

**EAST LYME PLANNING COMMISSION  
REGULAR MEETING  
Tuesday, NOVEMBER 17th, 2009  
MINUTES**

**PRESENT:** Lisa Picarazzi, Chairman, Francine Schwartz, Secretary, Chris Sandford, Mike Bowers, Paul Dagle, George McPherson, Alternate,

**ALSO PRESENT:** Attorney Mark Block, Counsel  
Attorney Theodore Harris  
Jack Hogan, Ex-Officio, Board of Selectmen  
Gary Goeschel, Planning Director  
Drew Kenny, Alternate  
Brian Schuch

FILED IN EAST LYME TOWN  
CLERK'S OFFICE

Nov 20 20 09 at 10:40 (AM) PM

*Esther B. Williams*

EAST LYME TOWN CLERK

**ABSENT:** Tom Perron, Alvin Sher, Alternate

Chairman Picarazzi called this Regular Meeting of the Planning Commission to order at 8:20 PM after the three (3) previously scheduled Public Hearings. She noted that she had seated George McPherson, Alternate at the table this evening.

**Pledge of Allegiance**

The Pledge was previously observed.

**I. Additions to the Agenda**

Ms. Picarazzi noted that there were no additions to the agenda this evening.

**II. Public Delegations**

*Public Delegations is the time when members of the public are invited to speak to the Commission about certain matters. Issues or concerns related to approved subdivisions under construction (Item VI) and in-house proposals or general topics of discussion (Item VIII) are open to comment. Items, referrals, or applications subject to a decision by the Commission, a public hearing, or in litigation may not be discussed. The members of the Commission will not directly answer questions or make comment during delegations.*

Ms. Picarazzi called for Public Delegations.  
There were none.

**III. Approval of Minutes – Regular Meeting Minutes of October 6, 2009  
Site Walk Minutes of October 15, 2009  
Workshop Minutes of October 20, 2009**

Ms. Picarazzi called for any discussion or corrections to the Planning Commission Regular Meeting Minutes of October 6, 2009.

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

Mr. Sandford moved to approve the Planning Commission Regular Meeting Minutes of October 6, 2009 as presented.

Mr. Bowers seconded the motion.

Vote: 4 – 0 – 2. Motion passed.

Abstained: Mr. McPherson, Ms. Schwartz

Ms. Picarazzi called for any discussion or corrections to the Planning Commission Site Walk Minutes of October 15, 2009.

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

**Mr. McPherson moved to approve the Planning Commission Site Walk Minutes of October 15, 2009 as presented.**

**Ms. Schwartz seconded the motion.**

**Vote: 4 – 0 – 2. Motion passed.**

**Abstained: Mr. Dagle, Mr. Sandford**

Ms. Picarazzi called for any discussion or corrections to the Planning Commission Workshop Minutes of October 20, 2009.

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

**Mr. Bowers moved to approve the Planning Commission Workshop Minutes of October 20, 2009 as presented.**

**Mr. McPherson seconded the motion.**

**Vote: 4 – 0 – 2. Motion passed.**

**Abstained: Mr. Dagle, Mr. Sandford**

**IV. Pending Applications**

**1. Town of East Lyme, 2009 Draft Plan of Conservation and Development (POCD).**

Ms. Picarazzi noted that they had left this Public Hearing open for comments and continued it to the December 1, 2009 meeting of the Commission.

**2. Application of Charles and Carol Hallas, Applicant/Owner for a proposed two-lot subdivision of land located at 191 Whistletown Road, Tax Assessor's Map 42, Lot 5, Zoned RU-80 Rural Residential, and request for a waiver from Section 6-16 of the Subdivision Regulations**

(Note: Mr. McPherson recused himself from discussion on this application and left the room)

Ms. Picarazzi called for comments on this application, noting that they had just closed the Public Hearing on it.

Mr. Bowers continued the discussion of the 25-year, 50-year and 100-year storm levels and noted that the Town Engineer has gone on record in support of waiving these regulations for a one-lot subdivision and as such, asked what they would then go on record of supporting with respect to those regulations and what the purpose of having them was if they were going to waive them.

Ms. Schwartz said that they have heard that some of the sections actually impacted the others as they are inter-related.

Mr. Dagle and Mr. Bowers said that they are not comfortable with waiving all of the Section 6-16 requirements.

Mr. Goeschel said that he thinks that the intent is that if the applicant was unable to meet the general requirement for a basin, then they would not have waived the 100-year storm to a 25-year storm and that under the 25-year storm standards, they meet the intent of not harming the water, etc.

Ms. Picarazzi said that she thinks that the intent of their regulations was of a specific section or of all and that the words that they used do not actually say that. She added that she is comfortable with what the Town Engineer has provided them with and acknowledged that they may not all agree and that it could have been written in a clearer manner. However, the Town Engineer has approved this and the stormwater regulations were written for much larger developments and they are discussing one house here. The regulations also allow the waiver for three lots or less. She asked if they were ready to make a motion.

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

**Mr. Sandford moved to grant a waiver of Sections 6-16-1, 6-16-2, 6-16-3, 6-16-4, 6-16-5 and 6-16-6 as they apply to the application of Charles and Carol Hallas, Applicant/Owner for a proposed two-lot subdivision of land located at 191 Whistletown Road, Tax Assessor's Map 42, Lot 5, Zoned RU-80**

**Rural Residential and request that the Town Engineer evaluate sections 6-16-5 and 6-16-6 for the applicable items that the applicant must meet.**  
**Ms. Schwartz seconded the motion.**

Mr. Bowers asked that they amend the motion so that they are only waiving the areas of Sections 6-16-1 through 6-16-6 that apply to the 50 and 100-year storms.

Ms. Picarazzi said that she is not comfortable with that as they would then be acting like an engineer and they are not qualified in that capacity to make those determinations. She said that she will go with the recommendation of the Town Engineer that they were provided with.

**Vote: 5 – 0 – 0. Motion passed.**

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

**Mr. Dagle moved to approve the application of Charles and Carol Hallas, Applicant/Owner for a proposed two-lot subdivision of land located at 191 Whistle-town Road, Tax Assessor's Map 42, Lot 5, Zoned RU-80 Rural Residential.**

**Mr. Bowers seconded the motion.**

**Vote: 5 – 0 – 0. Motion passed.**

(Note: Mr. McPherson returned to the table)

**3. Application of KSK Associates LLC, applicant/owner for a proposed four-lot re-subdivision of 203 acres of land located on and east of Goldfinch Terrace adjacent to and between Interstate I-95 to the south and Egret Road to the west and the East Lyme/Waterford Town boundary to the northeast. Tax Assessor's Map 36, Lot 34 & 41.**

Ms. Picarazzi noted that they had just continued this Public Hearing until the December 1, 2009 meeting of the Commission.

**Subdivisions (Approved and Under Construction)**

*(A list of approved subdivisions under construction will be posted on the Town web-site @ [www.eltownhall.com](http://www.eltownhall.com) under "Planning Commission". The Active Subdivision List will also be available upon request in the Land Use Office. This agenda item shall be reserved for items requiring administrative action by the Planning Commission for already approved subdivisions.)*

**V. Applications/Current Subdivision Approval/Construction Reports**

**1. Darrow's Ridge Subdivision Phase I, Renewal Request for a two-year extension of time to complete the proposed subdivision's public improvements.**

Ms. Picarazzi asked Attorney Harris to provide some information on this request.

Attorney Harris gave some background on this request noting that it is a routine request and something that they do many times. This request includes the public improvements to Mostowoy Road and Darrow's Ridge Road. The improvements on Mostowoy Road to the south have been done and in a normal course of events, the northern part of the road would have been completed however there was an opportunity for the Mostowoy Road intersection to be improved and the Town approached Mr. Torrance who owned a triangular piece of property that could allow the road improvement to take place. Mr. Torrance agreed to do the improvement and give the triangular piece of property. The design was well within proper parameters that did not require Army Corps of Engineers review. The work was started and in fact, the pipes etc, are still there now and the Town acted as the applicant in all of this work. Then there was a complaint to the Army Corps and they received a letter and they have been trying to work through this with the Corps to resolution so that the project can be completed. They thought that they had a letter however they now need a CAT 2 permits which typically takes some 9-12 months with the DEP. While a CAT 2 is less rigorous than a formal permit – it does require other plan and those will take a month or so to get together to get the application in and then the DEP reviews it and makes the recommendation to the Corps. This is not the developers' fault as they all felt that they were okay and it was a complaint that caused all of this. He submitted copies of a series of letters and correspondence that has transpired on this to the Chairman. **(Exhibit A)**

He said that they are requesting the extension as they will not have the permit immediately. Further, he said that they understand the issue of the lighting and they are working on having the lighting installed. The catch

basins and curbs are typically done last as doing them first, they could be beat up and damaged and they would have to be done over. The As-built drawings are done last and the cul-de-sac has not been seeded as the Town Engineer was working on some other design for it such as a tear drop to get the best possible design. He said that he is not sure how long the review will take as in speaking with the DEP, they informed him that they are short staffed as they are under the budget constraints and lost some senior staff to the early retirement offering.

Ms. Picarazzi noted the punch list of items from 2008 and said that they would like to see some good faith effort on the part of the developer to do some of the items – such as the lighting, the replacement of the dead trees, etc.

Attorney Harris noted that they had requested the punch list a year before they actually received it and that Mr. Torrance and Mr. Scheer have been working on the list.

Ms. Picarazzi asked Mr. Goeschel for his opinion here.

Mr. Goeschel said that he had provided them with a memo indicating that various events and that he does have on file a letter from Beth Hogan indicating that it was a complaint that stopped the project. He also noted that the current bond amount, as indicated in a memo from the Town Engineer dated November 9, 2009, is sufficient to complete the public improvements for Phase I and Phase III. It would not cover any legal issues were they to call the bond.

Mr. McPherson asked Mr. Goeschel if the road could be approved separately from the Mostoway Road improvement.

Mr. Goeschel said that he is of the opinion that could not be done as the one is a part or condition of the Mostoway Road improvement. He noted that the Town is picking up trash and that the developer is still plowing. In his verbal discussion with the Town Engineer he was told that some of the items will remain until they are removed or other determination on them is made. The open space is going to the association.

Mr. Sandford asked Mr. Goeschel when he last spoke with the Town Engineer on the punch list.

Mr. Goeschel said that it was recently and that he has also asked the Town Engineer to update the list as it is dated. He noted that there was a memo to Ms. Hogan regarding donating the property to the Town.

Mr. Dagle and Mr. Bowers asked why some of this work was not done and why portions were not done regardless as it appeared that there was ample time to do these things.

Attorney Harris said that the stop work order was issued in late summer or early fall of 2006.

Attorney Mark Block, special Counsel to the Town on this matter and Darrow's Ridge explained that the early portion on the stop work and the lack of progress was due to a bankruptcy filing and lawsuit between the Town and Niantic Real Estate which was not resolved until late 2008 or early 2009. He said that since that time there has been a conscious effort on the part of the Town, the Developer, Planning Staff, Attorney Harris and himself to get this moving forward and what they are trying to do here is to get to a reasonable way to get the work done and to keep things going. With respect to the paving and the plantings; this is mid-November and they are close to December and are closing in on the plants closing down for the winter months – so they would be looking at spring for those items as a practical matter anyways. He said that he would suggest that they try to get to some agreement on getting this done and leaving the regulatory requirements to the Town staff instead of laboring over a list. He reminded them that this is not a Public Hearing and that the only discussion that can take place is between the applicant and the Commission and that when the Commission makes a decision they have a legal and binding requirement to put on the record the reasons for their decision.

Mr. Bowers asked why they could only work on Latimer Brook during the months of July and August.

Attorney Harris said that they could only work on Latimer Brook during July and August because the Conservation Permit states that it must be done during the dry season and the months of July and August are typically the dry season.

Attorney Block suggested that non-roadwork items (from the punch list) be negotiated between staff and the developer and that they be completed by May 15, 2010.

Mr. Dagle said that he wants the Town Engineer to update the punch list as it is over a year old and then everything that is deemed non-roadwork by Town staff has to be completed by May 15, 2010. He also questioned the issue of the Town getting the permits for the road project. Attorney Block said that he agrees with the developer as it says that the Town will endeavor to get the permits for the project.

After much discussion, the Commission agreed that a 10-month extension of time could be granted with conditions.

Mr. Dagle said that as a reason for allowing the extension of time that a permit has not been issued from the DEP to complete the Mostowy Road project.

Mr. McPherson added that another reason is that the Conservation Permit only allows work to be done there during the months of July and August and that takes them into next year.

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

Mr. Dagle moved the following resolution:

The Planning Commission of the Town of East Lyme, herein after ("Commission"), based on the record before it with respect to this request, finds the following:

**WHEREAS:** The Commission finds October 19, 2009, as the expiration for the five year period to complete the proposed subdivision improvements associated with the subdivision known as Darrow's Ridge;

**WHEREAS:** The Commission received a request for a two-year extension of time to complete the subdivision improvements from Theodore A. Harris, Esquire on behalf of the developer, dated October 6, 2009, as final completion of subdivision improvements could not be made until the Army Corps of Engineers issues a permit for the re-location of Mostowy Road.

**WHEREAS:** The Commission granted an extension of time to November 17, 2009 to complete the subdivision improvements for the purpose of providing Planning Commission staff adequate time to review the present bond amount being held by the Town of East Lyme, obtain an update from the Town Engineer as to the status of the subdivision improvements which remain incomplete, and to investigate the status of project with the Army Corps of Engineers.

**WHEREAS:** The Commission received a second request or renewal request for a two-year extension of time to complete the subdivision improvements from Theodore A. Harris, Esquire on behalf of the developer dated November 9, 2009.

**WHEREAS:** The Commission finds as a condition of the Inland Wetlands Permit known as Permit #06-05 for the proposed re-alignment of Mostowy Road, construction must take place in July or August.

**WHEREAS:** The Commission finds the current bond being held in the amount of \$103,000.00 is sufficient to complete the remaining subdivision improvements assuming there is no drastic increase in asphalt prices;

**WHEREAS:** Pursuant to Section 8-26(c) of the Connecticut General Statutes, the Commission may condition the approval of an extension on a determination of the adequacy of the amount of the bond or other surety furnished under section 8-25 of the Connecticut General Statutes, securing to the municipality the actual completion of the work;

**NOW, THEREFORE, it is moved:**

The Commission Moves to approve a ten month extension of time to complete the proposed subdivision improvements, to expire on September 15, 2010, with the following conditions:

1. Executed deeds for the proposed road shall be submitted to the Department of Planning within thirty (30) days (December 17, 2009) of this extension, however, said deeds will not be recorded nor the roads accepted by the Town until the completion of the road to the satisfaction of the Town Engineer. Deeds previously submitted by the applicant, shall be reviewed and corrected as may be required;
2. Proposed street lighting shall be ordered on or before December 1, 2009 and installed within sixty (60) days (January 16, 2010) of this extension. Said date may be adjusted in the final agreement between the Developer and the Town in the event of unavailability of the lights from CL&P. The street lighting shall be accepted by the Town upon the completion and inspection by the Town;
3. Stamped As-built drawing shall be submitted upon completion of the installation of the final bituminous overlay;

4. The Town and Developer will, within thirty (30) days (December 17, 2009), issue an agreed upon updated punch list for the completion of the subdivision improvements and all non-road related subdivision improvements as agreed to by Town Staff and the Developer will be completed on or before May 15, 2010.
5. All other remaining items indicated in the Town Engineer's updated punch list as shall be completed per Planning and Zoning Regulations to the satisfaction of Town Staff prior to the expiration of this extension.

In addition, for the purpose of completing item two (2) above, the East Lyme Planning Commission hereby approves a partial bond reduction in the amount of \$20,000.00 dollars upon the execution of a written agreement between the developer, Niantic Real Estate, LLC, and the Town of East Lyme satisfactory to the Director of Planning and Town Counsel. Said funds shall be placed in an escrow account and used only for the installation of the proposed street lights.

The above items shall be accomplished prior to the release of any additional bond monies. Failure to complete any of the above items as specified above shall result in automatic expiration of this approval and the approved subdivision plans which shall be confirmed by an order of the Planning Commission.

The owner/applicant shall be bound by the provisions of this Request and Approval of Extension.

Mr. Bowers seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

#### VI. Zoning Referrals (CGS 8-3a)

There were none.

#### VII. 8-24 Referrals (Municipal Improvements)

There were none.

#### VIII. New Business

##### 1. 2010 Meeting Schedule

Ms. Picarazzi called for discussion or a motion.

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

Mr. Sandford moved to approve the 2010 Meeting Schedule of the Planning Commission as presented.

Mr. McPherson seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

#### VIII. Old Business

There was none.

#### IX. Reports

##### 1. Chairman

Ms. Picarazzi said that due to the lateness of the hour that she did not have any further comments.

##### 2. Zoning Representative

There was no report.

##### 3. Regional Planning Commission Representative – Christopher Sandford, Luane Lange, Alternate

There was no report.

##### 4. Subcommittees

- Conservation Development by Design (CDD) Subcommittee Report

Mr. Goeschel said that they are nearing a subdivision regulation on this.

##### 5. Ex-Officio – Jack Hogan

Mr. Hogan noted that he had been back and forth between this meeting and the Harbor Management meeting (he is Ex-Officio to both Commissions) and that Mr. Landers from the Harbor Management Commission will be getting in touch with Mr. Goeschel regarding some changes that they would like to see made to Section 5.

**6. Staff/Communications**

Mr. Goeschel said that they could set a special meeting date for the election of officers at their next meeting.

**ADJOURNMENT**

**\*\*MOTION (8)**

**Mr. Sandford moved to adjourn this Regular Meeting of the East Lyme Planning Commission at 10:22 PM.**

**Ms. Schwartz seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

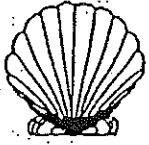
Respectfully submitted,

Karen Zmitruk,  
Recording Secretary

# Town of East Lyme

P.O. DRAWER 519

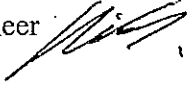
NIANTIC, CONNECTICUT 06357



Town Engineer  
William A. Scheer Jr.

860-691-4101  
FAX 860-739-6930

To: Gary Geoschel, Director of Planning

From: Bill Scheer, P.E., L.S. Town Engineer 

Date: November 9, 2009

Re: Darrow's Ridge Bond

The current Bond in the amount of \$103,000 is sufficient to complete the public improvements for Phase I and Phase III assuming no drastic increase in asphalt prices. The construction costs do not include the re-alignment of Mostowy Road, which was a separate task outside the Darrow's Ridge subdivision approval. The bond amount also does not include any legal fees that may result from calling the bond that would go beyond filing the executed property and easement deeds.

# Town of East Lyme

P.O. DRAWER 519

NIANTIC, CONNECTICUT 06357



Town Engineer  
William A. Scheer Jr.

860-691-4101  
FAX 860-739-6930

To: William Mulholland, Zoning Official  
From: Bill Scheer, P.E., L.S. Town Engineer  
Date: Oct. 7, 2008  
Re: Darrows Ridge Construction punch list.

- ollist*
1. Clean catch basin sumps.
  2. Remove irrigation piping and heads from the proposed Town Right of Way.
  - 3. Install street lights.
  4. Provide stamped As-built drawings.
  5. Correct any deficiencies shown on the as-builts. (eg. Monument / rebars not set, location of drainage structures etc.)
  - 6. Replace dead trees.
  7. Provide adequate slopes outside ROW on north side of the beginning of Darrows Ridge Road and at cul-de-sac or provide guiderail.
  8. Remove well and electric service in the Open Space.
  9. Provide an apron for the garage on the east side of Mostowy Road.
  - 10. The manhole in the drainage easement is buried. Uncover and set to grade.
  11. Clean out sedimentation basin.
  12. Replace damaged curb.
  13. Install final bituminous overlay.
  14. Loam and seed cul-de-sac islands.
  15. Widen the northern remainder of Mostowy Road. (Note: Completion and Town acceptance of the Mosowy Road re-alignment project negates this requirement).

*way back in  
lot -  
was covered  
by property  
owner*

*- to be revised -*

**Town of East Lyme  
Planning Commission  
Regular Meeting and  
Workshop Meeting Schedule  
2010**

Meetings are held at the Town Hall, on the following listed **Tuesdays at 7:00 PM** unless otherwise noted.

Regular Meetings

**January 5, 2010  
(First Tuesday)**

**February 2, 2010**

**March 2, 2010**

**April 6, 2010**

**May 4, 2010**

**June 1, 2010**

**July 6, 2010**

**August 3, 2010**

**September 7, 2010**

**October 5, 2010**

**November 16, 2010  
(Third Tuesday)**

**December 7, 2010**

Workshop Meetings

**February 16, 2010**

**March 16, 2010**

**April 20, 2010**

**May 18, 2010**

**June 15, 2010**

**September 21, 2010**

**October 19, 2010**

FILED IN EAST LYME TOWN  
CLERK'S OFFICE

*Nov 20* 20 *09* at *10 40* <sup>AM</sup> PM

*Esther B. Williams*

EAST LYME TOWN CLERK