

**EAST LYME PLANNING COMMISSION  
REGULAR MEETING  
Tuesday, APRIL 6th, 2010  
MINUTES**

**PRESENT:** Mike Bowers, Chairman, George McPherson, Secretary, Christopher Sandford, Francine Schwartz, Brian Schuch, Mark Mangelinkx

**ALSO PRESENT:** Attorney Mark Block, Town Counsel  
Jeff Torrance, representing the Applicant  
Joan Bengtson, Alternate  
Gary Goeschel, Planning Director  
Ed Gada, Zoning Commission Liaison  
Bill Scheer, Town Engineer

FILED IN EAST LYME TOWN  
CLERK'S OFFICE

April 12 20 10 at 1:50 PM

*Esther B. Williams*

EAST LYME TOWN CLERK

**ABSENT:** Greg Jackson, Alternate, Drew Kenny, Alternate

Chairman Bowers called this Regular Meeting of the Planning Commission to order at 7:43 PM after the previously scheduled Public Hearing.

**Pledge of Allegiance**

The Pledge was previously observed.

**I. Additions to the Agenda**

There were none.

**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.*

Mr. Bowers called for Public Delegations.

There were none.

**III. Approval of Minutes – Public Hearing Minutes of March 2, 2010  
Regular Meeting Minutes of March 2, 2010  
Workshop Meeting Minutes of March 16, 2010**

Mr. Bowers called for any discussion or corrections to the Planning Commission Public Hearing I Minutes of March 2, 2010.

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

Mr. Sandford moved to approve the Planning Commission Public Hearing I Minutes of March 6, 2010 as presented.

Ms. Schwartz seconded the motion.

Vote: 6 – 0 – 2. Motion passed.

Mr. Bowers called for any discussion or corrections to the Planning Commission Regular Meeting Minutes of March 2, 2010.

Mr. Sandford asked that on the bottom of page 3 where Mr. Bowers is talking that 'take noted' be changed to read: *take notes*.

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

Mr. Sandford moved to approve the Planning Commission Regular Meeting Minutes of March 2, 2010 as amended.

Mr. Schuch seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Bowers called for any discussion or corrections to the Planning Commission Workshop Meeting Minutes of March 16, 2010.

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

Ms. Schwartz moved to approve the Planning Commission Workshop Meeting Minutes of March 16, 2010 as presented.

Mr. Schuch seconded the motion.

Vote: 4 – 0 – 2. Motion passed.

Abstained: Mr. Sandford, Mr. McPherson

**IV. Pending Applications**

1. Application of New England National, LLC, Applicant/Owner for a proposed re-subdivision of 3.5 acres located at 70 Mostoway Road, East Lyme, Connecticut, Tax Assessor's Map 44.0, Lot 8; aka/ Darrow's Ridge Subdivision, Lot 25; and a request for a waiver of Section 6-16 of the Subdivision Regulations.

Mr. Bowers noted that the Public Hearing has been closed and called for discussion.

Mr. Sandford said that he knows that the application was put to the DEP on the road realignment and asked if there was any targeted response time.

Mr. Goeschel said that it is still under review and that there is no response time as of this time.

Mr. Sandford asked if the changing of the road would impact the location of the septic or anything else. Mr. Goeschel said that the septic is the concern of Ledge Light Health District and if it should fall within 50' of the road then it would have to be put in another place – however; in making an application for the construction of a house, an application would have to be submitted to and approved by Ledge Light regarding the septic location.

Mr. Mangelinkx asked the size of the chunk of land that comes back to the Town.

Mr. Goeschel said that the plan did not identify an exact size.

Mr. Bowers asked Mr. Goeschel if everything was in order.

Mr. Goeschel said that he had given them a memo outlining the findings and that he feels that the application meets the subdivision regulations of the Town. He noted that they should add to the proposed motion for the waiver request that it would also not adversely affect water quality.

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

Mr. Sandford moved to grant the applicant (New England National, LLC/70 Mostoway Road location) a waiver from Section 6-16 of the Subdivision Regulations and more specifically from Sections 6-16-1, 6-16-2, 6-16-3, and 6-16-6 based on the memo from Gary Goeschel, Town Planner dated April 6, 2010 on the Section 6-6 Requirements regarding flooding, indicating the proposed re-subdivision would not exacerbate downstream flooding or adversely affect water quality.

Mr. Mangelinkx seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Bowers called for a motion on the re-subdivision application.

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

Mr. Sandford moved, based on the Findings identified in the attached Memorandum from Gary A. Goeschel II, Director of Planning/Inland Wetlands Enforcement Officer to the East Lyme Planning Commission dated April 6, 2010, as amended, to APPROVE the Application known as Darrow's Ridge Re-subdivision of Lot 25, 70 Mostowy Road, East Lyme, Connecticut, New England National, LLC, owner/applicant, proposed 2 – Lot re-subdivision of 3.38± acres, Tax Assessor's Map# 44, Lot# 8; specific to plans entitled "Re-subdivision Darrow's Ridge Lot 25, 70 Mostowy Road, East Lyme, Connecticut; Owner/Applicant: New England National, LLC, dated January 28, 2010 revised through March 22, 2010" (Sheets 1 through 4 of 4), and further subject to the following administrative requirements and required modifications to the site plan and other materials submitted in support of this application:

1. As recommended in Exhibit "24", review comments from William Mulholland, Zoning Official dated March 5, 2010, the structure labeled as a "barn" on Sheet 2 shall be demolished prior to the filing the final approved subdivision Mylars on the East Lyme land records.
2. As indicated in Exhibit "26" correspondence dated 4/6/2010 from Ryan McCammon, Senior Sanitarian of the Ledge Light Health District, a 50-foot separation from the proposed septic system on New Lot#31 to any down gradient groundwater drain, stormwater infiltration or retention/detention system shall be maintained. As such, a note indicating the same shall be added to the subdivision plan. In addition, the proposed subsurface waste disposal system for New Lot# 31 shall be shown of Sheet 4 of 4.
3. As indicated in Exhibit "26" correspondence dated 4/6/2010 from Ryan McCammon, Senior Sanitarian of the Ledge Light Health District, the size and location of the proposed septic tanks shall be provided to the Ledge Light Health District upon making a building permit application for the construction of a single family dwelling.
4. As shown on Sheet 4 of 4, the Road Abandonment Plan, the portions of land to be conveyed to both New Lots# 25 and 31 shall be further identified either as Areas A, B, and C for the purpose of clarity.

5. The following notes shall be added to the subdivision plan:

**On Sheet 2; Condition of Approval:**

It is a condition of the approval of this Re-Subdivision Plan that Areas A, B and C as shown on Sheet 4 to are to be added to New Lot 25 and New Lot 31. The Deed of each lot shall contain a covenant acknowledging that the conveyance is subject to Note "(Number To Be Determine)" on the re-subdivision plan.

At such time as the Town of East Lyme has abandoned that portion of Mostowy Road shown as "that portion of Mostowy Road to be abandoned by the Town of East Lyme" on Sheet 4, of this Re-subdivision Plan, the then owner of New Lot# 31 shall, upon request of the Town of East Lyme, accept a conveyance of area B as shown on Sheet 4 of the re-subdivision plan. At such time as the Town of East Lyme has abandoned that portion of Mostowy Road shown as "that portion of Mostowy Road to be abandoned by the Town of East Lyme" on Sheet 4, of this Re-subdivision Plan, the then owner of New Lot# 25 shall, upon request of the Town of East Lyme, accept a conveyance of areas A as shown on Sheet 4 of the re-subdivision plan.

**On Sheet 3; Test Hole Data, Test Hole #1A should indicate groundwater restrictive layer of 77" for redoximorphication (mottling).**

6. A revised copy of the Subdivision Plan incorporating the above modifications signed; sealed and certified by a land surveyor and engineer, as applicable, licensed in the State of Connecticut shall be submitted to the Department of Planning, Town Engineer and the Ledge Light Health District.

The above items shall be accomplished prior to the filing of the subdivision on the land records, or other documentation of planning approval and no site work shall commence until all applicable conditions are satisfied.

This approval is specific to the subdivision plan submitted as Darrow's Ridge Re-subdivision of Lot 25, 70 Mostowy Road, East Lyme, Connecticut, Application of New England National, LLC, and the modifications of this approval. Any change in the re-subdivision plan other than those identified herein shall constitute a new application.

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

Mr. Schuch seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

**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. Request of Attorney Theodore A. Harris, Agent for Applicant for a two-year extension of time with respect to the Public Improvements for Darrow's Ridge Phase 3.**

Jeff Torrance explained that this request for a two-year extension of time for Darrow's Ridge Phase 3 is due to the fact that the Sanitarian took an inordinate amount of time to approve the subdivision or to provide them with the information necessary to move it along – hence it was developed in 'drips and drabs' instead of how it should have been done. They are asking here to be able to do the Phase 3 subdivision improvements at the same time as Phase I which relates to the DEP approval that has been previously discussed.

Mr. Sandford asked if there is a separate bond for Phase 3.

Mr. Scheer and Mr. Torrance said that it is \$105,000 and that it is lumped into one account.

Mr. Torrance said that the road would need a top coat and that would not be done until the heavy equipment necessary to do the rest of the work has done the work as the Town does to want to accept a Town road that is in need of repairs and they do not want to put the top coat on until they know that it will not be damaged. He added that he is working with Attorney Block on getting the street lights in. He said that he has worked with the Town Engineer on the islands and that one will be grass and one will be paved.

Mr. Sandford asked why the lights were not put in.

Mr. Torrance said that the lights are typically put in at the end. The stop work order on Mostowy Road stopped the Phase I projects as the Mostowy Road change was part of the Phase I improvements.

Mr. Sandford asked why they could not wait until September to ask for the extension so that they could see how far they get.

Mr. Torrance said that the attorney's would be back in September anyways so they could go with that.

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

**Mr. Sandford moved in the request of Attorney Harris to provide an extension of time to September 18, 2010 for the purpose of making the Public Improvements to Darrow's Ridge Phase III.**

**Mr. McPherson seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

**2. Request of Jeffrey A. Torrance for Niantic Real Estate LLC, for a five year extension of time with respect to the public improvements for Nottingham Hills Subdivision Phase 3.**

Mr. Torrance explained that only two lots have been built here and that the binder on the road has been left there until completion as the trucks coming in to develop the properties do not care about the road so you would not want to top coat it as the Town would not accept the road all beat up.

Mr. Sandford asked if this is where the cul-de-sac currently sits.

Mr. Torrance said yes.

Mr. Bowers asked if that was correct – only two lots have been built on.

Mr. Torrance said yes – out of 13 possible.

Attorney Harris noted that Phase II is in a position to be accepted.

Mr. Sandford asked with 10 lots left to be built out if they would need five years for that.

Mr. Torrance said that at the end of the day, the Town does not want this if they are going to have to go chase people around to fix or repair the roads.

Attorney Harris recalled that it has been two years for those two houses there so when you think in those terms – five years is really not unreasonable.

Mr. Torrance explained what happens if they put the curbing in and have the top coat on the road and then the trucks come in with the concrete and heavy equipment and they damage the curbing and turn their wheels on the hot pavement and really damage the road – and they don't care.

Mr. Goeschel noted that there was a recent Statute passed regarding subdivisions that had been approved in the 2006 (?) to 2009 time frame and that it stated that extensions were granted to six years to complete the improvements due to the economy and everything really slowing down.

Mr. Bowers asked Mr. Scheer, Town Engineer if he had anything to add.

Mr. Scheer said that Mr. Torrance was correct in how the Town likes to take the roads and that in good times road acceptance happens fast while in times like what we are in now, it does not happen as quickly.

Mr. Bowers asked Mr. Goeschel if they could condition the Phase II approval with this.

Mr. Goeschel said that he did not see why not.

Mr. Mangelinkx said that he would recommend that they grant three years instead of five.

Attorney Harris said that it is dangerous to condition one on the other.

Mr. Torrance said that he would meet with the Town Planner and Town Engineer and they could all go out and look at Phase II and go from there.

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

Mr. Mangelinkx moved in the Request of Jeffrey A. Torrance for Niantic Real Estate LLC, to grant a three (3) year extension of time with respect to the public improvements for Nottingham Hills Subdivision Phase 3.

Mr. Sandford seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

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

Mr. Sandford moved to add Item 3. – regarding clarification on an amendment that was made to the 70 Mostowy Road memo/findings/motion.

Mr. McPherson seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

**3. Affirmation on Clarification of New England National, LLC motion for re-subdivision of 3.5 acres located at 70 Mostowy Road, East Lyme, CT.**

Mr. Goeschel noted that they had changed the wording in Item no. 3 of the motion and asked that they make a motion to accept that amendment to his memo with the wording: *"As indicated in Exhibit "26" correspondence dated 4/6/2010 from Ryan McCammon, Senior Sanitarian of the Ledge Light Health District, the size and location of the proposed septic tanks shall be provided to the Ledge Light Health District upon making a building permit application for the construction of a single family dwelling."*

**\*\*MOTION (9)**

Mr. Mangelinkx moved to accept the amended wording for Item no. 3 of the motion as outlined above and in the motion.

Mr. McPherson seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

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

**1. Application of Theodore A. Harris for New England National, LLC to amend the East Lyme Zoning Regulations to add Section 12B, SU-A Special Use District. This proposal will provide for single family and two family homes with provisions for mandated affordable housing.**

Mr. Goeschel said that Attorney Harris was here to explain this to them.

Attorney Harris explained the genesis of this amendment noting that the SU districts are floating zoned granted by special permit. He chose this type of format at the Town has seen it before. It combines some of the Affordable Housing and the new Incentive Housing Zone language of the State. It does provide for 20%

affordable housing however this proposal does not fall under the baggage of CGS 8-30. The densities proposed here are less than those proposed by the Incentive Housing Zone.

Mr. Sanford asked if this was for one particular parcel or just in general.

Attorney Harris said that when the regulations are designed that they have to be with the intent for multiple use – this is limited to single and two family homes and to Commercial zoned and up to RU-40. As it is hard to build a home that is affordable these days, this affords the use of less land to serve more people.

Mr. Mangelinkx asked if it would be condominiums.

Attorney Harris said that it would be condo by deed – limited common areas with in-common areas.

Mr. Sanford asked how it meets the POCD criteria.

Attorney Harris said that it allows for affordable housing and provides for minimal coverage with less impervious surfaces, in areas where services are available.

Mr. Sanford reminded them that their charge is to find the proposal consistent or inconsistent with the POCD.

Mr. Bowers noted that while that is their charge that they could also suggest that a landscape architect be required and ask for increased open space when they send their finding back to zoning.

Mr. Goeschel suggested that they take the time to think about this as they have time to reply. They can take it up at their workshop meeting or at the first meeting in May.

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

There were none.

#### **VIII. New Business**

There was none.

#### **VIII. Old Business**

##### **1. Bylaws**

Mr. Goeschel noted that the changes had been made.

Mr. Bowers suggested that they take this up at their workshop meeting.

#### **X. Reports**

##### **1. Chairman**

Mr. Bowers said that he has received a notice of resignation from Drew Kenny, Alternate, recorded by the Town Clerk stating that his work has escalated and that he no longer has the time to serve. He asked that Mr. Goeschel put out a notice for anyone who might be interested in the position to contact them.

##### **2. Zoning Representative**

There was no report.

##### **3. Regional Planning Commission Representative**

This group only meets once per year.

##### **4. Subcommittees**

- **Conservation Development by Design (CDD) Subcommittee Report**

Mr. Bowers noted that this subcommittee has not met recently.

- **POCD Steering Committee**

Mr. Bowers noted that this subcommittee meeting was cancelled and asked that Mr. Goeschel set up another meeting so that they can continue moving forward with the POCD updates.

- **Sustainable Development and Climate Adaptation – (Gary Goeschel, Francine Schwartz, Mark Mangelinkx)**

Mr. Goeschel said that he would work on trying to set something up for this.

**5. Ex-Officio – Jack Hogan**

There was no report.

**6. Staff/Communications**

Mr. Goeschel said that he had nothing further to report.

**ADJOURNMENT**

**\*\*MOTION (10)**

Mr. Sandford moved to adjourn this Regular Meeting of the East Lyme Planning Commission at 10:05 PM.

Mr. Mangelinkx seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary

# Town of

P.O. Drawer 519

Department of Planning &  
Inland Wetlands Agency

*Gary A. Goeschel II, Director of Planning /  
Wetlands Enforcement Officer*



# East Lyme

108 Pennsylvania Ave  
Niantic, Connecticut 06357

Phone: (860) 691-4114

Fax: (860) 860-691-0351

## MEMORANDUM

AS MODIFIED BY THE EAST LYME PLANNING COMMISSION

APRIL 6, 2010

**TO:** East Lyme Planning Commission

**FROM:** Gary A. Goeschel II, Director of Planning /  
Wetlands Enforcement Officer

**DATE:** April 6, 2010

**RE:** Darrow's Ridge Resubdivision of Lot 25, 70 Mostoway Road, East Lyme, Connecticut, New England National, LLC, owner/applicant; Proposed 2 – Lot resubdivision of 3.38± acres, Tax Assessor's Map# 44, Lot# 8 and request for a waiver of Section 6-16 of the Subdivision Regulations.

---

Upon review of the above referenced subdivision, supporting documentation, and plans entitled "Resubdivision Darrow's Ridge Lot 25, 70 Mostoway Road, East Lyme, Connecticut; Owner/Applicant: New England National, LLC, dated January 28, 2010 revised through March 22, 2010" Sheets 1 through 4 of 4, I offer the following for deliberation:

The East Lyme Planning Commission based on the record before it with respect to this application, finds this application to be in conformance with the Subdivision Regulations of the Town of East Lyme and more specifically based on the following Findings:

**Whereas:** The Commission has received a Subdivision Application from New England National, LLC a.k.a Darrow's Ridge Resubdivision of Lot 25, 70 Mostoway Road, East Lyme, Connecticut, proposed 2 – Lot resubdivision of 3.38± acres, Tax Assessor's Map# 44, Lot# 8. The applicant New England National, LLC is also the owner of record. The Commission received this application on January 28, 2010, and commenced a Public Hearing and received testimony on March 2, 2010. Subsequently, the Public Hearing was continued to the Commission's Regular Meeting of April 6, 2010. The Public Hearing for said application was closed at the Commission's April 6, 2010 meeting. The Commission has reviewed the

application, received testimony from the applicant and the public. Town staff also provided the Commission with comment concerning this applications compliance with local requirements and regulations.

**Whereas:** The parcel of land constituting the property subject to this application is zoned RU-40 Rural Residential. The properties abutting the site are also zoned RU-40 Rural Residential.

**Whereas:** The subject parcel contains an existing dwelling and barn. The proposed resubdivision would create two lots; New Lot#25, which would contain the existing house and New Lot# 31, which would contain the existing barn.

**Whereas:** Based on Exhibit "24" review comments from William Mulholland, Zoning Official dated March 5, 2010, views the structure labeled as a "barn" on sheet 2 as a dilapidated structure of no apparent use. As such, the proposed subdivision does not create a use issue.

**Whereas:** Exhibit "24", review comments from William Mulholland, Zoning Official dated March 5, 2010, recommends the structure labeled as a "barn" on Sheet 2 be demolished prior to the filing of mylars n the land record.

**Whereas:** The Planning Commission recognizes that three portions of land will be conveyed upon the relocation of Mostowy Road, as indicated on Sheet 4 of 4. Further, one piece (piece A) will be conveyed to New Lot# 25, a second piece (piece B) will be conveyed to New Lot# 31, and a third piece (piece C) will be conveyed to the Town of East Lyme.

**Whereas:** The proposed resubdivision is found to meet the requirements of the East Lyme Subdivision Regulations and more specifically, as demonstrated by the following:

- A. **Section 3-4 Plan of Development:** The proposed resubdivision conforms to the comprehensive Plan of Development for the Town of East Lyme (POCD) as adopted by the East Lyme Planning Commission as the proposed resubdivision is located within a residential zoning district adjacent to existing lots which, were previously approved as part of a cluster subdivision. The proposed resubdivision continues follow the pattern of development characteristic of the existing residential cluster development.
- B. **Section 5-5 Sanitation Report:** As indicated in Exhibit "26" correspondence dated 4/6/10 from Ryan McCammon, Senior Sanitarian of the Ledge Light Health District, to Jim Bernardo, L.S., Lots# 25 and 31 are recommended suitable in their current condition. As such, the land to be subdivided and subdivision plans are satisfactory for on-site sewage disposal systems.

- C. Section 5-6 Water Supply Report: The East Lyme Water and Sewer Commission has determined there is sufficient water capacity to serve the proposed 2-lot development as indicated in Exhibit "21", a Memo from Brad Kargl, Municipal Utility Engineer to Gary Goeschel, Director of Planning, Dated 4-1-2010. Exhibit "21" also indicates municipal sewer service is not available.
- D. Section 5-7 Stormwater Management Plan: As indicated in Exhibit "25" Memo from Bill Scheer, P.E., Town Engineer, dated April 5, 2010, the proposed resubdivision would not exacerbate downstream flooding. In addition, the road realignment of Mostowy Road would result in a decrease in stormwater flow rates for all storms up to the 100-year storm, increase the floodplain storage during the realignment process, and result in improved stormwater quality and decreased local and downstream flooding.
- E. Section 5-8 Erosion and Sedimentation Controls: The proposed Soil Erosion and Sedimentation Control Plan as indicated on Sheet 3 of 3 of the proposed plan, Exhibit "8", contains proper provisions to adequately control accelerated erosion and sedimentation and reduce the danger from storm water runoff on the proposed site based on the best available technology. As such, the Planning Commission hereby certifies that the Soil Erosion and Sediment Control Plan complies with the requirements and objectives of this Subdivision Regulation.
- F. Section 5-9 CAM Coastal Site Plan Review Required: As indicated by Exhibit "24", review comments from William Mulholland, Zoning Official, the proposed resubdivision is not located within the coastal boundary of the Town of East Lyme in accordance with Sections 22a-105 through 22a-109 of the Connecticut General Statutes. As such, a CAM Review is not required. In addition, as the proposed New Lot# 31 would create a non-conformity upon the filing of the lot on the land records as the existing barn is an accessory structure.
- G. Section 6 – 5 Open Spaces: As understood by the Commission, the Darrow's Ridge Subdivision, when first subdivided ("Original Subdivision"), contained an estimated 123.96 acre tract of land ("Original Tract"). The Original Subdivision contained 9 lots, of which one lot contained 78.34 acres and was subsequently resubdivided leaving a 3.38 acre tract of land which is the subject of the resubdivision application referenced above ("Subject Parcel"). At the time of the approval of the Original Subdivision, there was approximately 37.2 acres dedicated as open space as a condition of that approval.

The Conn. Gen. Stat. §8-25 provides that the Town's subdivision regulations may require the applicant by deed, payment of a fee or combination of the two, to provide the Town with open space of a value not to exceed 10% of the fair market value of the land to be subdivided "prior to the approval of the subdivision" and

Section 10-5 of the Subdivision regulations is consistent with the General Statutes, and

says that in arriving at the fee in lieu of the dedication of the land, the fee cannot equal more than 10% of the "fair market value of the land to be subdivided "prior to approval of the subdivision."

Further, Section 10-2-2 of the Subdivision Regulations says that if a parcel "is subdivided in stages, the open space dedication attributable to the subdivision of a portion of the entire tract" may be deferred to a later date. The critical language in this section is the reference to the subdivision being in stages and calculating open space based upon the entire tract.

As indicated in a previous application, there are no legal cases on this precise issue, so one must look to the language of the statute and the regulations. As such, the Original Tract that was submitted to the Commission for subdivision approval comprised 123.96 acres. The Commission required, per its regulations, that the Developer set aside open space calculated on the number of acres in the Original Tract, i.e., 123.96 acres. Both the Statute and the Regulations speak of the dedication for open space to be from the land to be subdivided. The Town's regulations also speak of a subdivision developed in stages, with provision for deferral of the open space.

Therefore, since the original developer having met the open space requirements at the time of the Original Subdivision, and made the dedication of Open Space out of the Original Tract, the Commission could not require an additional dedication from the subject parcel, which based on the information before the Commission, is a resubdivision of the Original Tract/Subdivision.

- H. Section 6 – 6 Requirements Regarding Flooding: As indicated in item D above, Exhibit "25" Memo from Bill Scheer, P.E., Town Engineer to Gary Goeschel, Director of Planning, dated April 5, 2010, state the proposed resubdivision would not exacerbate downstream flooding and further states that the road realignment of Mostoway Road, which is a separate activity from the proposed subdivision, would result in a decrease in stormwater flow rates for all storms up to the 100-year storm, increase the floodplain storage during the realignment process, and result in improved stormwater quality and decreased local and downstream flooding.
- I. Section 6 - 9 Streets: As indicated by Exhibit "8", plans entitled "Resubdivision Darrow's Ridge Lot 25, 70 Mostoway Road, East Lyme, Connecticut; Owner/Applicant: New England National, LLC, dated January 28, 2010 revised through March 22, 2010" the proposed the area to be subdivided has frontage on, and access from, an existing street that is suitably improved and paved. In addition, no new streets are proposed.

- J. Section 6 - 10 Sidewalks: As indicated by Exhibit "8", plans entitled "Resubdivision Darrow's Ridge Lot 25, 70 Mostoway Road, East Lyme, Connecticut; Owner/Applicant: New England National, LLC, dated January 28, 2010 revised through March 22, 2010", the proposed subdivision is proposed on an existing State highway and an abutting subdivision of 10 or more lots in which there are no existing sidewalks.

#### PROPOSED MOTION FOR WAIVER REQUEST

Based on the findings identified in the above Memorandum from Gary A. Goeschel II, Director of Planning / Inland Wetlands Enforcement Officer to the East Lyme Planning Commission date April 6, 2010, regarding Section 6-6 Requirements Regarding Flooding, as indicated the proposed resubdivision would not exacerbate downstream flooding or adversely affect water quality. As such, the Commission Moves to GRANT the applicant a waiver from Section 6-16 of the Subdivision Regulations and more specifically from Sections 6-16-1, 6-16-2, 6-16-3, 6-16-6.

#### PROPOSED MOTION FOR RESUBDIVISION APPLICATION:

NOW THEREFORE, Based on the Findings identified in the above Memorandum from Gary A. Goeschel II, Director of Planning / Inland Wetlands Enforcement Officer to the East Lyme Planning Commission date April 6, 2010, as amended, the Commission Moves to APPROVE the application known as Darrow's Ridge Resubdivision of Lot 25, 70 Mostoway Road, East Lyme, Connecticut, New England National, LLC, owner/applicant, proposed 2 – Lot resubdivision of 3.38± acres, Tax Assessor's Map# 44 , Lot# 8; specific to plans entitled "Resubdivision Darrow's Ridge Lot 25, 70 Mostoway Road, East Lyme, Connecticut; Owner/Applicant: New England National, LLC, dated January 28, 2010 revised through March 22, 2010" (Sheets 1 through 4 of 4), and further subject to the following administrative requirements and required modifications to the site plan and other materials submitted in support of this application:

1. As recommended in Exhibit "24", review comments from William Mulholland, Zoning Official dated March 5, 2010, the structure labeled as a "barn" on Sheet 2 shall be demolished prior to the filing the final approved subdivision mylars on the East Lyme land records.
2. As indicated in Exhibit "26" correspondence dated 4/6/2010 from Ryan McCammon, Senior Sanitarian of the Ledge Light Health District, a 50-foot separation from the proposed septic system on New Lot#31 to any down gradient groundwater drain, stormwater infiltration or retention/detention system shall be maintained. As such, a note indicating the same shall be added to the subdivision plan. In addition, the proposed subsurface waste disposal system for New Lot# 31 shall be shown of Sheet 4 of 4.

3. As indicated in Exhibit "26" correspondence dated 4/6/2010 from Ryan McCammon, Senior Sanitarian of the Ledge Light Health District, the size and location of the proposed septic tanks shall be provided to the Ledge Light Health District upon making a building permit application for the construction of a single family dwelling.
4. As shown on Sheet 4 of 4, the Road Abandonment Plan, the portions of land to be conveyed to both New Lots# 25 and 31 shall be further identified either as Areas A, B, and C for the purpose of clarity.
5. The following notes shall be added to the subdivision plan:

On Sheet 2; Condition of Approval:

It is a condition of the approval of this Re-Subdivision Plan that Areas A, B and C as shown on Sheet 4 to are to be added to New Lot 25 and New Lot 31. The Deed of each lot shall contain a covenant acknowledging that the conveyance is subject to Note "*(Number To Be Determine)*" on the resubdivision plan.

At such time as the Town of East Lyme has abandoned that portion of Mostowy Road shown as "that portion of Mostowy Road to be abandoned by the Town of East Lyme" on Sheet 4, of this Resubdivision Plan, the then owner of New Lot# 31 shall, upon request of the Town of East Lyme, accept a conveyance of area B as shown on Sheet 4 of the resubdivision plan.

At such time as the Town of East Lyme has abandoned that portion of Mostowy Road shown as "that portion of Mostowy Road to be abandoned by the Town of East Lyme" on Sheet 4, of this Resubdivision Plan, the then owner of New Lot# 25 shall, upon request of the Town of East Lyme, accept a conveyance of areas A as shown on Sheet 4 of the resubdivision plan.

On Sheet 3; Test Hole Data, Test Hole #1A should indicate groundwater restrictive layer of 77" for redoximorphication (mottling).

6. A revised copy of the Subdivision Plan incorporating the above modifications signed, sealed and certified by a land surveyor and engineer, as applicable, licensed in the State of Connecticut shall be submitted to the Department of Planning, Town Engineer and the Ledge Light Health District.

The above items shall be accomplished prior to the filing of the subdivision on the land records, or other documentation of planning approval and no site work shall commence until all applicable conditions are satisfied.

This approval is specific to the subdivision plan submitted as Darrow's Ridge Resubdivision of Lot 25, 70 Mostoway Road, East Lyme, Connecticut, Application of New England National, LLC, and the modifications of this approval. Any change in the resubdivision plan other than those identified herein shall constitute a new application.

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