

**Black Point Beach Club Association Zoning Commission
March 15th, 2019 Regular Meeting Minutes**

Present:

Jim Fox, Chairman
Jim Allen
John Kycia, Alternate (*Sat as Regular Member)

Also Present:

Steven Beauchene, Board of Governors Liaison
Jim Ventres, Zoning Enforcement Officer

Absent:

Matt Peary
Michael Cenci
James Mastria
Barbara Koenig, Alternate

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Brooke Stearns A.C.
EAST LYME TOWN CLERK

The Regular Meeting of the Black Point Beach Club Zoning Commission was held on Friday March 15th, 2019 at 6:00 p.m. in the Black Point Beach Clubhouse located at 6 Sunset Avenue, Niantic.

I. Call to Order

Mr. Fox called the Regular Meeting of the Black Point Beach Association Zoning Commission to order at 6:00 p.m.

II. Attendance and Establishment of Quorum

The Commission Members introduced themselves and Mr. Fox noted that a quorum was present; Mr. Kycia sat as a Regular Member for the meeting.

III. Additions to the Agenda

There were none.

IV. Approval of Meeting Minutes:

A. October 19th, 2018 Regular Meeting Minutes

MOTION (1)

Mr. Allen moved to approve the meeting minutes of October 19th, 2018 as presented.

Mr. Kycia seconded the motion.

Motion carried, 3-0-0.

V. Public Comments

There were none.

VI. Reports

A. Communications and Correspondence

There was none.

B. ZEO: Jim Ventres

Mr. Ventres noted he forwarded everyone the March roster of the projects that are currently active and shared the following:

- He spoke with some individuals who have had long-term projects over the last year which they're trying to finish up.
- There are some side hvac units that need to be screened; they will be receiving reminder notices.
- There are a couple of outstanding violations.
- Over the Winter he databased every file the Zoning Board owns by address, and noted whether it contains an A2 Survey and an As-Built Survey; he eliminated any photocopies of checks for security purposes which probably reduced the files by 1/3.

Mr. Fox asked if it's correct that 54 permits were issued in 2018 and Mr. Ventres clarified that the number is around 50 given that some cases began in 2017; Mr. Ventres discussed the numbering of zoning cases for tracking purposes.

Mr. Beauchene mentioned some ruts in the grass caused by construction vehicles at the Billow Road right-of-way and said he will bring this matter up at the next Board of Governors meeting. Mr. Fox said we have no purview to enforce anything at the right-of-way and Mr. Beauchene asked if it makes sense to have the ZEO enforce this.

Mr. Fox said he would like to see consistent enforcement and Mr. Ventres said because of the lack of space and if it's a new house, it makes sense to have a construction sequence and a bond in place to repair any damage done to the right-of-way. Mr. Beauchene pointed out they should be asking the BOG for permission to use the right-of-way as a staging area for construction.

Mr. Ventres asked if the parking lot off on Whitecap can be used during the Winter months for construction vehicles. Mr. Beauchene said he will discuss this with the BOG.

C. Ex-Officio: Steve Beauchene

Mr. Beauchene said there is a Board of Governors employment meeting tomorrow. Mr. Kycia asked about the Pier 2 repair and Mr. Beauchene said they've received nearly 4 bids; they will

start having committee meetings and will meet with each contractor individually to discuss the project, formulate a plan and present it at the Annual May meeting.

D. Chairman: Jim Fox

Mr. Fox noted the updated agenda format which is more aligned with the Town and FOI requirements. He provided the Recording Secretary the roster of Commission Members so that she may update the list complete with term limits. Mr. Fox reminded Mr. Beauchene that the Commission provided the Board of Governors with a name for the third open zoning alternate position.

VI. Old Business

There was none.

VII. New Business

A. Regulation Review

Mr. Fox briefly discussed the updating of the regulations completed last year and said he would like to take the opportunity to revisit any items that might have been bypassed or that may have come to light through input from the public. Mr. Fox asked the Members if there were any items they would like to suggest reviewing in the future and the following was mentioned:

1. Mr. Allen suggested clarifying and toning up the boating regulations, specifically storage.
2. Mr. Kycia said he's concerned about the attractiveness and maintenance of property but is unsure if this falls to zoning.
3. Mr. Fox suggested reviewing dumpsters- under the current regulations dumpsters can be utilized at anytime with no time limit; this item could become part of the regulation that addresses the use of pods.
4. Mr. Fox suggested discussing non working cars and boats as well as sailboats.
5. Mr. Fox asked about design standards and if this is something that should be attempted.

Mr. Ventres said he will review the Town Blight Ordinance and will provide copies of it at the next meeting.

Mr. Ventres supplied the Board with a copy of both the Connecticut Federation of Planning and Zoning Agencies Quarterly Winter Newsletter (attached) and the National Flood Hazard Layer Firmette by FEMA (attached.)

The Board discussed elevation and asked if this is something they should address and offer guidance to rather than leaving it for only for the Zoning Board of Appeals to handle. Mr. Ventres discussed how there could either be a set (elevation) number in the regulations or a special exemption review for anyone in the flood zone.

Mr. Fox said Black Point is becoming more and more of a year round community and discussed the issues that arise from the presence of nonconforming lots and additions; the Town utilizes a sliding scale for nonconformity. He would like for the Board to discuss whether it makes sense to address this issue.

VII. Adjournment

MOTION (2)

Mr. Kycia moved to adjourn the Black Point Zoning Association Meeting at 6:56 p.m.

Mr. Allen seconded the motion.

Vote: 3-0-0, Motion passed.

Respectfully Submitted,

Brooke Stevens,
Recording Secretary

CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Winter 2019

Volume XXIII, Issue 1

LOT LINE ADJUSTMENT NOT A SUBDIVISION

What constitutes a subdivision of land under Section 8-18 of the Connecticut General Statutes has been clarified by the State Supreme Court. This court ruled that a lot line adjustment, no matter how much it reconfigures already existing lots and transfers land from one lot to another, does not come within the statutory definition of a subdivision.

The factual circumstances that led to this decision concerned a parcel of property which had been divided into four parcels prior to the time subdivision regulations were adopted by the town. A subsequent purchaser of the lots combined one of the lots with another, leaving 3 conforming lots. This purchaser then reconfigured the 3 lots, substantially moving the lot lines. When the map was presented to the land use officer, she decided that since no new lots were created and the lots were all conforming, there was no subdivision of land.

The State Supreme Court agreed with the land use officer's reasoning. It stated that "the appropriate inquiry under Sec. 8-18 is whether one lot has been divided into three or more lots." Thus a lot line revision, no matter how much land is transferred from one lot to another, cannot result in a subdivision of land since no new lot or lots was created. *Cady v. Zoning Board of Appeals, SC*

20011, Supreme Court of Conn., 12/11/18.

SAVE THE DATE

The Federation will hold its Annual Conference on March 28, 2019 at the Aqua Turf Country Club in Plantsville CT. The event starts at 5:00 p.m. The program for the Conference will include a presentation on Authority over Zoning Enforcement and recent attempts to transfer this power to First Selectman and Mayors. Flyers announcing the event will be sent to all members later this month.

FEMA REQUIREMENTS ALLOW FOR APPROVAL OF VARIANCE

The owner of a residential property applied for a variance in regard to building height restrictions in the zoning regulations. The prior 2 story dwelling had been completely destroyed by super-storm Sandy. The new building, due to FEMA imposed foundation base elevation requirements, would exceed the maximum building height by about 5 feet. The new home would have the same lot coverage and living area as the prior home, and would reduce the nonconforming seaside setback.

The Zoning Board of Appeals denied the application, in part, by saying that the excessive building height would detract from the neighborhood by

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blocking views of the water. On appeal, the court reversed this decision and found that the variance should have been granted. The court agreed that the Board's consideration of aesthetic issues in evaluating the variance request was proper because such concerns come within the requirement that the granting of the variance complies with the comprehensive plan. However, this concern must give way to the improvement to public safety which results from the construction of a dwelling in compliance with FEMA regulations.

This was especially true in this case where both the POCD and the zoning regulations contained provisions that present and future residences in flood prone areas be brought into compliance with FEMA and State regulations. In regard to a valid hardship, the fact that the new dwelling would be built to reduce existing nonconformities allowed for the approval of the variance. *Turek v. Zoning Board of Appeals*, 66 Conn. L. Rptr. 353 (2018).

AFFORDABLE HOUSING ACT APPLIES TO MUNICIPAL HOUSING AUTHORITY'S APPLICATION

A housing authority's affordable housing application was met with substantial opposition from neighboring property owners. The application proposed to add 50 housing units to an

existing 30 unit building. The application was denied by the commission, resulting an appeal to court.

The Commission filed a motion to dismiss the appeal based in part on Connecticut General Statute Sec. 8-51. This state law provides that each housing project of a housing authority is subject to planning, zoning and building regulations. Since the application involved a housing authority project for housing, the Commission argued that the application must comply with its zoning regulations and that the Affordable Housing Act did not apply.

The court disagreed, ruling that the Affordable Housing Act was meant to have a broad reach and could not be limited by this other state law. It is interesting that this is the first case addressing the interplay of these state laws. It should be noted that this is a Superior Court decision which could be appealed to a higher court. *Housing Authority of the Town of North Haven v. Planning & Zoning Commission*, 66 Conn. L. Rptr. 841 (2018).

SIGN BRIGHTNESS AND ILLUMINATION CAN BE REGULATED

Public Act 18-28 amended Connecticut General Statutes Sec. 8-2 by adding additional language which authorizes a zoning commission to regulate the brightness and illumination of advertising signs. Previously, this

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state law only authorized the regulation of the height, size and location of these signs. The amendment to Sec. 8-2 legalizes a practice already followed by many zoning commissions.

NO ABANDONMENT DUE TO SOLELY TO LAPSE OF TIME

When a property owner failed to rebuild his nonconforming, storm damaged manufacturing building in a timely fashion, he applied to the zoning board of appeals for relief. The town's zoning regulations imposed a 2 year time limit on re-building a nonconforming structure damaged or destroyed by several causes, including storms and acts of God. The property owner made a good faith effort to rebuild within this time period. However, due to delays in getting required federal and state approvals to rebuild, the 2 year time period passed.

The zoning board of appeals granted the requested variance from the 2 year requirement, finding that the imposition of federal and state regulations imposed a valid hardship. The board also believed that the regulation was not mandatory and that it had the authority to ignore the requirement.

On appeal, the court did not address the hardship issue. Instead, the court focused on the Board's interpretation of the regulation. By finding the regulation not mandatory, the

Board's decision complied with Connecticut General Statute Sec. 8-2 which holds in part that a nonconforming building cannot be found abandoned due to a lapse of time alone. *Founders Village Homeowners Assoc. v. Zoning Board of Appeals*, 63 Conn. L. Rptr. 533 (2017).

ANNOUNCEMENTS

Lifetime Achievement Award and Length of Service Award

Nomination forms will be sent out later this month for these awards which will be presented to recipients at the Federation's annual conference. You should begin your process of finding worthy nominees now.

Workshops

At the price of \$180.00 per session for each agency attending, our workshops are an affordable way for your board to 'stay legal'. Each workshop attendee will receive a booklet which sets forth the 'basics' as well as a booklet on good governance which covers conflict of interest as well as how to run a meeting and a public hearing.

ABOUT THE EDITOR

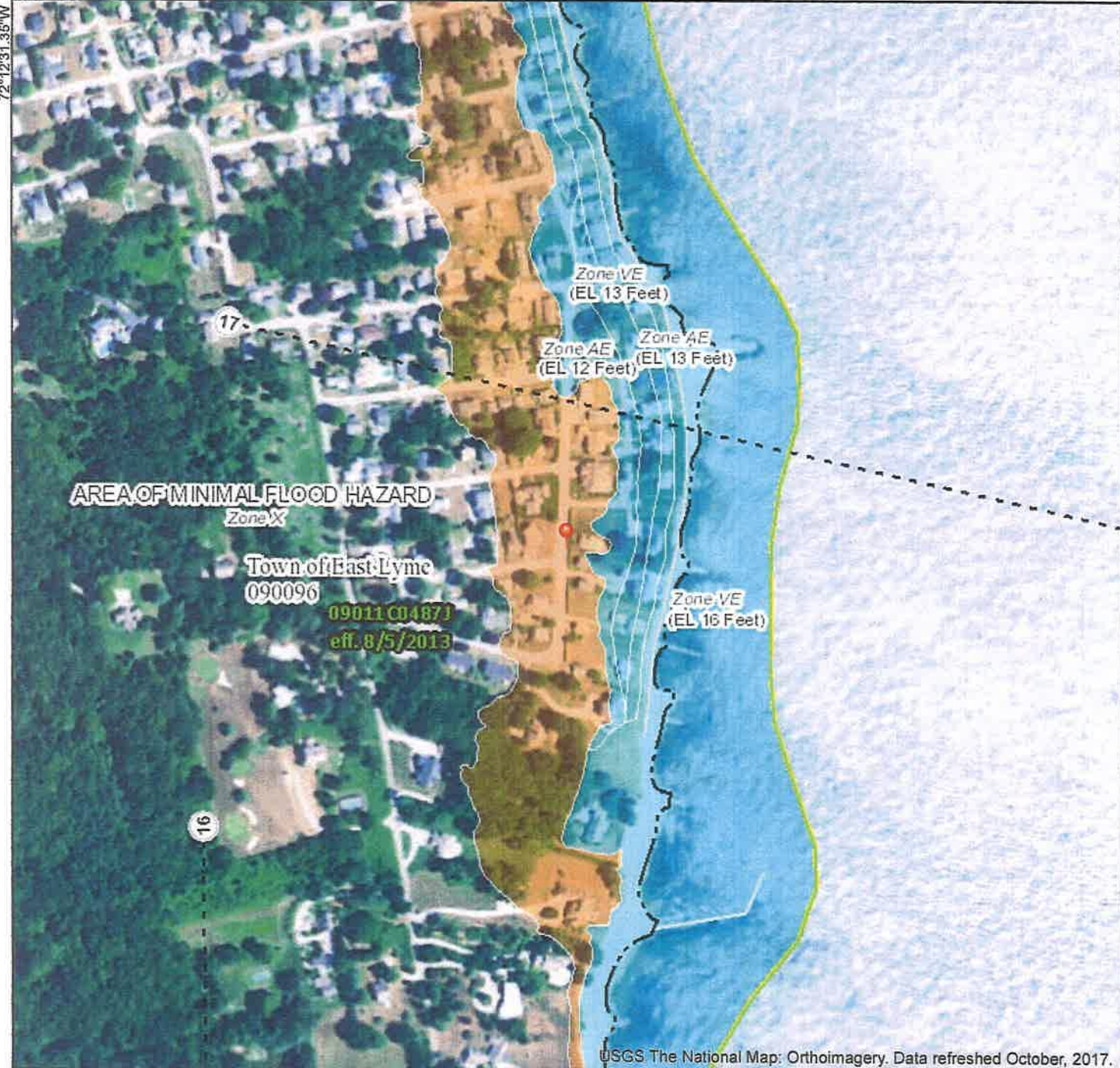
Steven Byrne is an attorney with an office in Farmington, Connecticut. A principle in the law firm of Byrne & Byrne LLC, he maintains a strong focus in the area of land use law and is available for consultation and representation in all land use matters both at the administrative and court levels.

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National Flood Hazard Layer FIRMette



41°17'48.63"N



USGS The National Map: Orthoimagery. Data refreshed October, 2017. 0 250 500 1,000 1,500 2,000 Feet 1:6,000 41°17'21.60"N

Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS		Without Base Flood Elevation (BFE) Zone A, V, A99
		With BFE or Depth Zone AE, AO, AH, VE, AR
		Regulatory Floodway

OTHER AREAS OF FLOOD HAZARD		0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
		Future Conditions 1% Annual Chance Flood Hazard Zone X
		Area with Reduced Flood Risk due to Levee. See Notes, Zone X
		Area with Flood Risk due to Levee Zone D

OTHER AREAS		Area of Minimal Flood Hazard Zone X
		Effective LOMRs
GENERAL STRUCTURES		Area of Undetermined Flood Hazard Zone I
		Channel, Culvert, or Storm Sewer
		Levee, Dike, or Floodwall

OTHER FEATURES		Cross Sections with 1% Annual Chance Water Surface Elevation
		Coastal Transect
		Base Flood Elevation Line (BFE)
		Limit of Study
		Jurisdiction Boundary
		Coastal Transect Baseline
		Profile Baseline
		Hydrographic Feature

MAP PANELS		Digital Data Available
		No Digital Data Available
		Unmapped

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 3/10/2019 at 3:35:28 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

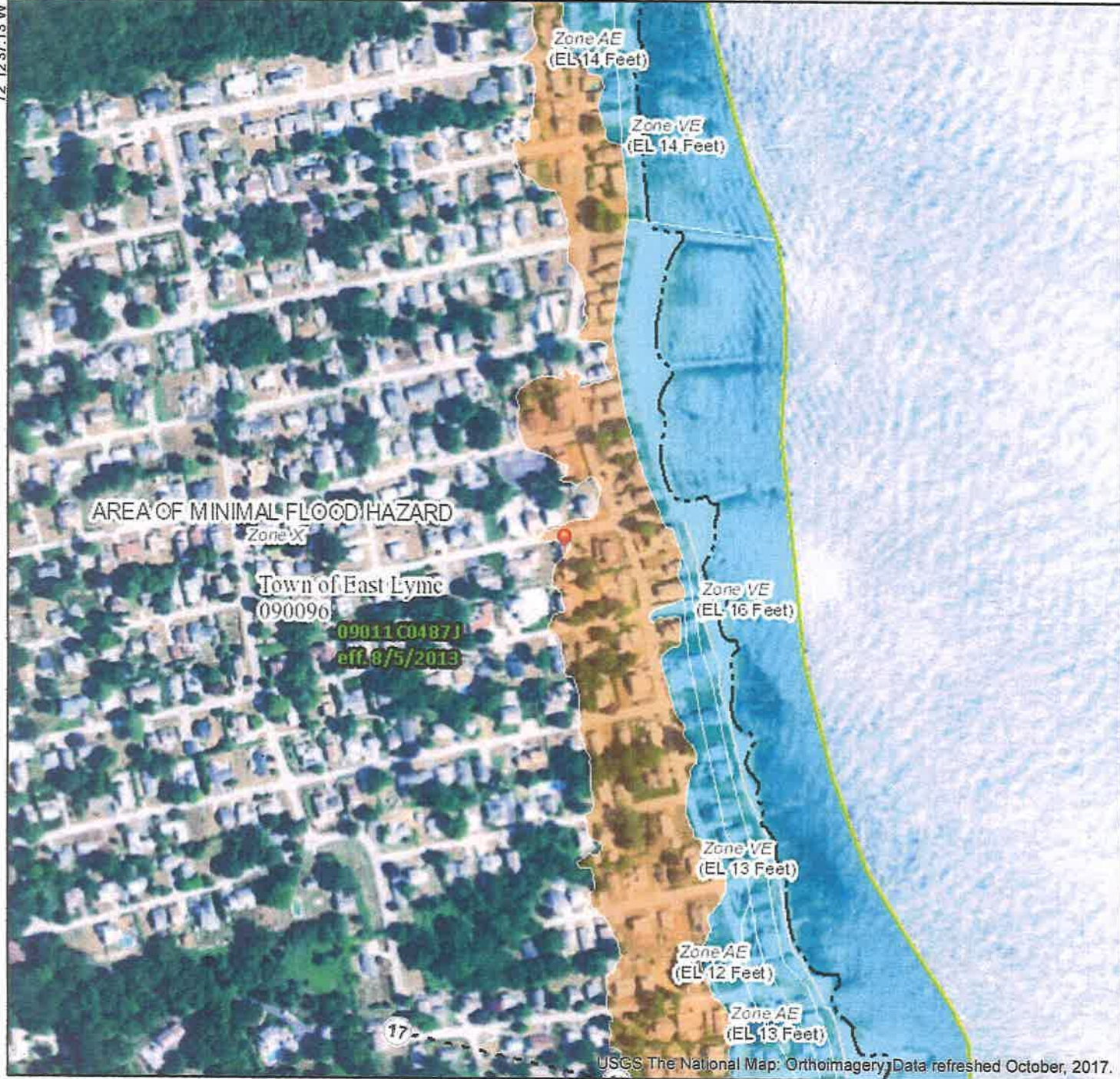


National Flood Hazard Layer FIRMette



41°18'6.35"N

72°12'37.13"W



Legend

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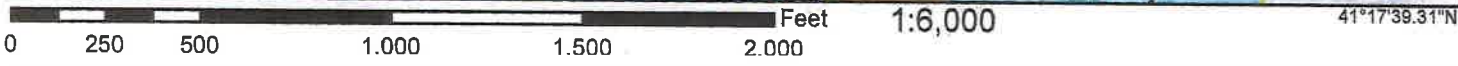
MAP PANELS		Digital Data Available
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