

**EAST LYME WATER & SEWER COMMISSION  
REGULAR MEETING  
Tuesday, October 28th, 2014  
MINUTES**

The East Lyme Water & Sewer Commission held a Regular Meeting on Tuesday, October 28, 2014 at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Formica called the Regular Meeting to order at 7:20 PM after the two previously scheduled Public Hearings.

**PRESENT:** Paul Formica, Chairman, Dave Murphy, Joe Mingo, Carol Russell,  
Roger Spencer, Dave Zoller

**ALSO PRESENT:** Brad Kargl, Municipal Utility Engineer  
Joe Bragaw, Public Works Director  
Attorney Edward O'Connell, Town Counsel  
Attorney Mark Zamarka, Town Counsel  
Attorney Timothy Hollister, representing the Applicant  
Glenn Russo, Landmark/Jarvis  
Attorney Westcott, representing the Interveners  
Anna Johnson, Finance Director  
Mark Nickerson, Board of Selectmen, Ex-Officio

FILED IN EAST LYME  
CONNECTICUT  
Nov 5 2014 AT 3:07 AM PM  
EAST LYME TOWN CLERK

**ABSENT:** Dave Bond, Steve DiGiovanna

**1. Call to Order**

Chairman Formica called the Regular Meeting of the East Lyme Water & Sewer Commission to order at 7:20 PM after the two previously scheduled Public Hearings.  
The Pledge was previously observed.

**2. Approval of Minutes**

▪ **Regular Meeting Minutes – September 23, 2014**

Mr. Formica called for a motion or any discussion or corrections to the Regular Meeting Minutes of September 23, 2014.

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

Mr. Zoller moved to approve the Regular Meeting Minutes of September 23, 2014 as presented.

Ms. Russell seconded the motion.

Vote: 4 – 0 – 2. Motion passed.

Abstained: Mr. Formica, Ms. Russell

▪ **Special Meeting Minutes – October 7, 2014**

Mr. Formica called for a motion or any discussion or corrections to the Special Meeting Minutes of October 7, 2014.

**\*\*MOTION (2)**

Mr. Murphy moved to approve the Special Meeting Minutes of October 7, 2014 as presented.

Ms. Russell seconded the motion.

Vote: 5 – 0 – 1. Motion passed.

Abstained: Mr. Zoller

### **3. Delegations**

Mr. Formica called for delegations.

Karen Rak, 27 Black Point Rd. said that as they move forward that she asks that they re-consider the water and sewer rate increases and advised them to consider the public input. She said that she feels that the rates are cumulative and too much for the public to swallow.

John Smith, 2 Clarks Lane asked that they be considerate of the people of East Lyme. He stressed moderation in the increase as a tax and a rate increase are the same thing.

### **4. Consider Adoption of Sewer Rates**

Attorney O'Connell noted that the proposed rate sheets are what they would adopt and that the effective date would be November 1, 2014 and would show up with the May 2015 billing.

#### **\*\*MOTION (3)**

**Mr. Mingo moved to adopt the Sewer rates and charges as presented this evening at Public Hearing and to have them become effective on November 1, 2014.**

**Mr. Zoller seconded the motion.**

Ms. Russell asked Mr. Bragaw to speak more of the costs to the New London treatment plant on the processing of waste and the gap on the increase and also if in going forward they would be getting better communication in order to avoid this.

Mr. Bragaw said that he does not believe that they will continue to see those increases. He explained that they budgeted \$600,000, then \$700,000 but the costs came in at \$880,000. He added that they are trying to get costs under control by addressing the infiltration inflow.

Mr. Mingo said that the sewer charge from New London is based on metered flow and that we give an educated guess on what will go there.

Mr. Bragaw said that New London is also guessing as they bill not on the actual but on estimates of what will happen.

Mr. Zoller asked when New London changed their rate.

Mr. Kargl said that it is not so much a rate as an operation budget that they have and it is the catch-up on the flow that caused the increase.

Mr. Zoller noted that we are billed based on 15% of the expenses.

Mr. Spencer asked where the meter is.

Mr. Kargl said that it is at the Niantic Pump Station. He added that charges include the pass-through Waterford to New London.

Mr. Formica called for a vote on the motion.

**Vote: 6 – 0 – 0. Motion passed.**

### **5. Consider Adoption of Water Rates**

Mr. Formica called for a motion.

#### **\*\*MOTION (4)**

**Mr. Mingo moved to adopt the Water rates and charges as presented this evening at Public Hearing and to have them become effective on November 1, 2014.**

**Mr. Murphy seconded the motion.**

Ms. Russell asked with respect to the chart that was provided showing how the revenues and expenditures are getting where they want them to be – if they go with the 5% increase now – what is the likelihood of next year being flat or having a very low rate increase.

Mr. Bragaw said that is always the goal.

Mr. Formica said that there was a long period of time with no rate increases and then they had a large one and they adopted the concept of having small rate increases to get them on track.

Mr. Zoller said that they also have to keep in mind the age of the system and the cost to do maintenance and repairs.

Mr. Murphy said that in the past few years that they have finally been able to do preventative maintenance.

Mr. Formica called for a vote on the motion.

**Vote: 6 – 0 – 0. Motion passed.**

## **6. Landmark Sewer Capacity Appeal**

Mr. Formica said that this is an item that the Commission had decided and it was then appealed to the Court which then remanded it back with a memo of decision. The remand steps are outlined by the Judge. In this instance there will be the opportunity for the applicant and the intervener to have interactive discussion however no new evidence can be discussed or entertained.

Attorney Zamarka passed out **Item A** (attached) – the Memorandum of Decision and cautioned that this is not a Public Hearing – it is a redetermination proceeding. He noted that in January it was remanded to the Commission regarding the amount of gallons and they came up with 13,000 gpd. The Court found it inappropriately low for five reasons which appear on pages 10 & 11 of the decision. He additionally passed out **Item B** (attached) – a compilation of the information originally presented and from the record that pertains to the following four items to be addressed.

He cited the four (4) items from Page 9 of the decision that the Court wants addressed in coming up with an amount.

- 1. the remaining capacity for the entire town (Item B tab exhibits 30, 31, 38 & 39)
- 2. the land area represented by the property versus the available land area in the Town (Item B tab exhibit 3)
- 3. the safe design standards for the public sewer (Item B tab exhibit 41; esp. pgs 13 & 14) and –
- 4. the percentage of the allocation versus the total remaining capacity (Item B tab exhibit 8)

He noted that the Commission only has jurisdiction over the land in the sewer service area and explained the calculation of land area and sewer service area.

Attorney Hollister representing the applicant said that he will object to this as it is introducing information in another format that was not in the record. He said that he is objecting to the analysis that is being derived from the PowerPoint information shown.

Attorney Zamarka continued that the Landmark area is a small percentage of the total area and that safe design standards are defined in Tab 41 of Item B. He said that Mr. Kargl would speak to the design standards.

Mr. Kargl passed out calculations based on the discussion. **Item C** (attached) is the land area of the property versus the entire Town and **Item D** (attached) explains the equation based on the total land area and comparison calculations. He explained the calculations to the Commission.

Mr. Formica said that they have taken the Judge's remand on page 9 (Item A) and have calculated it in any number of ways. He asked Attorney Zamarka what the number was that went to the Court originally.  
Attorney Zamarka said that it was 13,000 gpd.

Mr. Formica said that they have heard from staff and Counsel regarding the calculations and that they would hear Attorney Hollister's comments.

Attorney Zamarka noted that the exhibit that Attorney Hollister objects to that is on the overhead is from Exhibit 8 of the record.

Attorney Hollister representing Landmark & Jarvis submitted two items from the record – **Item E** (attached) – letter dated 10/28/14 from Attorney Hollister citing what is not in dispute and **Item F** (attached) information on available capacity from 2012 information presented. He said that none are anything new and that all information is from the record. He said that Judge Cohn had made it clear that the Commission cannot allocate by what they might want as that is not their job. He noted that the Fuss & O'Neill report regarding projection from 2004 is off by some 240%. The Commission cannot reserve capacity indefinitely based on some future need; they are not a land use agency. He noted that the allocation is not authorizing construction as they would have to go to the respective land use commissions and obtain approvals from them. He said that according to their calculations and the information presented that the Town could allocate between 93,000 and 118,000 gpd and still have adequate reserve and not distress the system. He said that he also feels that Mr. Zamarka has distorted the land area figure – it is 236 acres. Further the calculation they are presenting is a misunderstanding of the remand order and of case law. And, Mr. Kargl's 14,434 gpd as the final figure – if they do adopt it – will go back to Judge Cohn and they will state that they feels that they did not proceed in good faith. He said that the bottom line is that they please not try to use the sewer system to control the development of this property.

Is there room for something less than the 118,000 gpd – yes there is – but he would like to move on this and have them come up with a reasonable figure as has been remanded by Judge Cohn.

Jason Westcott, representing the Interveners said that he would let Attorney Zamarka respond first. Attorney Zamarka said that the court did not make a finding that the floor has 250,000 gallons – the court directed them in the remand order to consider availability. He also noted that regarding the 2007 Fuss & O'Neill report that he thought that they made note not to consider it. Page 10 states that the 13,000 gpd figure was inappropriately low and the usage by the State facilities is irrelevant here as that cannot be allocated elsewhere. What staff came up with for analyzing the factors was based on the factors that the court set. The court said that the 13,000 gpd was low because there were factors that were not addressed and this proceeding is to address those factors that were missing previously.

Mr. Murphy asked about Items E and F and if there is anything that should not be there.

Attorney Zamarka said that it appears that all of the information is from the original record.

Mr. Formica asked Attorney Zamarka to address the acres.

Attorney Zamarka said that it is not an application for capacity for the entire property and that Phase I was what was used.

Jason Westcott, for the Interveners commended Attorney Zamarka for his presentation and said that the court was seeking a calculation and urged them to review the entire record. He said that he agrees with Attorney Zamarka's analysis. He suggested that if the analysis could be based upon a larger land area that it might suit the judge's remand. He suggested that they take from Mr. Kargl's calculation the 236 acres and what area Mr. Hollister considers to be in the sewer service area. He noted that he does not think that the Commission specifically used V-15 and that it was just a part of the facilities plan. He does feel that they have to keep a reserve.

Mr. Mingo asked if they are allowed to comment on the decision of the judge.

Attorney Zamarka said that they can comment on the record and the decision is part of the record but bear in mind the items that are in remand.

Mr. Formica asked that they stick to the items the judge remanded to them in his decision.

Attorney Hollister said that there is no reason that this should be complicated. He pointed out on Page 10 regarding the 13,000 gpd is clearly stated as being inappropriate and further that the Commission's attorney conceded regarding the 250,000 gpd available. He asked that they compare like items and said that the judge said the entire property and not the development are or a subset.

Mr. Formica asked Mr. Kargl to review his last calculation.

Mr. Kargl explained the sewer service district minus the State land and said that he did consider the 235 acres which is not entirely within the sewer service area. The 14,434 gpd does afford a bit more than the 13,000 gpd.

Mr. Formica asked Attorney Zamarka if a motion should need to be made and if there is a time factor on this.

Attorney Zamarka said that the June 23<sup>rd</sup> decision was a final order and if the applicant disagreed with the decision tonight they would have to file a new appeal.

Attorney Hollister said for the record that Judge Cohn did not state that this was final and when pressed on the matter did not respond.

Mr. Formica said that he would like to address this tonight.

Mr. Mingo said that he would like to throw out 28,868 gpd for discussion.

Ms. Russell said that she would like to see a figure come from a specific formula and thinks that the judge wants that. She suggested that they utilize Mr. Kargl's calculation for the entire land and entire Town and discussed various figures, all much less than the original 13,000 gpd.

Mr. Spencer said that he did not know that he could arbitrarily double the figure.

Mr. Zoller said that he is comfortable with the 14,434 gpd figure but is not sure if the judge would be satisfied with it.

Mr. Murphy said that he agrees with Mr. Zoller and thinks that they have done what is asked with the 14,434 gpd figure.

Attorney O'Connell suggested that they might want to look at it from the 30,000 ft. height – in Forest Walk it was around 8% of capacity and he said that he thinks here it is something like 5 or 6%.

Attorney Westcott said that he was at the court hearings and that the judge was clearly looking for methodology and also clearly thought that the 13,000 gpd was too low. He said that he appreciates the time that the Commission has put into this and that there are a number of different things in the entirety of the record that they can use and they have wide discretion. He said that he thinks that the methodology alone is not what the court is looking for regarding capacity.

Attorney Hollister suggested the following methodology – 250,000 is the floor; 164,000 is adequate reserve; so 86,000 gpd is a starting point. All of this information is in the record.

Ms. Russell asked about Forest Walk.

Attorney Zamarka said that the Water & Sewer Commission cannot supply to the entire Town as a large portion is outside of the sewer shed area.

After further discussion, Mr. Formica said that he thinks that they should put out a figure as they can calculate until they are crazy.

Mr. Zoller asked if they use the 14,434 gpd if they have to show all of the other calculations.

Attorney O'Connell said that all of the calculations are in the record and it can be transcribed if necessary.

Mr. Formica noted that 28,000 gpd would be 8% of the 358,000.

Mr. Murphy said that Forest Walk had the 8% and that they cannot look to match someone else. He thinks that the 14,434 gpd is generous and ours works out to be around 4%.

Mr. Formica asked if they were ready to make a motion.

**\*\*MOTION (5)**

**Mr. Zoller moved to adopt the 14,434 gpd as the capacity figure for Landmark as developed in Item D.**

**Mr. Murphy seconded the motion.**

Mr. Murphy asked if they should include the acres used.

Mr. Zoller amended his motion to the following with Mr. Murphy amending his second to accept the change.

**\*\*MOTION (5) amended**

**Mr. Zoller moved to adopt the 14,434 gpd as the capacity figure for Landmark utilizing the entire figure of 236 acres and the methodology as developed in Item D.**

**Mr. Murphy seconded the motion.**

**Vote: 3 – 2 – 1.**

**For: Mr. Murphy, Mr. Spencer, Mr. Zoller**

**Against: Mr. Formica, Ms. Russell**

**Abstained: Mr. Mingo**

(Note: a brief break was taken here)

**7. Billing Adjustment Requests**

There were none.

**8. Approval of Bills – from Attachment B**

Mr. Formica called for a motion on the Regional Interconnection bills.

**\*\*MOTION (6)**

**Mr. Mingo moved to approve payment of the following Regional Interconnection bills: D'Amato Construction, Pay Appl. # in the amount of \$13,851.33 and Tighe & Bond, Inv. #092014763 in he amount of \$19,746.92.**

**Mr. Murphy seconded the motion.**

Mr. Kargl explained that the D'Amato bill of \$13,851.33 was one-third of the invoice.

**Vote: 6 – 0 – 0. Motion passed.**

**9. Water Project Updates**

**▪ Regional Interconnection**

Mr. Kargl reported that this has been working out well and that it has allowed them to check on any bugs in the system. He said that they still have Well 5 off-line. They are also working with the DEEP on the temporary order that expires on 10/31/2014.

Ms. Russell asked how much water dollar-wise they have purchased from New London.

Mr. Kargl said that it is around \$18,000 - \$19,000 less the \$5000 that was for test operations.

**▪ Filter Rehabilitation – Bride Lake Filtration Plant**

Mr. Kargl said that they really need to start doing this now as all of these are 26 or so years old. He said that he would like to start with Bride Lake and that it would cost \$53,000 to do two of the filters. He asked that they authorize spending up to \$54,000 which includes the purchase of the greensand media which will take an 8 week period to get. He noted that he still needs to find someone to do this work and that would cost approximately another \$35,000 so the total could be \$90,000 to do this work. He said that he would want to do it during the winter when the flows are low. The money is available in the water construction account.

**\*\*MOTION (6)**

**Mr. Murphy moved to approve up to \$54,000 from the Water Construction Account to purchase materials for rehabilitation of two greensand filters at the Bride Lake Treatment Plant including filter components and media subject to review by the Finance Director.**

**Ms. Russell seconded the motion.**

Ms. Russell asked if this would filter out the manganese.

Mr. Kargl said that it would filter out the manganese and iron.

Ms. Russell asked if there are more down the road.

Mr. Kargl said that there are many more to do.

**Vote: 6 – 0 – 0. Motion passed.**

**10. Budget Report – Finance Director**

Mr. Formica asked that they review this and bring any questions that they might have to the meeting next month due to the lateness of the hour.

Mr. Kargl noted that Mr. Bragaw had prepared a monthly update report and passed out a copy. He said that it is a snap shot in time.

**11. Communications**

**▪ See Correspondence Log**

The correspondence log was available for review.

**12. Chairman's Report**

Mr. Formica said that he did not have anything further to report this evening.

**13. Staff Updates**

**a. Water Department Monthly Report**

Mr. Kargl noted that this report has the New London flows added to it for better accuracy.

**b. Sewer Department Monthly Report**

There were no comments.

**14. ADJOURNMENT**

Mr. Formica called for a motion to adjourn.

**\*\*MOTION (7)**

**Mr. Spencer moved to adjourn the October 28, 2014 Regular Meeting of the East Lyme Water & Sewer Commission at 10:16 PM.**

**Ms. Russell seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary

**TOWN OF EAST LYME  
WATER AND SEWER COMMISSION  
NOTICE OF PUBLIC HEARING RE SEWER RATES AND CHARGES**

NOTICE IS HEREBY GIVEN of a public hearing to be held by the East Lyme Water and Sewer Commission at the East Lyme Town Hall on Tuesday, October 28, 2014 to consider proposed revisions to rates and charges for connection to and the use of the East Lyme sewerage system. This sewer rate public hearing will commence at 6:30 P.M. The proposed revised sewer rates and charges are as follows:

	<u>Rate</u>
Application for Connection Permit	
Class 'A'- Residential	\$100.00
Class 'B'- Multi Family and Commercial	\$200.00
Class 'C'- Industrial	\$500.00
Demolition/Disconnect-Any Class	\$50.00
Sale of Stocked Material	Cost, incl. shipping, plus 12% admin fee
Inspection Services	
During Normal Working Hours	\$65.00/hour
After Normal Working Hours	\$97.50/hour
Usage, based on metered water readings at billing intervals	
Metered	\$6.93/1,000 gallons
Unmetered, per six 6 month period	\$173.25

These revised rates and charges, if adopted, shall be effective on November 1, 2014.

The owners of properties against which the revised rates and charges are to be levied and other interested persons are invited to attend and be heard.

Dated at East Lyme, Connecticut on this 15th day of October 2014

EAST LYME WATER AND SEWER COMMISSION

By \_\_\_\_\_  
Paul M. Formica, Its Chair

EAST LYME WATER & SEWER COMMISSION
OCT 28 2014
AGENDA # <u>4</u>

*Adopted -  
W&S Reg. Mtg. 10/28/14*

①



**TOWN OF EAST LYME  
WATER AND SEWER COMMISSION  
NOTICE OF PUBLIC HEARING RE WATER RATES**

NOTICE IS HEREBY GIVEN of a public hearing to be held by the East Lyme Water and Sewer Commission at the East Lyme Town Hall on Tuesday, October 28, 2014 to consider proposed revisions to rates and charges for connection to and the use of the East Lyme water system. This water rate public hearing will commence immediately after the conclusion of a public hearing to be held on said date at said place regarding sewer rates. The proposed water rates and charges are as follows:

SCHEDULE I – RATES FOR USAGE based on meter readings at six month intervals.

	<u>Rate</u>
<u>Minimum charge</u> per six month period, for usage up to a maximum of 3,500 gallons per six month period	\$49.59
<u>3,501 gallons</u> , to 50,000 gallons per six month period	\$4.00/1,000 gallons
<u>3,501 gallons</u> , to 675,000 gallons per six month period	\$4.41/1,000 gallons
<u>3,501 gallons</u> to over 675,000 gallons per six month period	\$4.82/1,000 gallons

SCHEDULE II – MISCELLANEOUS WATER CHARGES

Application for Connection Permit	
Class 'A' - Residential	\$100.00
Class 'B' - Multi Family and Commercial	\$200.00
Class 'C' - Industrial	\$500.00
Demolition/Disconnect-Any Class	\$50.00

ANNUAL PRIVATE HYDRANT CHARGE \$200.00

ANNUAL FIRE SPRINKLER CHARGE \$150.00

METER CHARGES (FLAT RATE)

Meter Deposits	\$70.00
Frozen Meter Repair (normal working hours)	\$65.00
Frozen Meter Repair (after normal working hours)	\$108.00
Install/Disconnect Meter (normal working hours)	No Charge
Install/Disconnect Meter (after normal working hours)	\$108.00
Meter Test (accurate within 2%)	\$65.00
Meter Test (meter error > 2%)	No Charge

EAST LYME WATER & SEWER COMMISSION
OCT 28 2014
AGENDA # <u>5</u>

*Adopted - W&S Reg. Mtg. 10/28/14*

SALE OF WATER DEPT. STOCKED MATERIALS

Cost, incl.  
shipping, plus  
12% admin. fee

INSPECTION SERVICES (HOURLY RATE)

During Normal Working Hours	\$65.00/hour
After Normal Working Hours	\$97.50/hour

TURN ON/SHUT OFF (FLAT RATE)

During Normal Dept. Working Hours	No Charge
After Normal Dept. Working Hours	\$108.00
Season Customer Turn On/Off > 1 per year	\$97.50
Turn On (after shut off for nonpayment of water bill, during normal working hours)	\$65.00

CONNECTION CHARGES

3/4-inch service (April 1 to November 30)	\$2,000.00
3/4-inch service (December 1 to March 31)	\$2,000.00 or Actual cost
1-inch service or greater	Actual cost incurred

The revised rates and charges, if adopted, shall be effective on November 1, 2014.

The owners of properties against which the revised rates and charges are to be levied and other interested persons are invited to attend and be heard.

Dated at East Lyme, Connecticut on this 15th day of October, 2014

EAST LYME WATER AND SEWER COMMISSION

By \_\_\_\_\_  
Paul M. Formica, Its Chair

NO. CV 13 6040390S : SUPERIOR COURT  
 LANDMARK DEVELOPMENT GROUP LLC :  
 : JUDICIAL DISTRICT OF  
 v. : HARTFORD  
 EAST LYME WATER AND SEWER  
 COMMISSION : JUNE 23, 2014

**MEMORANDUM OF DECISION**

The plaintiffs, Landmark Development Group LLC and Jarvis of Cheshire LLC (Landmark), have brought this appeal<sup>1</sup> pursuant to General Statutes § 7-246a (b), contesting a denial of Landmark's application for a sewer capacity determination by the defendant East Lyme water and sewer commission (the commission).<sup>2</sup>

Initially on June 1, 2012, Landmark submitted to the commission under § 7-246a (a) an application for a sewage discharge capacity determination for up to 18,000 gallons per day (gpd). After a series of public hearings on this application, at a meeting held on December 11, 2012, the commission resolved in part that the record showed that the

On January 16, 2014, Landmark introduced without objection two deeds, one dated October 2, 2000, the other dated September 21, 2006 to demonstrate aggrievement. The commission did not contest that these deeds proved aggrievement. Based on these exhibits, aggrievement is found. (Transcript, January 16, 2014, pp.48, 49).

Pursuant to § 22a-19, Save the River/Save the Hills and Friends of the Connecticut Hills Nature Preserve have intervened in favor of the commission.

HARTFORD J.D.  
 OFFICE OF THE CLERK  
 2014 JUN 26 A 10:23

Mailed to all counsel + OCR 6/26/14 ab/co

W & S Reg. mtg. 10/28/14 Item A  
Exhib. 7 14800

“Town has between 130,000 and 225,000 [gpd] of remaining sewerage treatment capacity,” that the 118,000 gpd requested by Landmark represented “between 52% and 90% of the Town’s remaining sewerage treatment capacity,” that “the remaining sewerage treatment capacity must be made available to the areas of the Town already designated to receive sewer service and to those customers who have the option to connect to the sewer system as a result of assessments levied on their properties,” that “the capacity requested in the application is a disproportionately large allocation of the Town’s remaining sewerage treatment capacity, and that there is not adequate sewer capacity related to the proposed use of land,” and thus concluded that the application should be denied. The reason given was that the capacity requested in the application is a disproportionately large allocation of the Town’s remaining sewerage treatment capacity, and that there is not adequate sewer capacity related to the proposed use of land.” This appeal followed.

Landmark stated in its brief on appeal that the commission’s December 11, 2012 final decision was erroneous, in part because it did not “consider an application of less than 118,000 gpd” but had instead denied it any sewer capacity. (Brief, August 14, 2013, p. 20). At the oral argument of January 16, 2014, the parties debated whether Landmark had asked for the commission to set an alternative capacity figure if the 118,000 gpd allocation was found to be “disproportionately large.” At the conclusion of this oral argument, the court remanded the appeal to the commission for an amended capacity

decision, based on the record, taking into account the need for a capacity reserve.

At the commission's meeting of February 25, 2014,<sup>3</sup> a resolution regarding Landmark's capacity application was unanimously approved. The resolution reads in part as follows:

“WHEREAS, the Commission finds that the Town has between 130,000 and 225,000 gallons per day of remaining sewage treatment capacity; and

WHEREAS, the 118,000 gallons per day of sewage capacity requested by the Applicant represents between 52% and 90% of the Town's remaining sewage treatment capacity; and

WHEREAS, the 118,000 gallons per day of sewage capacity requested by the Applicant represents more than 10% of the Town's current daily sewage flow; and

WHEREAS, the remaining sewage treatment capacity must be made available to the areas of the Town already designated to receive sewer service and to those customers who have the option to connect to the sewer system as a result of assessments levied on their properties; and

WHEREAS, the Commission finds that the capacity requested in the application is a disproportionately large allocation of the Town's remaining sewage treatment capacity, and that there is not adequate sewer capacity related to the proposed use of land; and

WHEREAS, based on a review of all the evidence in the record, including but not limited to the following:

- Weston and Sampson reports and attachments (Exhibits 31 and 38);
- Fuss & O'Neill report, including executive summary and section 5, tables V-4, V-5, State capacity graph on p. 40, Figure V-14 showing capacity breakdown, Figure

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The resolution was re-adopted with modifications not germane to this appeal on March 11, 2014.

V-15 Future Wastewater Flow Estimation for all areas of town, sewerred and unsewerred, Figure V-16 showing predicted expansion ranges of all parcels, and Figure V-17 bar graph of future flow projections (Exhibit 8);

- AECOM Report (Exhibit 3, Tab 5);
- New London municipal NPFES discharge permit (Exhibit 7);
- Memo from Commissioner Zoller (Exhibit 12) and follow up email that discusses the memo;
- East Lyme sewer flows history (Exhibit 12, Exhibit 3 Tab 2);
- Landmark reports and attachments (Exhibit 3, 30 and 39);
- 1985 Facilities Report, including Table 12 (p. 82) chart of problem areas, Table 13 (p. 84)
- 1985 Facilities Report, including Table 12 (p. 82) chart of problem areas, Table 13 (p. 84) problem area flow estimates, Figure 12 (following p. 85) map of problem areas

The Commission finds that it is willing to grant to the Applicant 13,000 gallons per day of sewage treatment capacity; and

WHEREAS, nothing in this Amended and Clarified Resolution shall be construed as a waiver of the Commission's position that its initial resolution dated December 11, 2012 properly and accurately addressed the Application as submitted.

BE IT THEREFORE RESOLVED, that the East Lyme Water and Sewer Commission, acting as the Town's Water Pollution Control Authority, pursuant to the Superior Court's remand order of January 16, 2014, based on a review of evidence in the record, hereby

GRANTS to the Applicant 13,000 gallons per day of sewage treatment capacity pursuant to an application dated June 1, 2012. . . .”

The minutes of the meeting of February 25, 2014 provide the commission’s rationale for this resolution. The commission’s attorney explained that this court had stated that “if the Commission felt that 118,000 gpd was too large that they were to come up with some other number and because they did not—[the prior final decision] was not seen as a final resolution.” Commissioner Mingo stated that the “[q]uestion is how much of that are they willing to allocate to what deals only with the area within the East Lyme sewer shed area boundaries for the Landmark property. . . . He suggested that they may want to consider [certain exhibits] from the record when discussing a potential determination. . . . He stated that he does feel they deserve something but that he is not sure that he has the expertise to come up with a figure that is equitable.”

The commission’s attorney referred to Section 5 of the Fuss & O’Neill report. Commissioner Formica referred to Map V-15. Commissioner Bragaw also relied on Map V-15 and parcel 16 where the Landmark property lies. These materials showed that 11,000 gpd had been allocated of 24,000 gpd in this parcel and that 13,000 gpd remained. This led to the commission members adopting the allocation of 13,000 gpd. Mr. Bond said that “he would agree with the figure and that they are all in the ball park percentage

wise that 7.25% of the total available capacity is fair.”<sup>4</sup> (Amended return of record, court docket #143, pp. 4-7).

Landmark’s appeal has now returned to court for a ruling on the December 11, 2012 and February 25, 2014 final decisions of the commission. The court is assisted by two key Connecticut appellate cases in its resolution of this appeal. The first is *Forest Walk LLC v. Water Pollution Control Authority*, 291 Conn. 271, 968 A.2d 345 (2009). Forest Walk appealed from a sewer authority’s final decision that had denied it a sewer connection and a sewer extension, and its appeal was dismissed by the Superior Court and the Superior Court was affirmed by our Supreme Court.

While the issue in *Forest Walk* did not directly involve the allocation of sewer capacity, the Supreme Court clearly stated, in language also applicable to this appeal, “a municipality has wide discretion in connection with the decision to supply sewerage.” *Id.*, 283, quoting *Wright v. Woodridge Lake Sewer District*, 218 Conn. 144, 149, 588 A.2d 176 (1991). The standard of review of the decision of a sewer commission “is limited to whether it was illegal, arbitrary or in abuse of [its] discretion. . . . Moreover, there is a strong presumption of the regularity in the proceedings of a public agency, and we give such agencies broad discretion in the performance of their administrative duties,

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Commissioner Bond was basing his percentage on an assignment of 13,000 gpd out of a total capacity of 177,000 gpd, choosing a mid-number between 130,000 gpd and 225,000 gpd, that the record supported as a range of capacity.



provided that no statute or regulation is violated.” (Citation omitted.) *Forest Walk LLC v. Water Pollution Control Authority*, 291 Conn. 285-86.

With regard to capacity, *Forest Walk* found that substantial evidence supported the sewer commission’s determination of a disproportionately large allocation. The amount sought “would allocate approximately 10 percent of the remaining capacity available for the entire town to a property that represented less than 1 percent of the available land area in town. . . . [S]ubstantial evidence . . . would exist to support the defendant’s conclusion that the extension application should be denied because the plaintiff’s requested sewage capacity was disproportionately large in relation to the property’s size and exceeded the safe design standards for the public sewer.” *Id.*, 296.

In the second case, *Dauti Construction, LLC v. Water and Sewer Authority*, 125 Conn. App. 652, 10 A.3d 84 (2010), the sewer authority denied an application for sewer capacity based on a “priority matrix” tied to the town zoning classifications. The Appellate Court undertook to review this denial, not to determine whether the sewer authority’s priority matrix was “facially invalid,” but to determine whether the sewer authority had properly applied the matrix to Dauti Construction’s proposal. *Id.*, 658. The test was whether the authority’s action was “illegal, arbitrary or in abuse of discretion,” *Id.*, 660, citing *Forest Walk LLC v. Water Pollution Control Authority*, *supra*, 291 Conn. 285-86.

The matrix required Dauti to meet the town zoning regulations of 1994. It was this “zoning based” element of the matrix that the Appellate Court found illegal “as limiting any possibility of development that exceeded the equivalent of four dwelling units.” *Id.*, 662. “More importantly, the defendant [authority] has not referred to any evidence in the record in support of a finding that the town’s sewer system lacks sufficient capacity for the plaintiff’s proposed development or that other property owners would be deprived of sewer connections to which they are entitled. . . . Further, the defendant concedes in its brief on appeal before this court that ‘there currently is enough capacity for [the] plaintiff’s proposed development and there was no evidence of current, identified property owners who absolutely will be deprived of sewer connections if the application is granted.’” *Id.*, 663-64.

The Appellate Court directed that Dauti’s application be approved; this was based upon the rule that in the instance where the agency is required to take only one action, it is not necessary on a finding of error to remand the matter to the agency. See § 8-8 (*l*); *R & R Pool & Patio, Inc. v. Zoning Board of Appeals*, 83 Conn. App. 1, 8-9, 847 A.2d 1052 (2004): “When, on a zoning appeal, it appears that as a matter of law there was but a single conclusion which the zoning authority could reasonably reach, the court may direct the administrative agency to do or to refrain from doing what the conclusion legally requires.” (Citation omitted.)

These relevant cases indicate the following to the court regarding this appeal:

From *Forest Walk*:

1. The commission has wide discretion in approving or limiting an application for sewer services.
2. The standard of review of the commission's final decision was whether it acted illegally, arbitrarily, or in abuse of its discretion.
3. There is a presumption of regularity of the proceedings in favor of the commission.
4. With regard to capacity, under the substantial evidence test, the commission must consider the remaining capacity for the entire town, the land area represented by the property versus the available land area in the town, the safe design standards for the public sewer, and the percentage of the allocation versus the total remaining capacity.

4 items

Supporting info/  
docs from  
orig. record  
attached

From *Dauti*:

1. The court followed *Forest Walk*, both with regard to the capacity determination and the standard of review, in an application for an allocation in an existing sewer system.
2. The issue of remaining capacity did not arise in the case as the sewer authority conceded that the application did not affect the remaining capacity. The issue in *Dauti* was, rather, whether the zoning regulations and projections were binding on the sewer authority. The Appellate Court held that the zoning record should not be part of the sewer authority's calculations.
3. The court did order the application to be granted and did not remand the matter, but only because there was no other action that the sewer authority could take under the facts of

this case.

Based on this appellant precedent, the court first indicates, as it did orally on January 16, 2014, that the commission improperly denied Landmark's application on December 11, 2012. The application sought an allocation up to 118,000 gpd and Landmark was entitled to receive a capacity amount, not a complete denial.

The more important question arises after the remand—whether the 13,000 gpd granted by the commission was “illegal, arbitrary or an abuse of discretion.” The court concludes that the figure was inappropriately low for the following reasons:

1. The record does not indicate a specific number of remaining capacity *before* Landmark's application is considered. The record before the court shows a range of 130,000 gpd to 225,000 gpd. At the meeting of the commission on February 25, 2014, the figure of 177,000 gpd was used as a compromise. In court on May 27, 2014, the commission's attorney conceded that the commission would not object to a figure of 250,000 gpd. Finally, Landmark points to a reduced usage by the town and state facilities so that the correct figure is between 308,000 gpd and 358,000 gpd. In *Forest Walk*, an expert reviewed the allocation requested by the applicant for safe design standards. *Id.*, 295.

2. The commission made no finding regarding the area of Landmark's development versus the land area of the town.

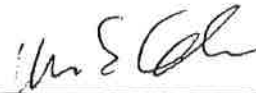
3. The commission primarily relied upon the data produced by Fuss & O'Neill, developed in 2004 and set forth in Map V-15. This data is not current.

4. The commission made use of the table "Future Waterworks Flow Estimation" (Parcel 16). This table was one ground in determining that 13,000 gpd should be allocated to Landmark. This table shows 24,000 gpd available, but subtracts 11,000 for future possible development. The court's understanding is that this gallonage is being held in reserve for septic tanks that might be converted to sewers. There is nothing in the record to show that any of these residences have requested sewer capacity since the table was developed in 2004.

5. The percentage of 8% of capacity to Landmark, used by the commission, is most likely much lower if total capacity is greater than 177,000 gpd. For example if the remaining capacity is 250,000 gpd, then 13,000 gpd is only 5% of capacity.

Based on these considerations, the court sustains the appeal and remands the matter to the commission for its appropriate action consistent with precedent and the record.

So ordered.



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Henry S. Cohn, Judge

# MEMORANDUM

**TO:** Chairman Paul Formica, East Lyme Water & Sewer Commission  
**FROM:** Dan Lawrence, Weston & Sampson Engineers, Inc.  
**DATE:** October 23, 2012  
**SUBJECT:** Sanitary Sewer Capacity Evaluation – Addendum

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## 1.0 Introduction

This addendum is to summarize additional information provided to Weston & Sampson Engineers, Inc. (Weston & Sampson), since the September 25, 2012 Public Hearing, by the Town of East Lyme. During the course of finalizing the Town of East Lyme's Wastewater Facility Plan the Town of East Lyme contacted the City of New London and the Connecticut Department of Energy and Environmental Protection (CTDEEP) to update the wastewater flows presented in the Plan. The Town prepared a memorandum to Weston & Sampson on October 19, 2012 (Attachment H) summarizing the discussions with the City of New London and CTDEEP.

## 2.0 Sewer Capacity Evaluation

CTDEEP indicated that the maximum monthly average flow in 2010 of 1.343 million gallons per day (MGD) demonstrated a vulnerability in the collection system, and that it would not be necessary to base available sewer capacity on this extreme weather event in March 2010. CTDEEP recommended the Town of East Lyme Water and Sewer Commission investigate the vulnerability further and evaluate the remedial measures that could be taken to the extent possible to mitigate this occurrence in the future. The City of New London indicated that the March 2010 storm event significantly increased flows at the wastewater treatment plant; however, the plant did not experience any regulatory issues regarding non-compliance.

Based on the information provided, Weston & Sampson has excluded the March 2010 and April 2010 data from the sewer capacity determination as it represents flows during an extreme weather event. Weston & Sampson does concur with CTDEEP and recommends the Town of East Lyme investigate the vulnerability to these high flows.

Excluding the March 2010 and April 2010 data results in a maximum monthly average flow of 1.206 MGD, which occurred in April 2007. This data is also utilized in the May 2012 "Evaluation of Capacity at the Thomas E. Piacenti Wastewater Treatment Plant" by AECOM presented in Exhibit 3, Tab 5.

Table 7 in the September 12, 2012 shall be superceded by Table 7 presented below.

W&S 10/28/14

Item  
Exhibit B

**Table 7  
Sewer Capacity Evaluation Summary Table  
Town of East Lyme**

<b>Flow Condition</b>	<b>Average Daily Flow (MGD)</b>	<b>Maximum Monthly Average Flow (MGD)<sup>(1)</sup></b>
Maximum	1,111	1,206 <sup>(2)</sup>
<i>Existing State Agreements and Orders</i>		
Existing Agreements (Table 4)		0.478
Average Daily Flow from Existing Agreements/Orders (Table 6)		0.314
Additional Flow From Existing Agreements and Orders (Table 6)		0.164
<b>Total Daily Flow</b>	<b>1,275</b>	<b>1,370</b>
New London Agreement	1,500	1,500
<b>Available Flow</b>	<b>0.225</b>	<b>0.130</b>

- (1) Maximum Monthly Average Flow is defined in RCSA 22a-430-3(a) as the highest average of all daily discharges during any calendar month.
- (2) In March and April of 2010, the monthly average flow was 1.343 MGD and 1.341 MGD, respectively. This data was not utilized following conversations between the Town of East Lyme and City of New London and CTDEEP.

**3.0 Summary**

Based upon the additional information provided by the Town, as a result of finalizing the Wastewater Facilities Plan, during maximum monthly average flow periods the Town utilizes 1,370 MGD of flow within their agreement with the City of New London based on actual usage and reserved capacity for the State of Connecticut and Point O' Woods as shown in Table 7. This leaves 0.130 MGD of remaining capacity for the properties within the sewershed as depicted on Figure V-15 of the 2007 Wastewater Collection System Capacity Analysis Planning Report. Phase 1 of the proposed development, estimated at 118,400 gpd (0.118 MGD), would consume 86% of this remaining sewer capacity for the entirety of the properties located within the Town's sewershed area.

**4.0 Exhibit #12 of the September 25, 2012 Waste & Sewer Commission Public Hearing**

This exhibit is a statistical analysis of the data from 2007 to 2011 completed by a member of the Town of East Lyme Water and Sewer Commission. The average daily flow and state allocation of 0.478 MGD presented in the analysis appears to be generally accurate. The average daily flow estimated by utilizing the 95% confidence interval is in general agreement with the maximum monthly average flow presented in Table 7.

The estimated average daily flow from the state allocation used in this analysis is the same as presented in the Exhibit 5 of the August 28, 2012 Water and Sewer Commission public hearing. This exhibit indicates the 2011 average daily flow was 0.276 MGD from state facilities. As indicated in Table 6, the average daily flow from the state facilities, including those operating under as a result of a temporary flow reallocation ordered by CTDEEP is estimated to be 0.314 MGD. As a result, the estimated unused state allocation is 0.164 MGD, approximately 0.038 MGD less than presented in Exhibit Nos. 5 & 12.

# MEMORANDUM

**TO:** Chairman Paul Formica, East Lyme Water & Sewer Commission  
**FROM:** Dan Lawrence, Weston & Sampson Engineers, Inc.  
**DATE:** September 12, 2012  
**SUBJECT:** Sanitary Sewer Capacity Evaluation

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## 1.0 Introduction

The Town of East Lyme retained Weston & Sampson to complete a "Sewer System Capacity Determination" for the Landmark Development, which is proposed on several parcels including an 86.7 acre parcel on Boston Post Road (Map 31, Block 4) and 113.5 acre parcel on Calkins Road (Map 32, Block 1) within the Town of East Lyme, Connecticut. The proposed development is shown on Map 1.

The proposed development consists of two phases as outlined in the letter dated May 3, 2012, included within Attachment A:

- Phase 1 – Apartment Master Plan
  - 408 one-bedroom apartments
  - 432 two-bedroom apartments
- Phase 2 – Town House Pending Application
  - 678 two-bedroom town houses

## 2.0 Documents Utilized for the Sewer Capacity Determination

Weston & Sampson was provided the following documents for use in the evaluation of sewer capacity within the Town of East Lyme:

### Reports

- "Wastewater Collection System Capacity Analysis Planning Report" – Prepared by Fuss and O'Neill – Dated September 2007
- Addendum to Sewer Capacity Study – Mapping and Hydraulic Model Update Town of East Lyme Sanitary Sewer System – 2009 – Dated: December 15, 2009
- "Water Pollution Control Facilities Plan" – Prepared by Consulting Environmental Engineers, Inc. – June 1985.

### Letters

- March 23, 1999 – East Lyme Water and Sewer Commission Meeting Minutes
- April 27, 1999 – East Lyme Water and Sewer Commission Meeting Minutes
- May 25, 1999 – East Lyme Water and Sewer Commission Meeting Minutes
- January 28, 2003 – East Lyme Water and Sewer Commission Meeting Minutes



### Orders

- State of Connecticut Department of Environmental Protection – STATE OF CONNECTICUT V. TOWN OF EAST LYME – ORDER NO. WC5429

### Maps

- "Sewer Service Area Plan – Sewer Capacity Study" – Prepared by Fuşs and O'Neill – Dated October 2010
- "DRAWING NO. O-1, OVERALL SITE PLAN, RIVERVIEW HEIGHTS A RESIDENTIAL COMMUNITY, RIVER & CALKINS ROAD, EAST LYME, CONNECTICUT, SCALE: 1"=200', DATE: APRIL 13, 2005, PREPARED FOR: LANDMARK DEVELOPMENT GROUP, 460 SMITH STREET, SUITE A, MIDDLETOWN, CT 06457, PREPARED BY: ASW CONSULTING GROUP, LLC, 329 MAIN STREET, SUITE 203, WALLINGFORD, CT 06492"
- "DRAWING NO. SS-1, SEWER SHED/SEWER DISTRICT FEASIBILITY PLAN, RIVERVIEW HEIGHTS A RESIDENTIAL COMMUNITY, RIVER & CALKINS ROAD, EAST LYME, CONNECTICUT, SCALE: 1"=200', DATE: SEPTEMBER 23, 2004, PREPARED FOR: LANDMARK DEVELOPMENT GROUP, 460 SMITH STREET, SUITE A, MIDDLETOWN, CT 06457, PREPARED BY: ASW CONSULTING GROUP, LLC, 329 MAIN STREET, SUITE 203, WALLINGFORD, CT 06492"
- "Town of East Lyme, Connecticut, Existing Sewer Shed District Depicted on the Conservation and Development Policies Plan for Connecticut 2005 – 2010, Town of East Lyme, Department of Planning, March 2012"
- "SEWER SERVICE DISTRICT BOUNDARY COMPARISON, EAST LYME, CT, FIGURE 1, AUGUST 31, 2005" Prepared By: Fuss & O'Neill, Inc.

### Intermunicipal Agreements

- "Agreement by and between the City of NEW LONDON, CONNECTICUT and the Town of WATERFORD, CONNECTICUT and the Town of EAST LYME, CONNECTICUT in connection with the THOMAS E. PIACENTI REGIONAL WATER POLLUTION CONTROL FACILITY Dated January 10, 1991"
- "EAST LYME/WATERFORD AGREEMENT" Dated August 11, 1988"

### Public Hearing Exhibits

- Exhibit 1 – PUBLISHER'S CERTIFICATE – Public Notices in issues 8/18/2012 and 8/24/2012
- Exhibit 2 – Letter from Shipman & Goodwin to East Lyme Water & Sewer Commission dated: June 1, 2012
- Exhibit 3 – APPLICATION OF LANDMARK DEVELOPMENT GROUP LLC AND JARVIS OF CHESHIRE LLC TO EAST LYME WATER AND SEWER COMMISSION FOR CONFIRMATION OF SEWER CAPACITY, 236 ACRES AT CAULKINS ROAD, Applicant's Supplemental Materials August 28, 2012
- Exhibit 5 – MEMORANDUM, TO: Project File 4845-01-1, FROM: Stephen R. Dietzko, P.E. Milone & MacBroom, Inc., DATE: August 28, 2012, RE: Riverview Heights East Lyme, Connecticut, Sanitary Sewer Evaluation

- Exhibit 6 – SEWER CONNECTION OPTIONS 1 & 2 – RIVERVIEW HEIGHTS SEWER CONNECTION SCHEMATIC DIAGRAM – EAST LYME, CONNECTICUT – AUGUST 28, 2012

### 3.0 Proposed Sanitary Sewer Flows

The proposed development includes two (2) separate phases as outlined in Section 1.0 above and described in Attachment A. The proposed sanitary sewer flows for each of the phases are summarized below.

Table 1  
**Estimated Average Day Wastewater Flow** <sup>(1)</sup>  
*Landmark Development*

Description	Type of Unit	Occupancy Per Unit (persons)	No. of Units	Average Daily Flow (gpd)	Average Day Total Flow (MGD)
Phase 1 Sewer Flows					
Apartments	1 bedroom	1.5	408	42,840	0.043
Apartments	2 bedroom	2.5	432	75,600	0.075
Total Phase 1 Sewer Flows				118,440	0.118
Phase 2 Sewer Flows					
Town Houses	2 bedroom	2.5	678	118,650	0.119
Total Sewer Flows				237,090	0.237

(1) As presented in Exhibit 3, Water & Sewer Commission Public Hearing, 8/28/2012.

The table presented above summarizes the estimates for average daily flow in Attachment A. A method for sizing gravity pipes and pump stations is by using the nomograph presented in NEIWPC Technical Report #16, "Guides for the Design of Wastewater Treatment Works" (TR-16). The nomograph shows peaking factors between the average day flow and peak hour flow. As the average daily flow increase, the peaking factor decreases. The TR-16 peaking factors are estimated to be 5.4 for Phase 1 and 4.7 for Phases 1 and 2. A copy of the nomograph is provided in Attachment B. Based on the proposed average daily flows provided for the development and the peaking factor contained within TR-16, Weston & Sampson anticipates that the peak flows from the proposed development will be as follows:

Table 2  
**Estimated Peak Hourly Wastewater Flow**  
*Landmark Development*

Phase	Average Day Flow (gpd)	TR-16 Peaking Factor	Peak Hourly Flow (gpm)	Peak Hourly Flow (MGD)
1	118,440	5.4	444	0.640
1 and 2	237,090	4.7	774	1.114

### 4.0 Basis of Sewer System Capacity Determination

#### 4.1 Town of East Lyme Agreement with the City of New London

The Town of East Lyme entered into an Agreement with the City of New London, Connecticut to accept wastewater flows from the Town of East Lyme. The Agreement is dated January 10, 1991. The Agreement is between the City of New

London, Town of Waterford and the Town of East Lyme. A copy of this agreement is provided in Attachment C.

The design capacity of the New London Wastewater Treatment Facility is 10,000,000 gallons per day (10 MGD). The Town of East Lyme has the right to have its wastewater accepted by the City of New London Wastewater Treatment Facility in an amount not to exceed fifteen (15) percent of the design capacity of the New London Wastewater Treatment Facility as specified in Section 15 of the agreement. This results in the Town of East Lyme having a design capacity of 1,500,000 gallons per day (1.5 MGD).

As noted in Section VIII of the Wastewater Collection System Capacity Analysis Report, "...The City of New London is not amenable to renegotiating the Intermunicipal agreement with East Lyme to accept additional flow at this juncture." The current Municipal NPDES Permit (ID CT0100382) identifies the Average Monthly Limit (Average Monthly Discharge Limitation) for the City of New London Wastewater Treatment Facility as 10 MGD. The Average Monthly Limit is defined in Section 22a-430-3(a) of the Regulations of Connecticut State Agencies as "the highest allowable average of all daily discharges during any calendar month".

Weston & Sampson has reviewed flow data from March 1, 2006 to February 29, 2012, which is tabulated in Attachment D and summarized in Table 3.

Table 3  
**East Lyme Flow Summary**  
*March 1, 2006 to February 29, 2012*

Year	Average Daily Flow (MGD) <sup>(1)</sup>	Maximum Monthly Average Flow (MGD) <sup>(1)(2)</sup>	Maximum Day Flow (MGD) <sup>(1)</sup>
2006 <sup>(3)</sup>	1.102	1.193	2.899
2007 <sup>(3)</sup>	1.089	1.206	2.107
2008 <sup>(3)</sup>	1.111	1.178	1.762
2009 <sup>(3)</sup>	1.078	1.195	2.168
2010 <sup>(3)</sup>	1.048	1.343	3.171
2011 <sup>(3)</sup>	1.007	1.077	1.772
6-Year Average	1.072	1.199	2.313
Maximum Flow	1.111	1.343	3.171
Table III-3, East Lyme Flow <sup>(4)</sup>	1.100	1.206	-

- (1) MGD, Million Gallons Per Day
- (2) The maximum Average Monthly Limit or Average Monthly Discharge Limitation of each year from March to February of the following year.
- (3) Data provided by the Town of East Lyme, Connecticut. Yearly summaries are from March to February of the following year.
- (4) Data from "APPLICATION OF LANDMARK DEVELOPMENT GROUP LLC AND JARVIS OF CHESHIRE LLC TO EAST LYME WATER AND SEWER COMMISSION FOR CONFIRMATION OF SEWER CAPACITY, 236 ACRES AT CAULKINS ROAD Applicant's Supplemental Materials August 28, 2012, Exhibit 3 – Water & Sewer Commission Public Hearing 8/28/12". (Based on data from January 2006 to July 2008)

As noted above, the average daily flows range from 1.007 MGD to 1.111 MGD with a six year average of 1.072 MGD. The maximum average monthly flow is between 1.077 MGD to 1.343 MGD, with a six year average of 1.199 MGD. These 6-year averages are in general agreement with those presented in Tab 5 of Exhibit 3,

"Evaluation of Capacity at the Thomas E. Piacenti Wastewater Treatment Plant, New London, Connecticut."

The Town provides the City of New London with monthly average flows. The maximum monthly average from the data was utilized for the evaluation of the East Lyme and New London Agreement.

#### *4.2 Town of East Lyme Agreement with the Town of Waterford*

The Town of East Lyme entered into an Agreement with the Town of Waterford, Connecticut to accept wastewater flows from the Town of East Lyme. The Agreement is dated August 24, 1988. Section 10 of the Agreement includes provisions for the Town of East Lyme to discharge a peak flow of 8,000,000 gallons per day (8 MGD). A copy of this agreement is provided in Attachment E.

#### *4.3 Pumping Station Capacity Limitations*

The proposed development would convey flow from the proposed site to the Pattagansett Pumping Station. The Pattagansett Pumping Station then discharges to the Niantic Pumping Station. The Niantic Pumping Station then discharges to the Town of Waterford Collection System. The locations of the development and the pumping stations are shown on Map 2. The pumping capacities of the Niantic and Pattagansett pump stations are 6.2 MGD and 5.1 MGD, respectively. The 2007 Wastewater Collection System Capacity Analysis Planning Report notes the existing peak hour flows as to the Niantic and Pattagansett pump stations as 1.823 MGD and 1.096 MGD, respectively.

#### *4.4 Gravity Sewer System Limitations*

The proposed development has two potential discharge locations as shown on Map 2. To date, the applicant has not demonstrated the ability to connect to any of the proposed connection points. The existing sewer collection system was evaluated as part of the 2007 Wastewater Collection System Capacity Analysis (Capacity Analysis). Based on this evaluation the available capacity within the sewer collection system can be estimated.

The collection system was evaluated without any improvements and using the existing flows as presented in the Capacity Analysis. The Capacity Analysis indicates that the following peak flow capacity is available downstream of the anticipated connection points as shown in Map 2.

#### Connection Point 1 – Boston Post Road Sewer Connection to Waterford

To date, although there was a resolution by the Water and Sewer Commission to extend sewer on Boston Post Road to Waterford, this sewer has not been designed or installed. The feasibility of this connection has not been demonstrated to date (See Exhibit 6).

#### Connection Point 2 – Deerfield Village

This connection point is composed of 8-inch PVC pipe until the 8 inch main meets the 18 inch main on Flanders Road. The reported excess capacity during existing peak flow conditions was estimated to be 0.137 MGD. This does not include flow from the

proposed development. The feasibility of this connection has not been demonstrated to date (See Exhibit 6).

**5.0 State of Connecticut Reserve Capacity**

The State of Connecticut has existing agreements with the Town of East Lyme with a total flow allocation of 478,000 gpd as summarized in Table 4. A copy of the Order providing a summary of the agreements is provided in Attachment F. The Town of East Lyme takes readings of the existing flows from the state properties which are presented in the Table 6. Further data is provided in Attachment G.

**Table 4**  
**Existing Flow Allocation Agreements**  
*Between State of Connecticut and Town of East Lyme*

Location	Agreement	Date of Agreement	Flow (gpd)
Rocky Neck State Park	CT DEEP	9/17/90	169,600
Gates and York Prisons	CT DOC	11/22/89	250,000
Camp Rell (Camp Niantic)	CT National Guard	10/1/90	58,400
<b>Total:</b>			<b>478,000</b>

In an Order from the State of Connecticut Department of Environmental Protection to the Town of East Lyme dated July 21, 2006 the State ordered a temporary assignment of the State's unused allocation of approximately 144,600 gallons to the Town of East Lyme. "Upon the completion of successful negotiations for additional capacity at the Piancenti Facility, the temporary transfer of sanitary sewage capacity from DEP to East Lyme...shall cease." The temporary reallocation ordered by CTDEEP is provided in Table 5.

**Table 5**  
**Temporary Flow Reallocation as Ordered by CTDEEP**  
*Between State of Connecticut and Town of East Lyme*

Location	Original Allocation (gpd)	Ordered Reallocation (gpd)
Rocky Neck State Park	169,600	25,000
Point O' Woods (Old Lyme)	0	105,000
Pine Grove (East Lyme)	0	39,600
<b>Total:</b>		<b>169,600</b>

The Town of East Lyme maintains readings of flow from Point O' Woods, Gates and York Prisons and Camp Niantic. Summaries of the monthly usage from March 2006 to February 2012 are provided in Table 6. It should be noted that properties within Point O' Woods are still being connected at the time of this memorandum.

**Table 6**  
**Current Allocation Usage**  
*Between State of Connecticut and Town of East Lyme*

Location	Allocated Flow (gpd)	Average Daily Flow (gpd) <sup>(1)</sup>	Allocation Remaining During Average Daily Flow (gpd)
Rocky Neck State Park	25,000	0	25,000
Point O' Woods	105,000	17,133 <sup>(2)</sup>	87,867
Pine Grove	39,600	39,600 <sup>(3)</sup>	0
Gates and York Prisons	250,000	249,239	761
Camp Rell (Camp Niantic)	58,400	8,233	50,167
<b>Total:</b>	<b>478,000</b>	<b>314,205</b>	<b>163,795</b>

- (1) Data provided by the Town of East Lyme (March 2006 – February 2012)  
(2) Not fully connected as of September 5, 2012.  
(3) Estimated to be equal to allocated flow.

From the data provided, the Agreements with the State of Connecticut have approximately 163,795 gallons per day of remaining reserved capacity available to the State of Connecticut and Point O' Woods.

## 6.0 Sewer Capacity Evaluation

### 6.1 New London Agreement

As noted in Section 4.1 in this memorandum, the flow from the Town of East Lyme cannot exceed 15% of the 10,000,000 gallon per day (10 MGD) design capacity of the Thomas E. Piacenti Regional Water Pollution Control Facility. The following table summarizes the existing flows, reserved flows, and available flow.

**Table 7**  
**Sewer Capacity Evaluation Summary Table**  
*Town of East Lyme*

Flow Condition	Average Daily Flow (MGD)	Maximum Monthly Average Flow (MGD) <sup>(1)</sup>
Maximum	<b>1.111</b>	<b>1.343<sup>(2)</sup></b>
<i>Existing State Agreements and Orders</i>		
Existing Agreements (Table 4)		0.478
Average Daily Flow from Existing Agreements/Orders (Table 6)		0.314
Additional Flow From Existing Agreements and Orders (Table 6)		<b>0.164</b>
<b>Total Daily Flow</b>	<b>1.275</b>	<b>1.507</b>
<b>New London Agreement</b>	<b>1.500</b>	<b>1.500</b>
<b>Available Flow</b>	<b>0.225</b>	<b>-0.007</b>

- (1) Maximum Monthly Average Flow is defined in RCSA 22a-430-3(a) as the highest average of all daily discharges during any calendar month.  
(2) In March and April of 2010, the monthly average flow was 1.343 MGD and 1.341 MGD, respectively.

During average daily flow periods, the Town of East Lyme has 0.225 MGD of flow available. During maximum monthly average flow periods the Town utilizes the entire flow amount in their agreement with the City of New London based on actual usage and reserved capacity for the State of Connecticut and Point O' Woods as shown in Table 7.

6.2 Waterford Agreement

The wastewater flow from the Town of East Lyme is limited by the capacity of the Niantic Pump Station. The current capacity limitation for the Niantic Pump Station is 6.2 MGD well below the maximum flow rate of 8.0 MGD allowed by the Waterford agreement. The existing agreement between the Town of Waterford and Town of East Lyme provides adequate capacity for Phase 1 and Phases 1 and 2 to be connected.

6.3 Pump Stations

As discussed in Section 4.3, the applicant's proposed connection number 2 would flow to the Pattagansett Pumping Station and then the Niantic Pumping Station.

Table 8  
**Sanitary Sewer Pumping Station Summary**  
*Pump Stations Downstream of Project*

Pump Station Name	Pump Station Capacity (MGD) <sup>(1)</sup>	Existing Conditions (MGD) <sup>(1)</sup>	Phase 1 Peak Hour Flow (MGD) <sup>(2)</sup>	Phase 1 & 2 Peak Hour Flow (MGD) <sup>(2)</sup>	Available Capacity (MGD)
Niantic	6.2	1.8	0.640	1.114	3.3
Pattagansett	5.1	1.1	0.640	1.114	2.9

- (1) As Presented in "Sewer Connection Options 1 & 2, Riverview Heights, Sewer Connection Schematic Diagram", Exhibit 6 Water & Sewer Commission Public Hearing
- (2) See Table 2 for further detail.

The existing pump stations have adequate capacity under existing flow conditions to accept Phase 1 and Phase 1 and 2 flows.

6.4 Gravity Sewer

To date, the applicant has not demonstrated the ability to connect to any of the proposed connection points. The existing sewer collection system was evaluated as part of the 2007 Wastewater Collection System Capacity Analysis (Capacity Analysis). Based on this evaluation the available capacity within the sewer collection system can be estimated.

Although there was a resolution by the Water and Sewer Commission to extend sewer on Boston Post Road to Waterford, this sewer has not been designed or installed to date. The feasibility of this connection (connection point 1) has not been demonstrated to date (See Exhibit 6).

Connection point 2 is composed of 8 inch PVC pipe. The 2007 Wastewater Collection System Capacity Analysis Planning Report indicated that the available excess capacity for Connection Points 1 and 2 is 0.137 MGD. The peak hourly flow from Phase 1 of the project is 0.640 MGD indicating

connection point 2 has insufficient capacity and will require replacement. The feasibility of this connection (connection point 2) has not been demonstrated to date (See Exhibit 6).

## 7.0 Summary

The Town of East Lyme has a six year average daily flow of 1.072 MGD and a maximum monthly average flow of 1.343 MGD. The Town of East Lyme has experienced peak daily flows of 1.762 (2008) to 3.171 (2010) during the six year period reviewed. From the data provided and summarized in Table 6, the State of Connecticut has 0.164 MGD of reserved flow remaining within its order/agreements to be utilized.

The proposed development includes two phases involving apartments (Phase 1) and town houses (Phase 2). The proposed flows are 118,440 gpd (0.118 MGD) and 118,650 gpd (0.119 MGD), for Phase 1 and Phase 2 respectively. The review of pump station capacity indicates that the Pattagansett Pumping Station and Niantic Pumping Station can accommodate Phase 1 and Phase 2 flows.

Although there was a resolution by the Water and Sewer Commission to extend sewer on Boston Post Road to Waterford, this sewer has not been designed or installed to date. The feasibility of this connection (connection point 1) has not been demonstrated to date (See Exhibit 6). The Town of East Lyme has completed the Wastewater Collection System Capacity Analysis Planning Report outlining the remaining capacity within the sewer system and the proposed flows for the planning period. The review of the gravity sewer indicates upgrades to existing piping would be needed for connection point 2. The feasibility of this connection (connection point 2) has not been demonstrated to date (See Exhibit 6).

On an average day the Town utilizes 1.275 MGD of flow within their agreement with the City of New London based on actual usage and reserved capacity for the State of Connecticut/Point O' Woods as shown in Table 7. This leaves 0.225 MGD of remaining capacity for the properties within the sewershed as depicted on Figure V-15 of the 2007 Wastewater Collection System Capacity Analysis Planning Report. Phase 1 of the proposed development, estimated at 118,400 gpd (0.118 MGD), would consume 52% of this remaining sewer capacity for the entirety of the properties located within the Town's sewershed area.

During maximum monthly average flow periods the Town utilizes the entire flow amount in their agreement with the City of New London based on actual usage and reserved capacity for the State of Connecticut and Point O' Woods as shown in Table 7.



## MEMORANDUM

TO: East Lyme Water and Sewer Commission  
Dan Lawrence, Weston & Sampson Engineers

FROM: Glenn Russo, Landmark Development  
Stephen Dietzko, P.E., Milone & MacBroom  
Tim Hollister, Shipman & Goodwin

DATE: September 24, 2012

RE: Landmark's Application for Public Sewer Capacity Determination

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This memo is the applicant's response to the September 12, 2012 memo from Dan Lawrence of Weston & Sampson Engineers, Inc.

1. The memo's statements that the engineering feasibility of actual connection points "has not been demonstrated" are premature. The pending application is for a capacity determination at the New London treatment plant and Town of Waterford transmission lines.
2. The Weston & Sampson memo makes no mention of the May 2012 "Evaluation of Capacity" report, prepared by AECOM, which discusses potential capacity improvements at the New London treatment plant. An excerpt from this report was submitted for the record on August 28, 2012.
3. The Weston & Sampson memo agrees with Milone & MacBroom's calculation of the amount of sewage discharge from the proposed Landmark development phases. Milone & MacBroom does not dispute the related peaking factors.
4. The Weston & Sampson memo states that the sewer extension along Route 1, to the former Lulu's restaurant, a route on which Landmark has frontage, was approved "but not designed or installed." The system was designed and approved (see Landmark's August 28 submission) but not installed. The approval of the design / plan remains valid.
5. The applicant respectfully disagrees that the capacity reserved for Point O' Woods is properly charged against East Lyme's New London treatment plant capacity allocation. In the May 2012 AECOM report on the New London plant capacity improvements, Old Lyme and Point O' Woods are stated as a separate category from East Lyme's allocation. In the 2006 DEP Order attached to the Weston & Sampson memo, Paragraph B.1.a clearly states that Point O' Woods is a temporary transfer of the State's excess capacity, not East Lyme's.

6. In general, peak / maximum flows are not relevant, because the permits and agreements under which the New London plant operates are based on average daily flow. Similarly, the East Lyme / Waterford agreement and the DEP Order are based on average daily flow.

7. The applicant's principal disagreement with the Weston & Sampson memo is its use of a six-year average daily flow for East Lyme's current discharges, and in Table 7, the maximum flow during this six year period. A six-year average would be defensible if the discharges varied within a range, but the year-by-year flows (see September 2012 update, attached) show a substantial and consistent decline during this time period, of nearly 100,000 gallons from 2006, which is of course due in part to closure of a prison facility. The two-year average for the period ending February 29, 2012 is 1.027 MGD, which is more reflective of existing conditions than the six-year average. Note that Sewer Department Monthly Report through the end of August 2012 denotes an ADF of 978,056 gpd for the two-year period ending August 31, 2012 and ADF of 1,019,513 gpd for the period including all of 2010, 2011, and year-to-date 2012. Current flows continue to decline. For this same reason, use of 1.111 MGD, the maximum average daily flow over this six-year period, is inappropriate and misleading. A more accurate summary of current available capacity uses the two-year average and omits Point O' Woods:

Allocation	1,500,000 gpd
2010-2011 ADF from East Lyme, including State facilities	1,026,962 gpd
Unused State reserve allocation	163,795 gpd*
Available Capacity	309,243 gpd

\* Source: Table 6 of September 12, 2012 Weston & Sampson memo.

**Thus, 118,000 gpd requested by Landmark is 38 percent of available flow, not 52 percent.** However, this 38 percent is based on 163,795 gpd that is reserved but not currently used. If this reserved capacity were considered available for reallocation, 118,000 gpd is only **25 percent**. Finally, these numbers and percentages do not take into account New London treatment plant capacity improvements currently under consideration.

**Conclusion: It is established Connecticut case law that if a proposed development (1) is located in a sewer service area; (2) abuts or fronts on an approved sewer line or approved extension; (3) requests capacity that is available; and (4) can be physically and feasibly engineered, then the applicant is entitled to a sewer approval. The pending Landmark application meets these criteria.**

TSH:ekf

EAST LYME SEWER FLOWS - HISTORY

	2005	2006	2007	2008	2009	2010 <sup>(1)</sup>	2011	2012	% +/- Prev. Yr.
JAN.	1,081,493	1,125,420	1,137,320	1,002,851	1,081,072	1,037,939	918,818	956,431	4.09%
FEB.	1,084,724	1,078,408	1,027,091	1,015,914	1,025,974	1,001,694	959,700	912,442	-4.92%
MAR.	1,002,300	985,381	1,083,167	1,178,427	1,026,586	1,424,903	1,001,537	886,778	-11.46%
APR.	1,112,100	1,010,703	1,205,514	1,148,892	1,075,581	1,341,021	938,509	915,628	-2.44%
MAY	1,091,659	1,120,890	1,135,617	1,128,447	1,053,265	1,119,627	1,046,507	1,016,580	-2.86%
JUN.	1,093,098	1,144,452	1,136,675	1,117,479	1,122,961	1,067,205	1,017,256	996,993	-1.99%
JUL.	1,119,647	1,156,290	1,187,186	1,167,524	1,195,467	1,117,893	1,027,843	1,026,063	-0.17%
AUG.	1,051,086	1,167,040	1,158,667	1,167,600	1,162,253	1,040,808	970,097	1,018,439	4.98%
SEPT.	1,004,498	1,106,387	1,068,659	1,093,745	1,039,287	932,705	1,167,520		-100.00%
OCT.	1,177,896	1,124,860	1,026,567	1,072,337	997,294	928,254	966,767		-100.00%
NOV.	1,051,614	1,130,857	1,011,845	1,017,881	991,412	869,937	983,082		-100.00%
DEC.	1,098,235	1,064,774	1,000,163	1,118,268	1,103,500	882,347	1,133,107		-100.00%
AVG.	1,080,696	1,101,289	1,098,206	1,102,447	1,072,888	1,063,694	1,010,895	966,169	-34.56%

(1) March 30, 2010 storm event - 8.88 inches of rain/16.43 inches of rain for the month (Well 3A rain gauge)

# Sewer Department Monthly Report

Sep-12

Aug-12	Monthly Running Avg:	966,169 GPD
	Daily Avg:	1,018,439 GPD
	Daily Max:	1,243,220 GPD
	Daily Min:	841,600 GPD

Daily Average as a Percent of Monthly Running Average: 105.41%  
 Daily Average as a Percent of 1.5 MGD Allotment at NLWWTP: 67.90%

**State CT Flows:**

	DOC	Camp Niantic	Rocky Neck	POW	Total
Actual GPD AVG.	221,464	7,854	0	35,319	264,637
Design GPD AVG.	250,000	58,400	64,600	105,000	478,000
% of Design GPD	88.6%	13.45%	0	33.64%	55.36%
% of East Lyme Average Daily Flow	21.75%	0.77%	0.00%	3.47%	25.98%
% of East Lyme 1.5 MGD Allotment	14.76%	0.52%	0.00%	2.35%	17.64%

Footnotes:

**APPLICATION OF LANDMARK DEVELOPMENT GROUP LLC  
AND JARVIS OF CHESHIRE LLC**

**TO**

**EAST LYME WATER AND SEWER COMMISSION**

**FOR CONFIRMATION OF SEWER CAPACITY,  
236 ACRES AT CAULKINS ROAD**

**Applicant's Final Submission Materials**

**October 23, 2012**

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Applicants Landmark Development Group LLC and Jarvis of Cheshire LLC have reviewed the reports, letters, and testimony submitted at the September 25, 2012 hearing and submit the following final comments:

**1. Approval Requested; Methodology**

Landmark seeks a reservation of 118,000 gallons of capacity (average flow) so that it can pursue land use approvals premised on sewer availability. It does not at this time seek permission to connect to the sewer system, which is why Weston & Sampson's comments that individual pipe capacity "has not been demonstrated" are premature.

It is apparent from the Weston & Sampson report and testimony received on September 25 that the amount of sewer capacity available hinges on three issues:

1. Use of average flow vs. maximum flow;
2. Use of a six year average or a two year average, when the average daily flow data show a clear and continuing downward trend during the past six years; and
3. Whether the temporary Point O'Woods reallocation from the State counts as a deduction from East Lyme's 1.5 MGD allocation.

These issues are addressed below, followed by other final comments.

**2. Use Of Average Daily Flow vs. Maximum Flow**

The Weston & Sampson report dated September 25, 2012 contains this table:

Flow Condition	Average Daily Flow (MGD)	Maximum Monthly Average Flow (MGD)
Maximum of 6 Year Period	1.111	1.343
<b>Existing State Agreements and Orders</b>		
Existing Agreements		0.478
Average Daily Flow for Existing Agreements and Orders		0.314
Additional Flow from Existing Agreements and Orders		0.164
Total Daily Flow	1.275	1.507
New London Agreement	1.500	1.500
Available Flow	0.225	-0.007