or plunge pool will only initially slow the velocity of the discharge and the continuous discharge or runoff will concentrate and cause the erosion.
  - iii. There is no water quality treatment proposed for these three discharge points, so pollutants found in the on-point source will be discharged directly into the Niantic River.

7. The Applicant shall, at the time it applies for Final Site Plan approval pursuant to §32.9.2 of the Regulations, submit not only the information required for a Final Site Plan, but shall also submit the following:

Documents, reports or such other evidence which will be of use to the Commission in determining the exact location, extent and nature of "Inland Wetlands Area #5", more particularly described in a report from Highland Soils, LLC dated April 24, 2014 and depicted on maps and in photographs attached to a letter to the Commission from

Friends of Oswegatchie Hill Nature Preserve dated June 1, 2015 (Exhibit 48 submitted at June 18, 2015 public hearing).

**Seconded by Mr. Donovan.**

**Motion Passed 4-1 (Mr. McPherson – Nay)**

Mr. Dwyer asked if Mr. McPherson should state his reasons.

Mr. McPherson stated he finds it highly suspect that the information provided was not as accurate as what we were told. Attorney Hollister stated they were just lines on paper. He dared us to deny this application because not everything was on the Preliminary Site Plan. He thinks they know and it shouldn't be allowed.

Chairman Walker stated we all feel some of those sentiments. He extended his gratitude for a job well done. It was a monumental effort to get a grasp of these materials. It is not easy knowing the public pressure against this.

**Motion (3) Mr. McPherson moved to adjourn the Special Meeting at 7:25 p.m.**

**Seconded by Mr. Donovan.**

**Motion Passed 5-0.**

**Respectfully Submitted,**

**Karen Miller Galbo  
Recording Secretary**

**LANDMARK INVESTMENT GROUP, LLC  
AFFORDABLE HOUSING APPLICATION**

**August 20, 2015**

**CONDITIONAL APPROVAL OF ZONE CHANGE AND APPROVAL WITH  
MODIFICATIONS OF PRELIMINARY SITE PLAN APPLICATION**

**RECITALS**

1. On March 4, 2015, Landmark Investment Group, LLC, and Jarvis of Cheshire, LLC (“Applicant”) filed an “Application for Rezoning of 123.02 Acres to Affordable Housing District (AHD) and Preliminary Site Plan Approval” (“Application”) with the East Lyme Zoning Commission (“Commission”) consisting of a set of plans for 840 total units for sale or rent of which 30% would be affordable housing units on approximately 36 acres, an affordability plan pursuant to Section 32 of the East Lyme Zoning Regulations (“Regulations”) and a proposed zone change for approximately 123.03 acres and;
2. The Application is submitted pursuant to Superior Court Judge Stephen Frazzini’s Memorandum of Decision and Remand Order dated October 31, 2011 (“Decision”) in the matter of *Landmark, LLC v. East Lyme Zoning Commission*, HHB CV 06-4016813S, Superior Court of Connecticut, Judicial District of New Britain; and
3. The Applicant has requested (1) the rezoning of 123.03 acres of the property of Jarvis of Cheshire LLC and Landmark Development Group LLC (“Property”), from its existing designation to an Affordable Housing District, in accordance with Section 32 of the Regulations and (2) approval of a Preliminary Site Plan for the construction of 840 housing units, 30% of which would be affordable housing units, in accordance with Section 32 of the Regulations; and
4. The Commission, having determined that the application includes a request for a change in zone, has made the requisite referrals to the Planning Commission pursuant to General Statutes § 8-3a and the Southeastern Connecticut Council of Governments pursuant to General Statutes §8-3b; and
5. The Commission has determined that the application proposes activity within the coastal boundary as defined in General Statutes §22a-94 and the Town’s Plan of Development the Commission has referred the application to the Department of Energy and Environmental Protection (DEEP) pursuant to general Statutes §22a-104(e), and the Office of Long Island Sound Programs (OLISP); and
6. Pursuant to General Statutes §22a-19, the Friends of Oswegatchie Hills Nature Preserve, Inc. and Save the River, Save the Hills, Inc. and the Connecticut Fund for the Environment and Save the Sound (“Intervenors”) have intervened in this Application upon the belief that the application involves conduct that is reasonably likely to have the



effect of unreasonably polluting, impairing or destroying the public trust in the air, water and other natural resources of the State of Connecticut; and

7. The Commission also received referral reports from the Niantic River Watershed Committee, the East Lyme Harbor Management Commission and the East Lyme Director of Public Safety; and

8. The Commission is required to make appropriate findings under the Affordable Housing Statute C.G.S. §8-30g as well as the Connecticut Environmental Protection Act ("CEPA") §22a-16 et. seq.; and

9. In light of the Intervenors allegations regarding potential damage to inland wetlands and watercourses resulting from the Application, the Commission referred the Application to the East Lyme Inland Wetlands Agency ("IWA") for a report. The IWA report, dated July 27, 2015, found there was sufficient evidence in the record to determine that the Application involved regulated activities that require an IWA permit. The report further recommended that the Applicant be required to apply for an IWA permit; and

10. The Commission held three (3) public hearings on the application during which it listened to numerous hours of testimony. Approximately sixty (60) exhibits were submitted by the Applicant and various agencies and individuals for consideration during the hearing process. In addition the Return of Record in the matter of *Landmark, LLC v. East Lyme Zoning Commission*, HHB CV 06-4016813S ("2005 Application") was also incorporated as an exhibit and is part of the record in this Application. In making its decision, the Commission is considering and taking into account the testimony and exhibits submitted at the hearings on the Application as well as all relevant exhibits from the record of the 2005 Application.

11. For the purposes of this affordable housing application, the Commission will address this motion in two separate parts:

- I. The request for a zone change;
- II. The request for approval of a "Preliminary Site Plan";

## **I. THE PROPOSED ZONE CHANGE TO THE APPLICANT'S PROPERTY**

WHEREAS, the Commission finds and recognizes that there is a need for affordable housing in the Town of East Lyme, and that less than 10% of available housing stock meets the statutory definition of affordable housing; and

WHEREAS, the Applicant is applying for a zone change for 123.02 acres of its property that is the subject of this Application. The development plan submitted proposes 840 residential units to be located on 36 acres of the 123.02 acres that are the subject of the

zone change, and that the remaining 87.02 acres would be dedicated as open space; and

WHEREAS, in its decision regarding the Applicant's 2005 Application the Commission granted a partial change of zone for that portion of the Applicant's Property that was located within the East Lyme Sewer Service District ("SSD"); and

WHEREAS, in his Decision regarding the 2005 Application, Judge Frazzini found that there was insufficient evidence to support the denial of a zone change for the entire property based on lack of public sewers for an affordable housing district with the proposed or potential density as here. He also found that there was also insufficient evidence to use the lack of sewers as a basis for rejecting Landmark's suggestion that only the site plan area be rezoned; and

WHEREAS, Judge Frazzini also found that there was sufficient evidence in the record to support the Commission's decision in the 2005 Application to deny a zone change for the Applicant's entire 236 acre property based on concerns regarding environmental and coastal damage, and rescinded the Commission's granting of a partial zone change for that portion of the Property located within the SSD unless the Commission later approved a preliminary or final site plan that provided the information necessary for the Commission to assess environmental and coastal impacts; and

WHEREAS, Judge Frazzini also found that approximately 60% of the area to be developed was located outside the East Lyme SSD; and

WHEREAS, the Applicant has requested from the East Lyme Water and Sewer Commission sewer treatment capacity for the proposed development in the amount of 118,000 gallons per day ('gpd'), that the Water and Sewer Commission has allocated 14,434 gpd, approximately 10% of the amount requested by the Applicant, that the Applicant has appealed this allocation to the Superior Court, and that the appeal is still pending; and

WHEREAS the Commission has determined there is sufficient evidence in the record that if the Applicant does not receive the entire 118,000 gpd sewer allocation, the Applicant will require on site community septic which may be located in the area designated for open space, an area which is largely composed of inland wetlands and upland review area; and

WHEREAS, the Applicant has not applied for coastal site plan review and has not provided the information necessary for the Commission to assess environmental damage to the area, coastal resources, and the interests protected by the coastal management act and conservation zone statute; and

WHEREAS, the Commission has determined that there is sufficient evidence in the record that the property has been the subject of extensive efforts by and on behalf of

the Town, the Intervenor, members of the public, conservation groups and others to preserve the land for its unique environmental qualities, and that such qualities are widely known and are documented sufficiently in the record, and that the proposed zone change would be antithetical to that purpose; and

WHEREAS, the Commission has determined there is sufficient evidence in the record that large portions of the land within the proposed zone change are within the Coastal Boundary as described in General Statutes §22a-94. The Commission has determined there is sufficient evidence in the record that the proposed zone change is incompatible with the purposes of General Statutes §22a-105, et seq., the Coastal Management Act, in that a zone change would allow for activity that would have an adverse impact on coastal resources and water quality, and is inconsistent with the Town's Plan of Conservation and Development, the Municipal Coastal Program and the Harbor Management Plan. Pursuant to General Statutes §22a-106, the Commission finds that the site is characterized by shallow depth-to-bedrock and steep slopes which would necessitate significant alterations of the site to provide for road access, community septic, or water and sewer service, and the proposed structures' and

WHEREAS the Commission has determined that there is a significant public interest in the preservation and protection of the Coastal Boundary area, that this significant public interest outweighs the need for affordable housing, and that this significant public interest can be adequately protected by reasonable changes and conditions to the Application; and

WHEREAS, the Commission has determined there is sufficient evidence in the record that the proposed zone change would result in regulated activities as described in the East Lyme Inland Wetlands and Watercourses Regulations, and that such activities are likely to impact or affect inland wetlands and/or watercourses. There is sufficient evidence in the record that at least part of the proposed development may be located in wetlands or the upland review area. The Commission finds that there is a substantial public interest in protecting the Town's inland wetlands and watercourses, and that this substantial public interest outweighs the need for affordable housing. The Commission also finds that there is not sufficient evidence in the record for the Commission to properly evaluate the impacts of the regulated activities. The Commission further finds that the substantial public interest in preserving and protecting the Town's inland wetlands and watercourses can be adequately protected by reasonable changes and conditions to the Application; and

WHEREAS, pursuant to General Statutes §22a-19 the Commission finds that there is sufficient evidence in the record that the proposed zone change would result in activity that is reasonably likely to unreasonably adversely affect the public trust in land, air, water or other natural resources, and that feasible and prudent alternatives exist.

**BE IT THEREFORE RESOLVED**, the Commission hereby APPROVES the application of Landmark Investment Group, LLC to re-zone the Applicant's property to an Affordable Housing District, subject to the following CONDITIONS:

1. The change of zone shall apply only to that portion of the Applicant's Property that is located within the East Lyme Sewer Service District as determined by the Water and Sewer Commission on January 28, 2003, as shown on a map entitled "Sewer Service District Boundary Comparison East Lyme Connecticut", dated August 31, 2005 by Fuss & O'Neill, Inc. Consulting Engineers (Exhibit 17 submitted at 2005 public hearing, incorporated herein by referenced).
2. The Applicant shall, prior to (or contemporaneous with) applying for Final Site Plan approval pursuant to §32.9.2 of the Regulations, apply for and receive an Inland Wetlands Permit from the East Lyme Inland Wetlands Agency. Said application and approval shall accurately depict the location of all wetlands in relation to the proposed development and shall also depict the location of any septic fields or system;
3. The Applicant shall, prior to (or contemporaneous with) applying for Final Site Plan approval pursuant to §32.9.2 of the Regulations, also submit an application for coastal site plan review pursuant to General Statutes §22a-105(b)
4. The Applicant shall, at the time it applies for Final Site Plan approval pursuant to §32.9.2 of the Regulations, provide the Commission with the information necessary for the Commission to assess the environmental and coastal impacts of the proposed change of zone, including but not limited to:
  - A. A stormwater management plan which shall, at a minimum, address and resolve the following aspects:
    1. The Applicant shall conduct test borings in the area of each detention basin to determine the presence of bedrock and whether it would be encountered before design depths are achieved for each of the water quality basins as it may impact the infiltration of storm water thus, adversely impacting on site inland wetlands and watercourses.
    2. 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. The Applicant should submit an assessment that the four water quality basins will adequately reduce pollutant loads for total suspended sediments, total phosphorus, total nitrogen, petroleum hydrocarbons, and metals, and will not result in concentrated runoffs and discharges of eroded materials into down gradient wetlands.

3. Sources of pollutants the proposed development will generate that will exacerbate the adverse impacts to wetlands and watercourses. The pollutants are:
  - i. Sand and salt used in winter maintenance operations on driveways, sidewalks and parking areas,
  - ii. Nutrients from fertilizers used on grass and landscaped areas,
  - iii. Metals from vehicle brake pads, hydrocarbons from inadvertent gasoline spills and vehicular oil drips on impervious surfaces, and
  - iv. Atmospheric deposition on impervious surfaces.

The Applicant shall address and resolve the effect that the foregoing pollutants and loads would have on any of the on-site inland wetlands.

- B. The Applicant shall address and resolve the following concerns regarding drainage discharges along the proposed access driveway:
  - i. The three discharges from the access driveway will convey runoff from the proposed impervious area discharge directly onto upland soils and not into an existing stabilized location.
  - ii. The discharge of flow onto this slope for a length in excess of 300 feet will cause a channel to be eroded in the upland area as the natural slope does not currently experience concentrated runoff. The concentrated flow being discharged here will result in eroded sediments then being conveyed and potentially discharged into the Niantic River as no wetland areas are located down gradient of this point. A small riprap pad or plunge pool will only initially slow the velocity of the discharge and the continuous discharge or runoff will concentrate and cause the erosion.
  - iii. There is no water quality treatment proposed for these three discharge points, so pollutants found in the on-point source will be discharged directly into the Niantic River.

## **II. THE REQUEST FOR APPROVAL OF A PRELIMINARY SITE PLAN**

WHEREAS, the Commission finds and recognizes that there is a need for affordable housing in the Town of East Lyme, and that less than 10% of available housing stock meets the statutory definition of affordable housing; and

WHEREAS, the Applicant is applying for approval of a Preliminary Site Plan pursuant to §32.9.1 of the Regulations; and

WHEREAS, in his Decision regarding the Applicant's 2005 submission, Judge Frazzini found the following regarding the Site Plan:

1. There was insufficient evidence to support the lack of public sewers as a basis for denying the conceptual site plan.
2. There was sufficient evidence to support the denial of the conceptual site plan because Landmark had not yet shown that adequate potable water was available. However, the public interest in adequate waste disposal and potable water could have been protected by a conditional approval. The conditional approval should have required that Landmark show, in a preliminary or final site plan under the amended regulations, that public water and sewers can be provided to all or part of the development, or to the extent that relevant state agencies have approved community septic or water for the portions of the development not served by public water or sewer.
3. There was insufficient evidence to deny the site plan based on traffic issues. The Commission could have approved conditioned on Landmark obtaining Department of Transportation approval of its traffic expert's recommendations and then implementing the improvements at Landmark cost.
4. There was insufficient evidence to deny the site plan based on harm to coastal resources caused by the road and traffic thereon. This issue can be revisited when Landmark provides the information required by the DEP and for a preliminary site plan.
5. There was sufficient evidence to deny a preliminary site plan based on the proposed draft regulations, because as drafted they would have allowed approval of an application before a developer would have provided sufficient information to allow the commission to assess potential environmental harm. However, the public interest in protecting against potential harm to the environment could have been protected by a reasonable change to the application – treating and approving it as a conceptual site plan, and requiring Landmark to submit “information pertinent to environmental or coastal harm” in subsequent applications for preliminary or final site plan under the amended regulations.
6. The Commission is instructed to approve a conceptual site plan conditioned on Landmark subsequently demonstrating, in its preliminary or final site plan application under the amended regulations, that
  - (a) public water and sewers can be provided to the entire development,
  - (b) the relevant state agencies have approved community water and septic, or that a combination of public and onsite water and waste disposal can serve the entire development, and

- (c) that the state DOT approve the improvements recommended by Landmarks traffic engineers and that Landmark bear the full cost of those improvements.

WHEREAS, the Commission finds that the Application does not comply with Section 32 for one or more of the following reasons:

1. The Application does not accurately depict the location of wetlands and watercourses as required by §32.9.1.c of the Regulations;
2. The Application does not contain information regarding the location, ownership, operation and maintenance of sewage disposal and water supply, as required by § 32.9.1.f of the Regulations;
3. The Application does not supply a sufficient preliminary stormwater management plan as required by § 32.9.1.g of the Regulations;
4. The Application does not contain coastal zone resources information as required by § 32.9.1.h of the Regulations;
5. The Application does not contain information describing any impact on public health and safety, as required by § 32.9.1.o of the Regulations.

WHEREAS, the traffic report cited in the Decision was prepared in 2005. The instant PSP Application contains a report which purports to verify and update information contained in the 2005 traffic report; and

WHEREAS, the Commission finds there is sufficient evidence in the record that the proposed access road to the development provides for one incoming lane and one outgoing lane with a boulevard style divider in the middle, and that the access road runs through the Coastal Management Zone. The Commission further finds that there is a substantial public interest in the protection of the Coastal Management Zone, that this substantial public interest outweighs the need for affordable housing, and that this public interest can be adequately protected by reasonable changes and conditions to the Application; and

WHEREAS, the Applicant has not provided the information necessary for the Commission to assess the environmental and coastal impacts of the PSP; and

WHEREAS, the Commission has determined that there is sufficient evidence in the record that, pursuant to General Statutes 22a-19, the proposed development is reasonably likely to have the effect of unreasonably polluting, impairing and destroying the surrounding natural resources, and that feasible and prudent alternatives exist.; and

WHEREAS, the Commission has determined there is sufficient evidence in the record that the access roadway to the proposed development, known as Calkins Road, must have an unobstructed vertical clearance of not less than thirteen feet, six inches, pursuant to the National Fire Prevention Association and the Connecticut State Fire Prevention Code ("CSFPC") §18.2.3.4.1.1 and must have an unobstructed width of not less than twenty feet pursuant to CSFPC §18.2.3.4.1.2; and

WHEREAS, the Commission has determined there is sufficient evidence in the record that PSP does not provide for a second point of exit that meets CSFPC §18.2.3.3 Multiple Access Roads, that the single access road (Calkins Road) provided for in the Application is located on Route One and could be impaired by vehicle congestion, climactic conditions or other factors that could limit access, that the Applicant acknowledged that it did not have a second access road into the development; and.

WHEREAS, the Commission has determined there is a substantial public safety interest in providing and maintaining emergency access to the proposed development and in complying with the Connecticut State Fire Prevention Code, that this public interest outweighs the need for affordable housing, and that this public interest can be adequately protected by reasonable changes to the Application; and

WHEREAS, the Commission has determined there is sufficient evidence in the record that a substantial portion of the buildings in the proposed development is or may be located in an inland wetland or watercourse area, that there is a substantial interest in protecting the Town's inland wetlands and watercourses, and this public interest outweighs the need for affordable housing, and that the public interest can be adequately protected by reasonable changes; and

**BE IT THEREFORE RESOLVED**, the Commission hereby APPROVES the application of Landmark Investment Group, LLC for a Preliminary Site Plan, subject to the following MODIFICATIONS:

1. The Applicant shall, prior to (or contemporaneous with) applying for Final Site Plan approval pursuant to §32.9.2 of the Regulations, apply for and receive an Inland Wetlands Permit from the East Lyme Inland Wetlands Agency. Said application and approval shall accurately depict the location of all wetlands in relation to the proposed development;
2. The Applicant shall, prior to (or contemporaneous with) applying for Final Site Plan approval pursuant to §32.9.2 of the Regulations, also submit an application for coastal site plan review pursuant to General Statutes §22a-105(b)
3. The Applicant shall, prior to (or contemporaneous with) applying for Final Site Plan approval pursuant to §32.9.2 of the Regulations, demonstrate that public water and sewers can be provided to all of the development, or to the extent that relevant state agencies have approved community septic or water for the portions of the development not served by public water or sewer, that a



combination of public water and sewer and onsite water and waste disposal can serve the entire development. The Applicant shall also describe the location, ownership, operation and maintenance of said systems.

4. The Applicant shall, at the time it files for Final Site Plan approval pursuant to §32.9.2 of the Regulations, demonstrate that the access roadway to the proposed development, known as Calkins Road, shall have an unobstructed vertical clearance of not less than thirteen feet, six inches, pursuant to the National Fire Prevention Association and the Connecticut State Fire Prevention Code ("CSFPC") §18.2.3.4.1.1 and shall have an unobstructed width of not less than twenty feet pursuant to CSFPC §18.2.3.4.1.2
5. The Applicant shall, at the time it files for Final Site Plan approval pursuant to §32.9.2 of the Regulations demonstrate that the proposed development has a second point of exit that meets CSFPC §18.2.3.3 Multiple Access Roads,
6. The Applicant shall, at the time it applies for Final Site Plan approval pursuant to §32.9.2 of the Regulations, provide the Commission with the information necessary for the Commission to assess the environmental and coastal impacts of the proposed change of zone, including but not limited to:
  - A. A stormwater management plan which shall, at a minimum, address and resolve the following aspects:
    1. The Applicant shall conduct test borings in the area of each detention basin to determine the presence of bedrock and whether it would be encountered before design depths are achieved for each of the water quality basins as it may impact the infiltration of storm water thus, adversely impacting on site inland wetlands and watercourses.
    2. 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. The Applicant should submit an assessment that the four water quality basins will adequately reduce pollutant loads for total suspended sediments, total phosphorus, total nitrogen, petroleum hydrocarbons, and metals, and will not result in concentrated runoffs and discharges of eroded materials into down gradient wetlands.
    3. Sources of pollutants the proposed development will generate that will exacerbate the adverse impacts to wetlands and watercourses. The pollutants are:
      - i. Sand and salt used in winter maintenance operations on driveways, sidewalks and parking areas,
      - ii. Nutrients from fertilizers used on grass and landscaped areas,

- iii. Metals from vehicle brake pads, hydrocarbons from inadvertent gasoline spills and vehicular oil drips on impervious surfaces, and
- iv. Atmospheric deposition on impervious surfaces.

The Applicant shall address and resolve the effect that the foregoing pollutants and loads would have on any of the on-site inland wetlands.

- B. The Applicant shall address and resolve the following concerns regarding drainage discharges along the proposed access driveway:
- i. The three discharges from the access driveway will convey runoff from the proposed impervious area discharge directly onto upland soils and not into an existing stabilized location.
  - ii. The discharge of flow onto this slope for a length in excess of 300 will cause a channel to be eroded in the upland area as the natural slope does not currently experience concentrated runoff. The concentrated flow being discharges here will result in eroded sediments then being conveyed and potentially discharged into the Niantic River as no wetland areas are located down gradient of this point. A small riprap pad or plunge pool will only initially slow the velocity of the discharge and the continuous discharge or runoff will concentrate and cause the erosion.
  - iii. There is no water quality treatment proposed for these three discharge points, so pollutants found in the on-point source will be discharged directly into the Niantic River.
7. The Applicant shall, at the time it applies for Final Site Plan approval pursuant to §32.9.2 of the Regulations, submit not only the information required for a Final Site Plan, but shall also submit the following:

Documents, reports or such other evidence which will be of use to the Commission in determining the exact location, extent and nature of "Inland Wetlands Area #5", more particularly described in a report from Highland Soils, LLC dated April 24, 2014 and depicted on maps and in photographs attached to a letter to the Commission from Friends of Oswegatchie Hill Nature Preserve dated June 1, 2015 (Exhibit 48 submitted at June 18, 2015 public hearing).