

TOWN OF EAST LYME

ZONING COMMISSION

MAY 21, 2015

PUBLIC HEARING MINUTES

Members Present:

Matthew Walker, Chairman
William Dwyer
Terence Donovan
Norm Peck
George McPherson
James Liska, Alternate (Sat for Public Hearing)
Shawn Singer, Alternate (Did not Sit)

FILED IN EAST LYME
CONNECTICUT
MAY 21 2015 AT 8:25 AM/PM
William D. Dwyer ATC
EAST LYME TOWN CLERK

Members Absent:

Peter Lukas, Alternate
Matthew Kane

Also Present:

Bill Mulholland, Zoning Official
Holly Cheeseman, Ex-Officio
Frank Balantic, Planning Representative
Mark Nickerson, First Selectman
Ed O'Connell, Town Attorney
Mark Zamarka, Town Attorney
Gary Goeschel, Town Planner

CALL TO ORDER

Chairman Walker welcomed the audience and called the Public Hearing to order at 7:35 p.m.

PLEDGE OF ALLEGIANCE

Chairman Walker led the assembly in the Pledge of Allegiance.

Chairman Walker stated there are 2 other days allotted for this Public Hearing and they have 35 days to make a decision.

INTRODUCTION OF LIEUTENANT COLONEL JOSEPH D. DANEAO, II, CONSTRUCTION & FACILITIES
MANAGEMENT OFFICE OF THE CONNECTICUT ARMY NATIONAL GUARD

Chairman Walker thanked the National Guard for the use of Camp Niantic for the meeting tonight. It is important to get public input.

The Commission Members introduced themselves.

Chairman Walker introduced Lieutenant Colonel Joseph D. Daneao, II.

Lieutenant Colonel Daneao welcomed everyone to Camp Niantic. They have had a great relationship with East Lyme.

PUBLIC DELEGATIONS

There were no Public Delegations.

Mr. Liska was sat as a Regular Member for this meeting in Mr. Kane's absence.

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 read the call of the meeting.

Exhibit 1 was entered into the record: Spiral Bound; Application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC for rezoning of 123.02 acres to affordable housing district (AHD) and preliminary site plan approval, Calkins Road dated March 4, 2015 rcvd March 6, 2015 at 2:45 p.m.

Exhibit 2 was entered into the record: Riverview Heights (A Residential Community) Calkins Road, East Lyme, Connecticut, Application for Approval of Rezoning and Preliminary Site Plan, February 4, 2015, rcvd 3/6/15

Exhibit 3 was entered into the record: Traffic Impact Study Riverview Heights, East Lyme, Connecticut, Town of East Lyme Zoning Commission Site Plan Application State Traffic Commission Major Traffic Generator Certificate October 2005 by Ted DeSantos, PE, PTOE

Exhibit 4 was entered into the record: East Lyme Zoning Regulations Adopted May 4, 1954 as amended through February 27, 2015

Mr. McPherson read **Exhibit 5** into the record: Notice of Intervenor from CT Fund for the Environment and Save the Sound.

Chairman Walker read **Exhibit 6** into the record: Notice of Intervenor from Friends of Oswegatchie Hills Inc. and Save the River/Save the Hills Inc. dated 5/19/15

Chairman Walker stated there have been Notices of Intervention received. He invited Attorney Zamarka to give a presentation on the intervener process. There has also been a question raised by the

intervenor's regarding the Inland Wetlands issue. He will allow the intervenor's to offer their view on the Inland Wetlands issue.

Attorney Mark Zamarka stated there have been two petitions to intervene filed. Both have been read in to the record. They can allow the intervenors but they have to have specific allegations regarding environmental issues, even if those allegations are never proven. If the intervenor status is granted that puts additional duties on the Zoning Commission. They would need to find that under the EPA Act the activity has an adverse effect on natural resources, and that prudent alternatives exist. He recommended that both petitions meet the requirements and should be approved. He presented a Resolution to the Commission **(Exhibit 23)**.

Mr. McPherson read the following Resolution:

RESOLUTION REGARDING INTERVENTION PETITIONS FILED BY CONNECTICUT FUND FOR THE ENVIRONMENT/SAVE THE SOUND AND FRIENDS OF OSWEGATCHIE HILLS NATURE PRESERVATION/SAVE THE RIVER SAVE THE HILLS

WHEREAS, Landmark Development Group, LLC and Jarvis of Cheshire, LLC have filed an application for rezoning of 123.03 acres to Affordable Housing District and for Preliminary Site Plan Approval (collectively the "Application") regarding property located in the Oswegatchie Hills; and

WHEREAS, Connecticut Fund for the Environment and Save the Sound, as well as Friends of Oswegatchie Hills Nature Preserve, Inc. and Save the River Save the Hills, have filed Verified Petitions for Intervention in proceedings regarding the above referenced Applications pursuant to General Statutes Section 22a-19; and

WHEREAS, General Statutes Section 22a-19 allows any person, partnership, corporation, association, organization or other legal entity to intervene in any administrative proceeding upon the filing of a verified pleading; and

WHEREAS, the verified pleading must assert that the proceeding involves conduct which has or which is reasonably likely to unreasonably pollute, impair or destroy the public trust in air, water, or other natural resources of the State; and must also contain specific factual allegations regarding (1) the nature of the alleged unreasonable pollution, impairment or destruction of the public trust in air, water or other natural resources and (2) whether the intervention implicates an issue within the Zoning Commission's jurisdiction; and

It is found that the verified petitions filed by Connecticut Fund for the Environment and Save the Sound and Friends of the Oswegatchie Hills Nature Preserve, Inc. and Save the River-Save the Hills meet the requirements of General Statutes Section 22a-19.

IT IS RESOLVED that Connecticut Fund for the Environment and Save the Sound and Friends of the Oswegatchie Hills Nature Preserve, Inc. and Save the River Save the Hills are hereby recognized as Intervenors in this matter pursuant to General Statutes Section 22a-19.

Roger Reynolds, the legal director for the Connecticut Fund for the Environment and Save the Sound stated their mission is to protect the air, land, and water of Connecticut. They have intervened with a

petition that is a prime example of a threat to the environment. This application is premature and needs to go to Wetlands first.

Attorney Zamarka stated we will hear from the applicant and the intervenors just based on whether the intervention is proper.

Mr. Reynolds stated this application will threaten wetlands, it will threaten the water quality of the Niantic River, they will be blasting, State conservation is a priority. That is a coastal forest, and this is a remarkably destructive proposal.

Attorney Paul Geraghty representing Save the River Save the Hills stated he is not even sure they needed to intervene on this matter because it is on remand and they were a prior intervenor. It is a pristine area. He requested they grant the intervenor status as they did on the other application that Landmark filed.

Attorney Tim Hollister of Hartford representing the applicant stated he is disappointed in the way they started this hearing. There has been no application presented yet. If their application is granted it won't authorize them to turn one shovel. This is only to rezone the property and for a preliminary site plan. He objects to the intervention.

Mr. Reynolds stated if the conduct of this application is allowed it will impact the environment.

Mr. Geraghty stated it is important they have intervenor status at this time.

Chairman Walker asked Attorney Zamarka to review the criteria for intervenor status.

Mr. Zamarka stated a person or partnership may intervene as a party if they assume the conduct has or is reasonably likely to pollute the environment. The preliminary site plan is the first step toward final construction.

Mr. McPherson asked if all the groups were intervenor's during the prior application.

Mr. Zamarka stated the Friends of Oswegatchie Hills were, and Save the River Save the Hills were. The CT Fund for the environment was not.

Mr. McPherson asked why we have to revisit them as intervenors if they already were.

Attorney Zamarka stated he was not sure why.

Motion (1) Mr. Liska moved to accept the Resolution as read into the record.

Seconded by Mr. Peck.

Motion Passed 6-0.

Chairman Walker confirmed the legal advertisement was run on this item.

Exhibit 7 was entered into the record: Legal Ad sent to New London Day on 5/8/15; Legal Notice Recorded with Town Clerk on 5/7/15

Gary Goeschel read Exhibit 8 into the record: Planning Commission Letter (attached to this exhibit is the memo from Mr. Goeschel and a traffic report)

Gary Goeschel read Exhibit 9 into the record: Planning Director Staff Review.

Mr. McPherson read Exhibit 10 into the record: CT DEEP Referral Response.

Mr. McPherson read Exhibit 11 into the record: Referral from Southeastern CT Council of Governments Regional Planning dated 5/7/15

Mr. McPherson read Exhibit 12 into the record: Brad Kargl, Utilities Engineer Referral Response

Mr. McPherson and Mr. Donovan read Exhibit 13 into the record: Town Engineer Response

There was no response from the Fire Marshal and from the Town of Waterford regarding this application; therefore Exhibit 14 and Exhibit 15 were not entered.

Mr. Donovan, Mr. McPherson, and Chairman Walker read Exhibit 16 into the record: Letter to Zoning Chairman Walker and Wetlands Chairman Lozanov from CT Fund for the Environment and Save the Sound dated 4/30/15.

Robert P. Jurason, Traffic Engineer read Exhibit 17 into the record: Letter from Robert P. Jurason, PE, Traffic Engineer dated 5/11/15

****There was a 5 minute recess, the meeting resumed at 10:25 p.m.**

Exhibit 18 was removed from the record.

Exhibit 19 was entered into the record: Filing with Town Clerk of the Map of rezoning of 123+- acres to AH

Exhibit 20 was entered into the record: Certificate of Mailing and Filing with Town Clerk

Mr. McPherson read Exhibit 21 into the record: Letter from Niantic River Watershed Committee dated 5/7/15

Mr. Donovan read Exhibit 22 into the record: East Lyme Harbor Management Referral Response.

Chairman Walker stated the intervening parties have asserted that this should have gone to the Inland Wetlands Agency prior to the Zoning Commission.

Mr. Reynolds stated this application is premature. They did not file with wetlands. This application shows a disregard for environmental law. Channels will flow into the wetlands and erode it. They have pictures of similar situations. They can provide expert testimony that this will have an adverse impact on the environment. This plan will require extra septic. Inland Wetlands has jurisdiction on this.

Exhibit 24 was entered into the record: Letter from Steve Trinkaus

Attorney Hollister stated it is 11:05 p.m., earlier in the Public Hearing the Chairman had noted that we would be adjourning at 10:30. He is amazed, disappointed, and angered at how this has proceeded. We have received comments and they haven't heard what the application is. The applicant has the right to make his application without comments first. If they decide we should have gone to Wetlands first then fine, but right now they haven't heard or seen the application. He would like to present to a full audience, the 150 people who were here at 7:30. He would like to come back at the next meeting to present his application.

Chairman Walker stated there were a number of exhibits that had to be entered into the record, and that took a considerable length of time. His frustration is understandable.

Motion (2) Mr. McPherson moved to continue the Public Hearing to June 4th at the same location.

Seconded by Mr. Peck.

Motion Passed 6-0.

Respectfully Submitted,



Karen Miller Galbo
Recording Secretary