

From this table, Mr. Lawrence eventually testified (focusing on the "-0.007" number) that the Town of East Lyme currently is *over* its allocated capacity, and **does not have capacity to allocate to any property.**

Whether intended or not, Mr. Lawrence's conclusion leaves this Commission with two alternatives: (1) accept this conclusion, in which case the Town of East Lyme is in violation of its sewage disposal agreement with New London and the state and federal Clean Water Acts, and does not have any capacity left to allocate, even where sewer hookups are needed to deal with existing water pollution problems;¹ or (2) reject Weston & Sampson's conclusion, in favor of using Mr. Lawrence's first column, which shows at least 225,000 in available capacity.

The proper way to proceed is to use the left column, average daily flow. The use of average daily flow instead of maximum flow is supported by at least these factors:

- Average flow rate is used in evaluating treatment plant capacity and in developing flowrates used in design;²
- The New London treatment plant NPDES permit, Exhibit 7 in the record of this hearing, in ¶ 4(L), states that the plant's design capacity must be reexamined when the *average daily flow* for the previous 180 days exceeds 90 percent of the design flow rate, which as noted above is also based on average, not maximum; and
- It is illogical to base design, compliance, agreements, allocations, or capacity estimates on maximums because minimum flows and maximum flows are unpredictable and highly variable. Design of discrete portions of sewer and treatment systems is subject to various peaking factors, but baseline capacity is not. The Recommended Standards for Wastewater Facilities 2004 Edition notes the design average flow is the average of the daily volumes to be received for a continuous 12 month period expressed as a volume per unit time (Section 11.241a). Section 11.26 of the same standards denote the wastewater treatment facility design capacity is the design average flow. Metcalf & Eddy further reinforces this in identifying "The average daily flowrate occurring over a 24-hour period based on total annual flowrate data. Average flowrate is used in evaluating treatment plant capacity and in developing flowrate ratios used in design." (Wastewater Engineering, Treatment, Disposal and Reuse, Metcalf & Eddy, Inc. Third Edition, Section 2-4, page 36).

Thus, average flow, not maximum, is used in evaluating capacity.

¹ And if this Commission denies Landmark's application on the basis of no available capacity, but then allocates to others, it will be exposed to a variety of legal claims.

² "Wastewater Engineering, Treatment, Disposal and Reuse," Metcalf & Eddy, Inc., Third Edition 1991, Section 5-2, page 149.

3. Six Year Average vs. Two Year Average

The use of a six year average vs. a shorter average depends on trends. If the range of flows within a six year period were consistent over that time period, a six year average might be appropriate. However, the average has been steadily diminishing from 2006 to 2012, from 1.101 MGD in 2006 to 1.010 MGD in 2011, a ten percent decline, such that **use of a six year average to analyze current conditions distorts current capacity.** In fact, Metcalf & Eddy note the following: "Where flow records are kept for treatment plants and pumping stations, at least two years of the most recent data should be analyzed. Longer-term records may be analyzed to determine changes or trends in wastewater generation rates." "Wastewater Engineering, Treatment, Disposal and Reuse," Metcalf & Eddy, Inc., Third Edition 1991, Section 2-4, page 36. Here, the longer trend demonstrates the need to use a two year average to identify current conditions accurately.

The Commission need not take the applicant's word on this. In 2011, Commission staff Brad Kargyl communicated with AECOM, the consulting firm retained to evaluate treatment capacity at the New London plant. The Town of East Lyme, through Mr. Kargyl, was asked to identify the appropriate, current base sewer flow numbers for treatment plant capacity planning purposes. In an April 13, 2011 email to AECOM's Dennis Setzko and others, in support of a request to double East Lyme's allocation, Mr. Kargyl stated (full copy of e-mail chain attached) (emphasis added):

For the purpose of the analysis, I would use the base wastewater flow of 2,800,000 for the 10-25 year timeframe. With some interpolation, this comes from Figure V-17 found in the 2007 Capacity Study prepared by Fuss & O'Neill and is consistent with the information provided to the DEP. However, **based on current trends, flows are decreasing and we recently learned that the Gates prison is closing effective June 1, 2011. That alone equates to approximately 80,000 gpd that will be lost.**

I believe the F&O report is very conservative and probably overstates the projected flows, i.e. the F&O report projected a base wastewater flow of approximately 2,000,000 gpd in the 0-5 year time frame (2010). We are actually closer to 1,000,000 gpd (see attached). With that in mind, I think at least two flow scenarios should be considered, one being the base wastewater flow of 2,800,000 gpd found in the F&O report, and the other being some fraction of that, say 2,000,000 gpd for the 10-25 year time frame.³

Flows have continued to decrease since Mr. Kargyl's April 2011 e-mail.

In calculating current available capacity, then, the past two years, not the past six years, reflect both current and expected conditions. Since the start of 2011, through September 2012,

³ The applicant notes that this information was apparently not conveyed to Weston & Sampson.

average daily flow has been less than 1.000 MGD, but 1.000 can be used as a conservative number. Plugging this number into Mr. Lawrence's table results in available capacity of **336,000 GPD**. Landmark requests 35 percent of this amount, **which would leave 218,000 GPD for other properties and purposes.**

It is worth noting that this 336,000 GPD is still a misleading number. The fact is that, as an *actual* matter, East Lyme did not use 400,000 gallons of its available capacity in 2006, and in 2011 it did not use 500,000 gallons of its allocation. One of the facilities that is the basis of the State's allocation has closed permanently. This means that, in reality, if 118,000 were allocated to Landmark, it would constitute only 23 percent of actual, currently unused capacity, and the Town's margin of physically unused (as opposed to allocated) capacity would be in the neighborhood of 380,000 GPD. This also means that if 118,000 were allocated to Landmark and used fully, the actual average flow would still be below what it was in 2004-05.

4. Point O'Woods

The discharges from Point O'Woods are not a reduction in East Lyme's New London treatment plant capacity allocation, but a temporary reallocation of capacity at the plant reserved by the State, as shown in the 2006 DEP order, a copy of which is attached to the Weston & Sampson report. Apparently, on this basis, the May 2012 AECOM report does not deduct Point O'Woods from East Lyme's capacity, but accounts for it and other future Old Lyme flows in the planning of the treatment plant.

5. Other Factors

1. We note that in the 2006 DEP order regarding Point O'Woods, ¶ B.1.b, the Town of East Lyme was ordered to pursue additional capacity at the New London treatment plant. That order remains in effect. The May 2012 AECOM report indicates active planning for East Lyme's allocation increasing to 3.05 MGD.

2. Regarding the Connecticut Supreme Court's 2009 decision *Forest Walk*, it must be noted that that property *was not* in the Town's sewer district. Also, that case's discussion of sewer capacity allocation (gallons per acre of land to be developed) is both misleading and contrary to smart growth principles. Sewers are intended to facilitate higher residential densities and smaller developed areas, allowing for clustering open space presentation, green building orientation, and other land planning advantages. Thus, the discussion about allocating too much sewer capacity to too little land is exactly backwards. Moreover, the Landmark parcel is 236 acres, not 36 acres, if we wish to compare apples to apples.

3. The Landmark property is undeveloped, but not "environmentally pristine." It has minimal wetlands (and none in the area of the proposed Phase I development). It is not habitat for endangered species. Much of it is relatively flat and readily developable. Twice in the early

2000's State of Connecticut officials indicated that they had "no interest" in dedicating state funds to preserve it as open space. Likewise, the Town of East Lyme's open space priority list does not list this property as a top priority.

4. If neighboring property owners are concerned with open space preservation and limiting development on the Landmark property, the best way to do so is to allow a sewer connection.

6. Conclusion

It is established Connecticut case law that a proposed development is entitled to sewer capacity if it (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. The Landmark is located in the Town's sewer service area and has frontage on an approved extension of the Town's sewer system. There is plainly available capacity, the only question being what percentage Landmark seeks, with the range being 35 to 52 percent. Weston & Sampson has confirmed that Waterford's system has capacity to transmit flow from the Landmark property to the New London treatment plant. The answer to the question, "Does East Lyme have 118,000 gpd of sewer capacity available?" is unequivocally "Yes." This Commission is obligated to approve Landmark's application.**

E-Mails Retrieved From AECOM File

October 17, 2012

Growley, Maureen

From: Brad Kargl [BKargl@eltownhall.com]
Sent: Wednesday, April 13, 2011 1:33 PM
To: Crowley, Maureen
Cc: Setzko, Dennis; Lanzafame, Joseph; P. E. Neftali Soto (nsoto@waterfordct.org); Mike Giannattasio
Subject: RE: confirmation of East Lyme Future Flows and Loads
Attachments: EL Flow Summary_04-13-11.pdf

Maureen:

For the purpose of the analysis, I would use the base wastewater flow of 2,800,000 for the 10-25 year timeframe. With some interpolation, this comes from Figure V-17 found in the 2007 Capacity Study prepared by Fuss & O'Neill and is consistent with the information provided to the DEP. However, based on current trends, flows are decreasing and we recently learned that the Gates prison is closing effective June 1, 2011. That alone equates to approximately 80,000 gpd that will be lost.

I believe the F&O report is very conservative and probably overstates the projected flows, i.e. the F&O report projected a base wastewater flow of approximately 2,000,000 gpd in the 0-5 year time frame (2010). We are actually closer to 1,000,000 gpd (see attached). With that in mind, I think at least two flow scenarios should be considered, one being the base wastewater flow of 2,800,000 gpd found in the F&O report, and the other being some fraction of that, say 2,000,000 gpd for the 10-25 year time frame. However, I would like to discuss this matter with Joe and Tali before I can give you definitive direction on this as it may affect the scope of work.

Please do not hesitate to contact me with any questions regarding this matter.

Sincerely:

Brad Kargl

From: Crowley, Maureen [<mailto:Maureen.Crowley@aecom.com>]
Sent: Wednesday, March 30, 2011 1:03 PM
To: Brad Kargl
Cc: Setzko, Dennis
Subject: RE: confirmation of East Lyme Future Flows and Loads

Hi Brad,

We are finalizing the flows and loads for the New London wastewater treatment plant and I wanted to run some estimates by you.

To determine the loads associated with East Lyme's flow, I used the future base wastewater flow of 2,800,000 GPD (from the email below) and subtracted the current average flow of 1,100,000 GPD to come up with an increase in the future base wastewater flow of 1,700,000 GPD. By dividing 1.7 MGD by 90 gallons per person per day, this is approximately 18,800 people that will connect to the system in the future (roughly 7,700 homes).

To estimate future BOD, TSS and TKN at the plant, we use the typical pollutant concentrations from TR-16 which are based on the population, so I am using a future population increase of 18,800 people to come up with the nutrient loads. I will use this population increase in our report, but if you feel it is incorrect, please let me know.

Thank you,
Maureen

Maureen Crowley, P.E.
Project Engineer
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maureen.crowley@aecom.com

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Rocky Hill, CT 06067
T 860.263.5800 F 860 263.5777
www.aecom.com

From: Brad Kargl [<mailto:BKargl@eltownhall.com>]
Sent: Friday, March 11, 2011 3:36 PM
To: Crowley, Maureen
Subject: RE: confirmation of East Lyme Future Flows

Maureen:

Sorry I missed you the other day. While I think these flows may be overstated given the current trend, it is in the report. I would use these projections for your study.

Thank you.

Brad

From: Crowley, Maureen [<mailto:Maureen.Crowley@aecom.com>]
Sent: Thursday, March 10, 2011 11:41 AM
To: Brad Kargl
Subject: re: confirmation of East Lyme Future Flows

Hi Brad,

I reviewed the 2007 Sewer System Planning Report and I just wanted to confirm the estimate I should use in our report regarding East Lyme flows. The Future Wastewater Flow Estimation shown on the large map in Chapter 5 of the report shows a flow at buildout of 3.645 MGD. We are estimating the flows for a 20-year planning period, so I used the bar chart on Figure V-17 (attached). It appears the average wet weather flow estimate for 10-25 years in the future is approximately 3.05 MGD and the base wastewater flow appears to be approximately 2.8 MGD. I will use these estimates in our report for the New London WWTP, but if you feel these are incorrect, please let me know.

Also, please disregard my email about the Point O' Woods flows. I talked to Rob Prybylo about the project and he mentioned the homes are connecting now so the current flows are very low.

Thank you for your assistance,

Maureen

Crowley, Maureen

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Also, please disregard my email about the Point O' Woods flows. I talked to Rob Prybylo about the project and he mentioned the homes are connecting now so the current flows are very low.

Thank you for your assistance,

Maureen

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June 1, 2012

Mr. Paul Formica, Chair,
and Commission Members
Water and Sewer Commission
Town of East Lyme
108 Pennsylvania Avenue
P. O. Box 519
Niantic, CT 06357

Re: Application of Landmark Development Group, LLC and Jarvis of Cheshire for Confirmation of Sewer Capacity, Caulkins Road Property

Dear Chairman Formica and Commission Members:

This letter is an application to the East Lyme Water and Sewer Commission ("WSC") filed pursuant to § 7-246a(1) of the General Statutes, seeking confirmation of the availability of 237,090 gallons per day of sewage disposal capacity in the Town's sewer system to serve Landmark Development's proposed residential development adjacent to Caulkins Road.

A May 3, 2012 letter from Milone & MacBroom, Inc. providing a calculation of the sewer capacity needed is enclosed.

Please note that as provided in § 7-246a, applications filed under this statute are processed in accordance with the timeframes and procedures set forth in § 8-7d of the General Statutes.

This application is made at that time for several reasons. First, the Connecticut Superior Court in late 2011 ordered the East Lyme Planning and Zoning Commission to adopt a regulation that will facilitate residential development with sewers on part of the applicant's 236 acre Caulkins Road property; the applicant will be pursuing contemporaneously with this application the formal adoption of that regulation. Second, it has been confirmed that a portion of the applicant's land is indeed within the Town of East Lyme's "sewer shed" and entitled to allocation of sewage disposal capacity, which is required for the type of development that the Superior Court has determined to be appropriate for the subject land. Third, we have examined

Mr. Glenn Russo
May 3, 2012
Page 2

The wastewater flows for the project are estimated as follows:

Apartment Master Plan

$$408 \text{ one-bedroom units} \times \frac{1.5 \text{ person}}{\text{unit}} \times \frac{70 \text{ gal}}{\text{person}} = 42,840 \text{ gal/day}$$

$$432 \text{ two-bedroom units} \times \frac{2.5 \text{ person}}{\text{unit}} \times \frac{70 \text{ gal}}{\text{person}} = \underline{75,600 \text{ gal/day}}$$

Subtotal 118,440 gal/day

Pending Town House Plan

$$678 \text{ two-bedroom units} \times \frac{2.5 \text{ person}}{\text{unit}} \times \frac{70 \text{ gal}}{\text{person}} = 118,650 \text{ gal/day}$$

Total Estimated Average Daily Project Wastewater Flow = 237,090 gal/day

Please contact me if you have any questions regarding the above.

Sincerely,

MILONE & MACBROOM, INC.



Stephen R. Dietzko, P.E.
Vice President

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Mr. Paul Formica, Chair,
and Members
June 1, 2012
Page 2

the most recent Town / WSC sewage treatment plant reports, which demonstrate the availability of the amount of capacity requested. Fourth, we are aware of the Town's / WSC's plan to expand its sewer capacity beyond what is currently available.

Under § 7-246a, this application will be received at the WSC's next regular meeting. We request notification as to when the WSC would like the applicant to present this application.

Under the Connecticut Freedom of Information Act, we request a copy of all agendas and minutes that involve this application.

Thank you.

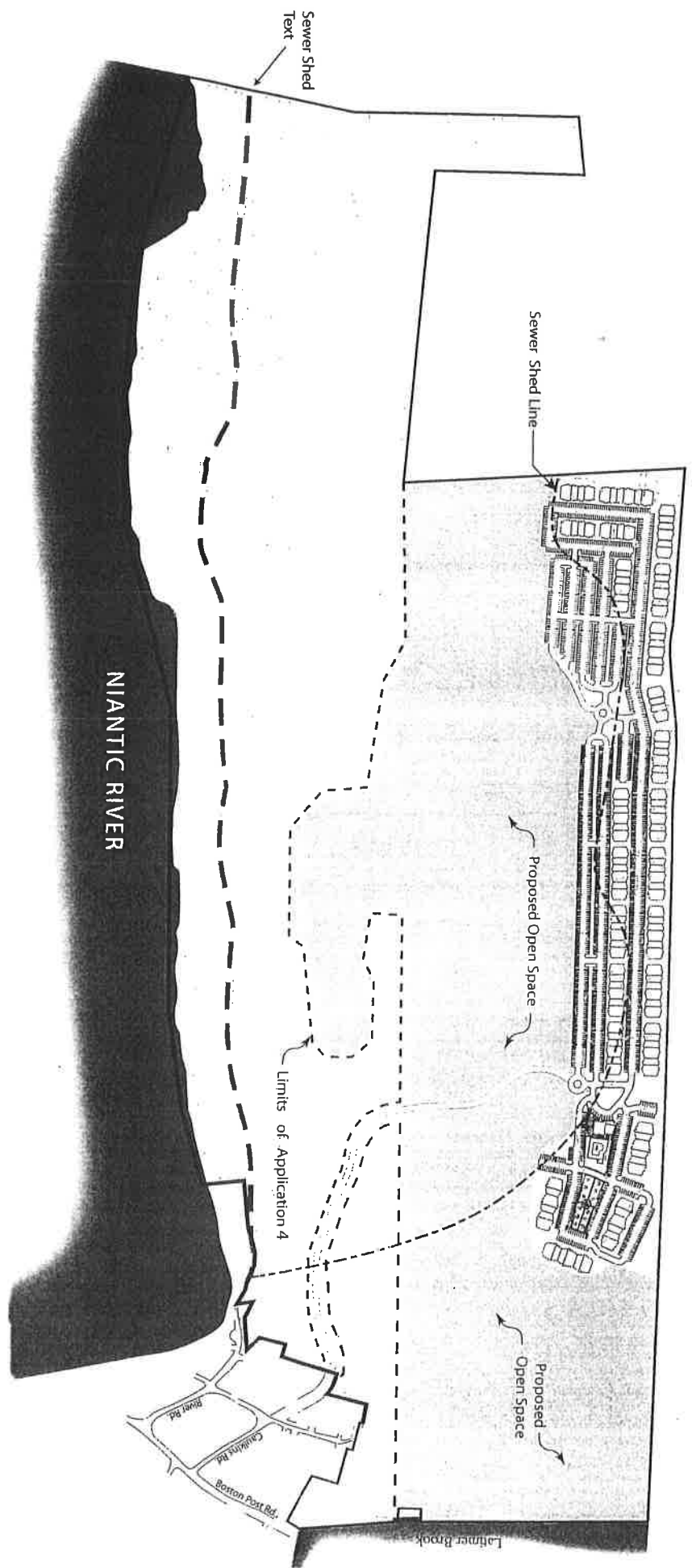
Very truly yours,



Timothy S. Hollister

TSH:ekf
Enclosure

c: Glenn Russo (w/ enc.)
Michael A. Zizka, Esq. (w/ enc.)



LEGEND

--- BOUNDARY LINE	PLAN OF DEVELOPMENT
--- LIMITS OF CONSTRUCTION	OPEN SPACE AREA
--- SEWER SHED LINE	PROPOSED OPEN SPACE
--- COASTAL AREA MANAGEMENT	WETLANDS

HOUSING APP. 4 (FIG. 1-2)

DATE	DESCRIPTION	BY	DATE	SCALE	PREPARED FOR	HOUSING MAP
08/28/12				No scale	LANDMARK INVESTMENT GROUP LLC 100 ROSCOMMON DRIVE SUITE 312 MIDDLETOWN, CONNECTICUT 06457	RIVERVIEW HEIGHTS RIVER & CAULKINS RD — EAST LYME, CT
						SHEET OF

1 portion of it while also respecting the
2 conservation and open space values of the town,
3 the values that citizens of East Lyme or residents
4 of the area hold in high regard but we are,
5 frankly, within those limits trying to -- we are
6 at a point where the issues is where, when, and
7 how it's going to be developed, not whether.

8 And I say that really for two reasons; the
9 first is after some what I'll call confusion ten
10 years ago about whether this property was within
11 the town's sewer shed, that's pretty well been
12 confirmed either within the formal line that was
13 drawn in 1999 or within the area adjacent to it
14 which under the town rules is -- could be fed by a
15 gravity sewer to the sewer area which by town
16 practice and rule is incorporated into the sewer
17 shed area.

18 The second and more recent development is
19 that in November of 2011 a superior court judge
20 evaluated the zoning commission's reasons in which
21 it rejected any development of this property and
22 the court sent it back to the zoning commission
23 where the application is now to revise the zoning
24 regulations, recognizing that a substantial
25 portion of the property is developable and

1 specifying the types of information that Landmark
2 should submit to allow the zoning commission to
3 conduct a final site plan evaluation on the
4 roughly 35 acres out of 236 total at the western-
5 most -- I think most people are accustomed to
6 looking at an East Lyme map in a north-south
7 fashion, so the Niantic River and then the
8 property runs north-south. So the Deerfield
9 Condominium would be to the west and this is the
10 area that's proposed for residential development.
11 And also on this -- on this is the formal sewer
12 shed line and then what we believe to be the
13 gravity line that feeds into the sewer shed.

14 So 35 out of 236 acres on the relatively flat
15 top portion of the site well over 1,000 feet from
16 the Niantic River and so we're basically here in a
17 somewhat indirect fashion on remand from the
18 superior court to determine the infrastructure
19 portion of what will eventually be the zoning
20 commission's consideration of the site development
21 plan.

22 Now, let me turn to what this application is
23 and is not. I will agree with the limitations
24 that Attorney O'Connell articulated. We're not
25 here to talk about whether housing is a good idea

1 or a bad idea. We're not talking about zoning or
2 we're not talking about wetlands but let me focus
3 on the sewer capacity determination.

4 What's before you tonight is not a request to
5 hook up immediately to the sewer because we still
6 have to go through a process with at least the
7 zoning commission, so really what you're being
8 asked to do is confirm that sewer capacity is
9 available, conditioned upon the fact that we need
10 to go get final approval from the zoning
11 commission.

12 Second thing, and this is -- this is very
13 important. The original request letter talks
14 about a total of 236,000 gallons of sewer capacity
15 but that is in two parts and it's very important
16 for the commissioners to understand each part
17 because I'm going to suggest at the end of the
18 proceeding that you consider them separately.
19 Part one is approximately 118,000 gallons. Again,
20 the exact calculations are in Mr. Dietzko's
21 letter. 118,000 gallons to support the proposed
22 residential development that was considered in the
23 court case and is now pending in front of the
24 zoning commission.

25 When we were preparing that application

III. EXISTING CONDITIONS

Data, maps, reports, and other information relevant to wastewater disposal within the planning area were collected from sources including:

- East Lyme First Selectman's Office
- East Lyme Engineering Department
- East Lyme Water and Sewer Department
- East Lyme Tax Assessor's Department
- East Lyme Zoning Department
- East Lyme Planning Department
- Waterford Water Pollution Control Authority
- Connecticut Department of Environmental Protection (DEP)
- Federal Emergency Management Agency (FEMA)
- Connecticut Office of Policy Management (CTOPM)
- United States Department of Agriculture (USDA)
- Economic Development Office
- United States Census Bureau

Figure III-1 shows the planning area as outlined by the existing Sewer Service District. The results of the data investigation phase of the planning study are presented below.

A. Existing Sewer Service District

The East Lyme Sewer Service District (SSD) was provided by the Water and Sewer Department, and is presented in Figure III-1. The Sewer Service District was originally created as part of the *1985 Wastewater Facilities Plan* based on areas with failing septic systems, poor water quality, and development constraints. Additional input from each town department identified additional areas for inclusion in the SSD. The current SSD was last corrected by the Water & Sewer Commission on January 28, 2003.

The current Sewer Service District is approximately 6,360 acres and covers about 28% of the town's land area. 6,976 parcels are completely within the Sewer Service District with 322 parcels bifurcated (split) by the SSD. Based on 2000 US Census block data, the estimated population within the SSD is approximately 11,200 people. The US Census data shows that about 62% of the entire town population lives within the SSD.

The existing Sewer Service District was created from older, less accurate mapping. When the SSD boundary is overlaid on the updated GIS parcel base, the boundary lines do not exactly line up with roadways and properties as intended in previous renditions. A clear example of

2nd Factor - The land area of property versus entire town

**Entire land area of East Lyme = 22,714 acres (Derived from Exhibit 8 – F&O report:
6361 acres of SSD = 28% of town land area).**

$$35/22,714 \text{ (total town land area)} = .0015, \text{ or } .15\%$$

Sewer Service District less state lands:

State facilities area = 507 acres, which is derived from Exhibit 8, section III-4.

$$35/5853 \text{ (SSD – state lands)} = .0059, \text{ or } .59\%$$

WAS 10/28/14

Teleme

CALCULATIONS

BASE EQUATION:

$$\frac{\text{Remaining capacity}}{\text{Available area}} = \frac{X}{\text{LM development area}}$$

Using entire land area of Town:

$$\begin{array}{r} 250,000 \\ 22,714 \\ \times 236 \\ \hline 2,598 \end{array}$$

$$\frac{225,000}{22,714} = \frac{X}{35}$$

X = 347 gpd,

Or .0015 of remaining capacity for .0015 of available land

Using SSD area less state lands:

sewer service district

$$\frac{225,000}{5853} = \frac{X}{35}$$

X = 1345 gpd (.006)

Or, .006 of available capacity for .006 of land area

WES 10/28/14

Edmond

COMPARISON CALCULATIONS

Using LM's 358,000 capacity figure

Using the entire town land area:

$$\frac{358,000}{22,714} = \frac{X}{35}$$

X = 551 gpd Or, .0015 of remaining capacity for .0015 of available land

Using SSD less state lands:

$$\frac{358,000}{5853} = \frac{X}{35}$$

X = 2140 gpd Or, .006 of remaining capacity for .006 of available land

Using the entire 236 acre LM area, even they didn't request capacity for entire area and this goes beyond statute

$$\frac{225,000}{5853} = \frac{X}{236}$$

X = 9072 gpd

Using LM capacity figure and the entirety of the LM property

$$\frac{358,000}{5853} = \frac{X}{236}$$

X = 14,434 gpd

Don pg. 10



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October 28, 2014

VIA HAND DELIVERY

Mr. Paul Formica, Chair,
and Commission Members
Water and Sewer Commission
Town of East Lyme
108 Pennsylvania Avenue
P. O. Box 519
Niantic, CT 06357

Re: Application of Landmark Development and Jarvis of Cheshire For Sewer Capacity Allocation; Remand From Superior Court

Dear Chair Formica and Commission Members:

Superior Court Judge Cohn has again remanded this matter to the Commission, for another decision based on the administrative record as compiled at hearings in August – October 2012. During the first remand conducted by the Commission in February 2014, Landmark / Jarvis determined that since the public hearing was not being re-opened, we should not actively comment on the remand. This time, in the interest of trying to resolve this matter, we have decided to comment on the remand, not to present new evidence or re-open the hearing, but to apprise the Commission of Landmark's position on the record as compiled at the 2012 hearings.

What Is Not In Dispute

- About 60 of Landmark's 236 acres, at the west side of the property, adjacent to the Deerfield development, are relatively flat, outside the coastal boundary, not wetlands; and within the sewer service district;

Submitted

W/S 10/28/14

3520004

ONE CONSTITUTION PLAZA

HARTFORD, CONNECTICUT 06103-1919

860-251-5000

WWW.SHIPMANGOODWIN.COM

Mem E

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and Commission Members
October 28, 2014
Page 2

- Landmark's property, on Route 1, abuts an approved sewer line extension, and the Deerfield Condominiums, which are sewerred; and
- The Town of East Lyme is in no danger of ever exceeding its New London treatment plant capacity, as the State of Connecticut has consistently not used about half of its 468,000 contractually reserved gallons, leaving 200,000± gallons as a buffer against the Town's 1,500,000 gallon limit.

Judge Cohn's June 2014 decision and remand order state:

- This Commission cannot use sewer capacity allocation to control /and use and zoning;
- The Commission cannot rely on the 2007 Fuss & O'Neill Report / Facilities Plan Supplement and its 2004 data, as the sewer numbers stated in that report, particularly Figure V-15, are based on zoning and are now shown to be inaccurate and out-of-date;
- "In court on May 27, 2014, the Commission's attorney conceded that the Commission would not object to a figure of 250,000 gpd";
- The Commission cannot reserve capacity indefinitely for unquantified, potential, long-term future needs; and
- The Commission's March 2014 allocation of 13,000 was unlawful and unreasonable.

In addition, the Commission should bear in mind that any allocation of sewer capacity is *conditional* on Landmark obtaining other land use approvals. A capacity allocation will not authorize construction.

Capacity Summary

A summary of available sewer system capacity, based on the Commission's own data as put into the 2012 hearing record, is attached. The key points are that available capacity is more

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Page 3

than 300,000 gallons, such that even if the Commission allocated 118,000 to Landmark, it will retain approximately 190,000 gallons, which is enough to connect or serve 1,100 homes. This is *decades* of capacity.

In addition, based on the facts summarized above:

1. In its February – March 2014 deliberations, the Commission determined that 177,000 gallons, the midpoint between the 130,000 and 225,000 gallonage it originally adopted in 2012, is its remaining capacity, and allocated 13,000 to Landmark, thus determining that a 164,000 gpd reserve was acceptable.
2. The Superior Court has now made a finding, binding on the Commission, that its capacity is not 177,000 but 250,000, allowing the Commission to allocate 93,000 to Landmark without touching its 164,000 gpd reserve.
3. In fact, Landmark submits that 308,000 gallons is the correct number), meaning that the Commission can allocate 118,000 to Landmark and still have 26,000 gpd more than it determined as its necessary reserve in March 2014.

We request that that Commission accept this compromise and end this aspect of the process.

Very truly yours,



Timothy S. Hollister

TSH:ekf

c: Glenn Russo, Landmark Development Group LLC
Stephen R. Dietzko, P.E., Milone & MacBroom, Inc.

**LANDMARK DEVELOPMENT
EAST LYME WATER AND SEWER COMMISSION**

October 28, 2014

1.	Town of East Lyme's allocated sewer capacity at New London treatment plant	1,500,000 GPD
2.	Capacity reserved by contract for State facilities	478,000
3.	Capacity remaining for Town of East Lyme	1,022,000
<hr/>		
4.	September 2011 – September 2012 (most recent full year data in record)	
a.	Total usage Town and State facilities	978,000
b.	Amount used by State facilities	264,000
c.	Town's use: 978,000 – 264,000	714,000
d.	CAPACITY AVAILABLE TO TOWN: 1,022,000 – 714,000	308,000
<hr/>		
5.	If use D. Lawrence State facilities flow calculation, 2006-2012, 314,000 gallons, then (substitute 314,000 for 264,000 above) Town capacity rises to	358,000

*Submitted - from original record
WWS 10/28/14*

Item F (1)

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:

EAST LYME SEWER FLOWS - HISTORY

	2005	2006	2007	2008	2009	2010 ⁽¹⁾	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)

Usage of State of Connecticut Reserved Capacity

March 1, 2006 to February 29, 2012

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

(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.

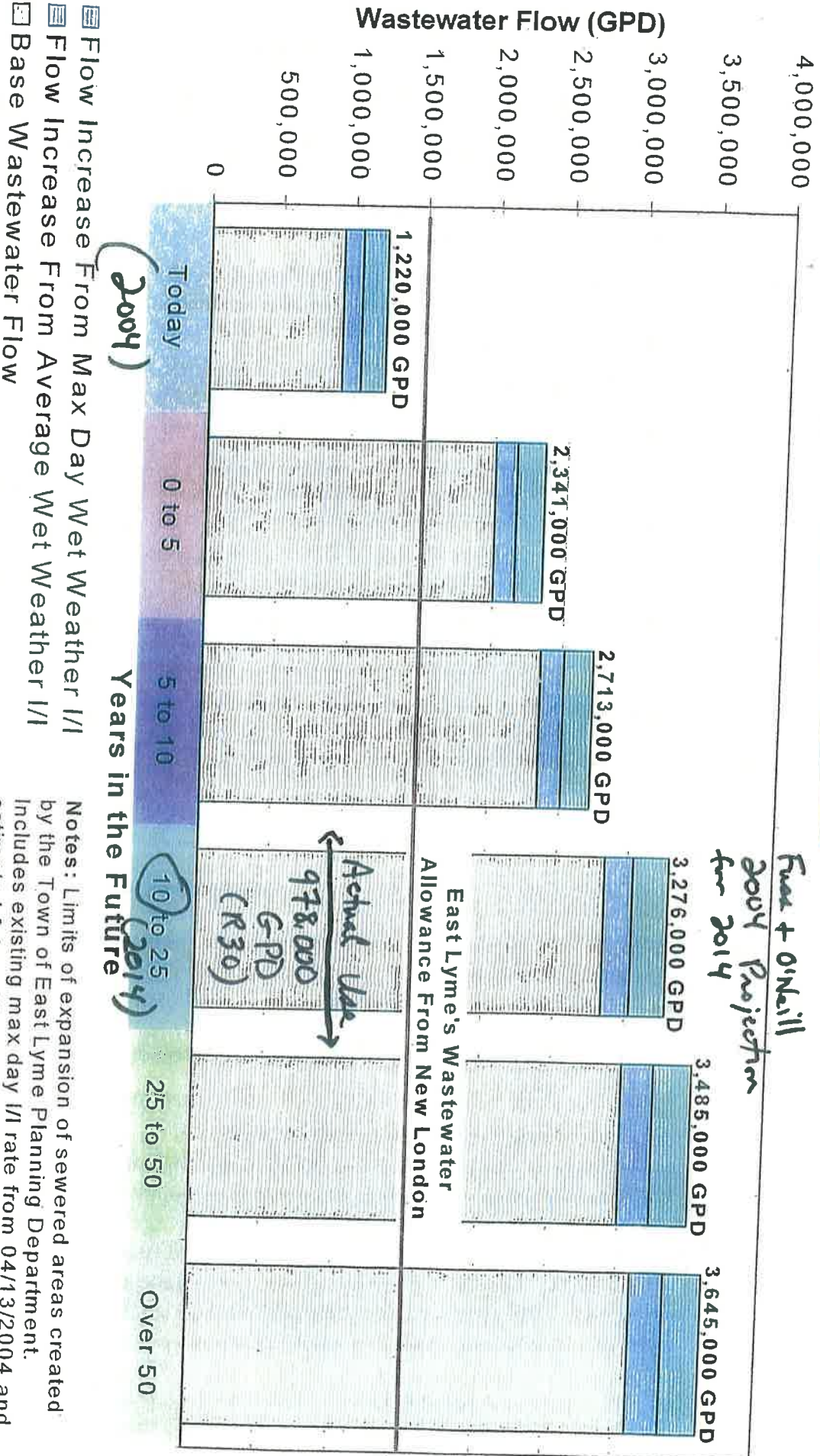
- The State of Connecticut, by agreement and order, appears to have approximately 0.164 MGD of flow allocation remaining

September 25, 2012
 Town of East Lyme
 Water & Sewer Commission
 Public Hearing

Weston & Sampson

East Lyme Sewer System Wastewater Flow Projections

FIGURE V-17



Notes: Limits of expansion of sewer areas created by the Town of East Lyme Planning Department. Includes existing max day 1/1 rate from 04/13/2004 and estimated future 1/1 amount based on TR-16.