

**Old Lyme**, Justice, Planning & Development

## Pickleball takes Old Lyme Zoning to Court for Failing to Follow Fair Hearing Rules

— Francisco Uranga, Laura Arman, 6.29.2024



Paddle courts at Old Lyme Country Club (CT Examiner)

OLD LYME – What began as a straight forward application to build two pickleball courts off McCurdy Road, ended up in court with a complaint against the Old Lyme Zoning Commission for violating fair hearing rules.

It's the second **allegation** in recent weeks of misbehavior or wrongdoing members of the town's Zoning Commission and land use staff.

The Old Lyme Country Club **filed a complaint to the New London Superior Court** in April following the rejection of a proposal to build two pickleball courts on its grounds by the Zoning Commission. The club alleged that commissioners based that decision on evidence that was not presented during three public hearings, and as a result lawyers for the club were not provided fair opportunity to analyze the data and respond.

The club is asking the court to reverse the decision and authorize the project.

During the zoning approval process, commissioners are only supposed to consider evidence presented during the public hearing, an experienced land use attorney in the region told CT Examiner.

According to the lawyer, the court will have to consider whether there was an improper influence and if it is a reversible error, which could lead to overturning the committee's decision.

The complaint puts the Zoning Commission and its role under scrutiny; not so much with decision-making, but for its professionalism with respect to a fair public hearing.

The club alleges that Commissioner Mary Jo Nosal failed to inform them that when she held meetings with neighbors opposed to the project.

Nosal could not be reached for comment on this story.

The club began the permit application process in 2023 for the construction of two pickleball courts, which would be in addition to the two existing paddleball courts.

When the club submitted the application to the Zoning Commission, members expressed concerns about nuisance sound. The club withdrew the application and hired Brooks Acoustic Corporation to conduct sound studies. In the 2023 fall, a second application was submitted.

Between November 2023 and January 2024, the Zoning Commission held three public hearings. The commissioners did not disclose in any of them that they had held meetings with neighbors who opposed the project, according to the club's complaint.

During the deliberations, the commission's sound consultant, Cavanaugh Tocci, provided a third-party review that had not been provided in the administrative record, according to the club's claim that it could not review and respond to the new evidence.

In the same instance, the club learned that commissioner Jane Marsh sent the other members a "decision tree" she had created with 10 reasons for denying the application, but that it was not disclosed to the club. According to the complaint, commissioner Nosal said the decision tree helped her to decide her the issue.

The application **was denied on March 11** by the vote of commissioners Nosal, Marsh and Michael Miller.

On June 21, the club requested a motion to discovery – if approved the Commission must disclose all the information that was used in the closed deliberation.

The lawyer consulted by CT Examiner considered it likely that the court would grant discovery to the plaintiffs.

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