

**Planning Commission
Minutes of June 24, 2015 Meeting**

1670 Flat River Road
Coventry, RI 02816

Meeting Called to order at 7:01pm by Chairman Russell Crossman.

Members Present: Chairman Crossman, Vice-Chairman Mr. Nunes, Secretary Mr. Flynn, Mr. Crowe, Mr. Kalunian and Ms. Fagan-Perry

Members Absent: Mr. Osenkowski, Mr. Bouchard

Also Present: Associate Planner Jacob Peabody, Mr. Joyal, and Attorney Assalone.

Mr. Crossman reviewed the exits in the room in case of an emergency. A moment of silence was observed in memory of Bruce Capwell, Guy Lefebvre, and Jeff Hakansan.

Approval of Minutes:
April 22, 2015

Ms. Fagan-Perry made a motion to approve the meeting minutes. Mr. Nunes seconded. All members were in favor. Motion passed.

NEW BUSINESS

PUBLIC INFORMATIONAL MEETING- Continued from May 21,215

Master Plan: “**Boyd Brook Estates**”; Green Light Farm, LLC

Proposed 16-Lot Cluster Subdivision w/Street Creation

AP 330, Lot 30; Zone RR3

Town Farm Road

Attorney John Paglarini representing the applicant. Lot 16.01 is in ownership dispute. There are two records that give the same metes and bounds description. There is also a historic cemetery on the site and the applicant is well aware of RI Statute 2318-11 which states there is to be no excavating within 25 feet of said cemetery. Applicant has no objection to staking out the four corners of the cemetery and erecting signage. Also there is a Notice of Intent from DEM for two violations and a mediation plan has been presented and accepted to cure the problems with plantings to be done in the fall season. The property is currently being used as a private airstrip. There will be a boulevard type entrance to the development. A waiver is being requested for the length of cul-de-sac and a waiver is being requested for a Cape Cod berm instead of concrete curbing. Also requesting to reduce the width of asphalt from 24’ to 22’ in order to slow traffic and request a waiver from the bike path tie-in requirement. Another waiver is requested for sidewalks.

Mr. Kalunian then made a motion to open up the hearing to the public. Motion was seconded by Mr. Nunes. All members were in favor. Motion passed.

Wayne Asselin, 30 Lorraine Avenue, wanted to be sure that the Planning Commission will give consideration to the width of the road.

Paul McGrath, 91 Colvintown Road, stated he owns property in front of the airstrip. Mr. Crossman clarified that the current airstrip will follow the same path as the main road through the development. Mr. McGrath stated it was the second time he purchased property in Coventry and then a plat is to be built nearby. Mr. Crossman stated that the lot sizes vary from 1.2 acres to 2.71 acre parcels. Mr. McGrath said he was under the impression that the lots were smaller – similar in size to the Hunters Crossing development; the larger sized lots are acceptable.

Phil St. Jean, 672 Town Farm Road, stated that his property abuts this development and he does not oppose the development. He is concerned with the septic systems because many residents in the area have shallow wells. Mr. Crossman explained that the septic designs have to be approved by both DEM and the Board of Health. Each lot will have individual septic systems and wells.

Ms. Fagan-Perry expressed her desire for underground utilities and sidewalks at least on one side of the development with concrete curbing. Mr. Crossman was in agreement. Mr. Flynn addressed the issue of the road width's being too narrow inhibiting snow plowing efforts and the new garbage collection system coming soon to that area. Mr. Peabody suggested a designated snow removal area be incorporated into the design of the subdivision. Mr. Kalunian felt that roadway width should be wide enough to allow two cars to pass each other safely.

Mr. Crossman quoted from a letter submitted by Kevin McGee, the DPW Director:

“There is an item I wish to bring to your attention which should be addressed for this application. The primary concern of the Public Works Department is the utilization of the open swale drainage proposed for this subdivision. Although RIDEM may prefer this type of drainage, the safety of the residents and the maintenance concerns of this department require a more conventional approach.

We have found that the open swale drainage areas become filled with snow during the winter season, forcing water during rain events to cascade across the road and then freezing causing a traffic hazard. Also, the department does not have the equipment or resources to clean and remove the silt in the open drainage swales. This silt will collect in the open drainage swales and during extreme rain events, flood into the detention basins, leaving silt in the detention basins also.

An alternative may be to remove the open drainage swales, provide perforated HDPE drainage pipe with filter fabric and crushed stone. The use of catch basins and drainage

manholes along with an outlet control structures would allow the Town to clean the silt in the drainage system on an annual basis.”

Ms. Fagan-Perry was in agreement with Mr. McGee’s recommendation. Mr. Crossman was in agreement as well; he feels that swales look horrible on the side of the road. Ms. Fagan-Perry added that she has seen children actually swimming in swales. The other board members were also in agreement regarding the swales.

Ms. Fagan-Perry made a motion to close the public hearing portion of the meeting. Mr. Flynn seconded. All were in favor. Motion granted.

Mr. Peabody brought to the attention of the Planning Commission that there is a small, low-hazard dam located on the property which the homeowner’s association should be made responsible for maintaining. Mr. Peabody explained that “low hazard” meant that the dam won’t affect life or property should it fail. He also questioned as to whether the homeowner’s association or the Town would be responsible for maintaining the open space. Mr. Crossman stated that he did not want it to be the responsibility of the Town. Mr. Peabody also suggested a predominantly closed pipe drainage system and to not eliminate the swales completely.

Ms. Fagan-Perry then made a motion by reading aloud the Finding of Fact:

“The proposed Preliminary Plan 16 lot Major Residential Cluster Subdivision is consistent with the Town’s Comprehensive Community Plan. The Town’s Comprehensive Plan Land Use Map depicts the property as being in a Low Density Residential (LDR) land use district. Such a district encourages one dwelling unit/2 acres. The Plan states that high densities are allowed in lower density areas if the higher density is off-set such that the 1 DU/2 acre densities is maintained. The applicant’s proposed residential cluster has significant open space to maintain the minimum recommended density of the Comprehensive Plan.

State Land Use Plan 2025 promotes clustering of residential subdivisions into much denser concentrations within or adjacent to rural areas.

The proposed residential subdivision will not have any significant negative impact to the environment providing the applicant secures an appropriate RI Pollutant Discharge Elimination System (RIPDES) permit from RI DEM; secures a Freshwater Wetlands Determination and/or Verification of Wetlands Edge from RIDEM; obtains a Subdivision Suitability Determination from RIDEM respecting septic systems.

The developer should install roof runoff drainage systems on the proposed dwellings. The residential cluster subdivision will reduce the amount the impervious surface and increase the area of permanent open space. This will decrease the amount of storm water runoff and provide greater recharge of the aquifer. The developer should remove the open grass swales and install perforated High Density Polyethylene Pipe (HDPE) drainage pipes with filter fabric, crushed stones and catch basins. Such a procedure

would allow easier and less costly maintenance of the drainage system by the Town per the DPW letter submitted by Mr. McGee.

A waiver is granted to eliminate the island in the cul-de-sac - giving it an 800' length. The width of paved roadway is to be 24' curb to curb. Sidewalks are to be installed on one side wrapping around the cul-de-sac and to be constructed of concrete. A waiver as the requirement of bike paths is granted. A 50' right of way is granted for the roadway.

Stipulations include the erection of historic cemetery sign on the on-site historic cemetery. The cemetery will not be part of a residential lot. Cleanup of brush in the historic cemetery will also included.

Applicant must secure Preliminary Determination and, if necessary, Verification of Wetlands edge from RIDEM; Subdivision Suitability Determination from RIDEM; RIPDES permit from RIDEM.

The Planning Commission requires an ERT as to drainage and storm water and includes Mr. Sprague's staff report and the letter submitted by Mr. McGee."

Mr. Nunes seconded the motion. All were in favor. Motion passed.

PUBLIC HEARING- Continued from May 21,215

Preliminary Plan: "Pullano Estates"; Ernest G. Pullano/Clean Care New England
3- Lot Major Subdivision with Approved Variances
AP 318, Lot 187; Zone RR2
Phillips Hill Road

Thomas Cronin, 1070 Main Street, representing the applicant. Mr. Cronin's area of concern was the requirement by the Central Coventry Fire Department of a 30K gallon cistern. He feels this is an excessively large cistern. Mr. Crossman and Mr. Peabody stated that only 10K gallon cisterns have been granted in the past. Mr. Cronin said that the owners would be agreeable to a 10K gallon cistern.

Joe Casale, PE, representing the applicant stated that they would like to subdivide the lot into 3 single family dwelling lots with ISDS and frame the existing house on a 4.8 acre lot. Driveway access will be shared and there will be a cistern location.

Ms. Fagan-Perry questioned that if they begin construction and the neighbor in the existing house loses water from the current well, would they be prepared to dig them another well. Mr. Casale stated that he does not have authorization to answer that question. Mr. Cronin stated that development should not affect the current well. Ms. Fagan-Perry said she just wanted to be sure that the existing neighbor is protected. Mr. Cronin suggested that the applicant would contact the neighbor and start a discussion regarding the well. Ms. Fagan-Perry said that would be acceptable.

Mr. Nunes then made a motion to open up the hearing to the public. Motion was seconded by Ms. Fagan-Perry. All members were in favor. Motion passed.

Charles Vacca, 124 Fairway Drive, representing the Historical Preservation Society, asked the Planning Commission if this proposed development contained an unmarked historical cemetery. Mr. Peabody said that he did not come across one during inspection.

Mr. Kalunian made a motion to close the public hearing portion. Motion was seconded by Mr. Nunes. All members were in favor. Motion passed.

Ms. Fagan-Perry questioned if underground utilities would be installed. Mr. Crossman said they would be installed. He then read the Planning Department Recommendation:

“The Planning Department recommends that the Planning Commission grant Preliminary Plan approval of the 3-Lot Major Residential Subdivision subject to the conditions set forth herein.

The proposed project is consistent with the Town’s Comprehensive Community Plan. Each of the proposed lots meets the guidelines for a low density residential area.

Providing the developer utilizes proper soil erosion & sedimentation measures during construction activities, the proposed development will not create any significant negative impact to the environment.

The applicant has secured the necessary variances from the Zoning Board of Review and, therefore, the project complies with the minimum standards of the Town’s Zoning Ordinance.

The developer has received Master Plan approval of the proposed project. There have been no significant changes to the project since said approval. Accordingly, the applicant has *vested rights* to continue the same, previously approved development. A ‘vested right’ is *‘a right which has so completely and definitely accrued to ...a person that it cannot be defeated or canceled by the act of any other private person and...the government should recognize and protect...and which the individual cannot be arbitrarily deprived without injustice...’*¹ Or, otherwise stated *“a vested right...is a property interested that may not be divested absent due process.”*²

Accordingly, at this juncture the applicant’s right to proceed with a 3-Lot residential subdivision as depicted on the plans cannot be vitiated; rather, the Commission should concentrate its inquiries as to matters relating to the adequacy and appropriateness of the developer’s engineering plans (drainage, soil erosion & sedimentation control), the need for RIDEM verification of wetlands; measures necessary to insure ingress/egress by the owners of lots #2 & 3 to their homes as well as upkeep of the same, etc.

¹ Black’s Law Dictionary, Abridged 5th edition, 1983

² International Association of Firefighters v. Town of Johnston, RISUP, June 2, 2012.

It should be noted that the developer has not yet received OWTS approvals. As such, the applicant does not have “*all required state and federal permits*” which is a prerequisite to submission for approval of a Preliminary Plan. Notwithstanding the same, the Commission may either (1) grant a ‘waiver of such approval at this stage on the grounds that it is reasonable and within the intents of the regulations’³ and require the foregoing at the time of Final Plan approval; or (2) grant conditional plan approval subject to submission of approved OWTS.

If the Commission sees fit to grant Preliminary Plan approval, it should require cross easements between owners of lots # 2 & 3 that they have shared unimpeded access to the private driveway and an agreement for each to be responsible for maintenance of the roadway. This should also be set forth on the recorded plan or restrictions respecting the lots.

It is within the discretion of the Commission to allow the matter to proceed administratively at the Final Plan approval stage.”

Mr. Crossman clarified that the applicant will obtain OWTS approval. Ms. Fagan-Perry stated there should be a roof runoff system. Mr. Peabody confirmed that there would be a resolution with the existing neighbor regarding the existing well. Mr. Nunes suggested that it be stipulated that the well be tested before and after construction.

Mr. Kalunian made the following motion by reading the Finding of Fact:

“The proposed 3-lot residential subdivision is generally consistent with the Town’s Comprehensive Community Plan. The property is depicted as Low Density Residential (LDR) on the Land Use Map of the Plan. Such a designation provides for one dwelling unit per 2 acers (1DU/2AC) of land. The Planning Commission previously granted waivers respecting the 3:1 ratio of length to width standards of the Subdivision Regulations.

The proposed development will not have any significant negative impact to the environment. The applicant’s LID techniques have been reviewed and are acceptable to the Town Engineer. The applicant has already received dimensional relief from the Zoning Board of Review.

Stipulations include that the developer must receive OWTS permits from RIDEM. Cross-easements acceptable to the Town Solicitor respecting lots #2 and #3 to include maintenance agreements should be recorded prior to recording of final plan as well as testing before and after construction of the existing well. Applicant can proceed administratively as long as the stipulations are incorporated. The staff report is to also be included in this motion.”

Mr. Flynn seconded the motion. All were in favor. Motion passed.

³ Subdivision & Land Development Regulations, Article VIII (B)

PUBLIC HEARING- Continued from May 21, 2015

Preliminary Plan/Recommendation to Zoning: “**Liberalis Subdivision**”; Liberalis LLC
Proposed 2-Lot Minor Subdivision also seeking Zoning Variance (FKA DaSilveria Subdivision)

AP 310, Lot 22; Zone RR5
Perry Hill Road

Mr. Cronin representing the applicant. Applicant is requesting a dimensional variance. The property line was redrawn which left one lot approximately 15,000 sq. ft. short. Mr. Peabody stated that the redrawn lot line makes for a logical property line. Ms. Fagan-Perry asked if applicant had DEM approval to put the driveway through the wetland buffer. Mr. Cronin answered in the affirmative.

Attorney Assalone said the applicant is not required to have a public hearing at this time; however, Mr. Crossman entertained comments from the audience.

Mr. Charles Vacca of the Historical Preservation Society voiced his concern that there may be a field stone burial lots present on this property. Mr. Peabody stated that none of the historical maps indicated that any cemeteries were present.

Mr. Crossman clarified that the plans were stamped Class 1 but not signed. He then proceeded to read the Planning Department Report:

“The Planning Department recommends that the Planning Commission grant conditional Preliminary Plan approval and recommend that the Zoning Board of Review grant dimensional relief with respect to the proposed to the two (2) lot Minor Residential subdivision.

The property is designated as “Very Low Density Residential” on the Land Use Map of the Town’s Comprehensive Community Plan.⁴ Said designation recommends 1DU/5 acres of land. The developer proposes two dwelling units on 9.96+/- acres of land; or, 1DU/4.98 acre of land. The small difference between 4.98 acres and the required 5.00 acres of land per dwelling unit likely falls within the so-called *rule de minimus*⁵ (de minimus is ‘a fact or thing so insignificant that a court may overlook it in deciding an issue or case’) which would allow a finding of general consistency with the Comprehensive Plan.

However, the *rule de minimus* is a highly relative term in its application. While a Comprehensive Plan is not an amorphous document to be ignored, it is a general ‘blue print’ for a community’s development and direction;⁶ zoning laws by their very nature are much dimensionally stricter in their application.⁷ As such, in light of the shortage of ½ acre of land for zoning purposes, *de minimus* would be inapplicable and the applicant

4 Town of Coventry Comprehensive Community Plan, D.1-1A

5 Ferrone v. Rossi, 311 Mass. 591 (Mass. 1942); Black’s Law Dictionary 442 (7th ed. 1999)

6 Bliss v. City of Woonsocket, C.A. PC 2004-2357 (R.I. 2005)

7 Renaissance Development Corporation v. Universal Properties Group, 831 A.2d 233 (R.I. 2003)

would need to secure dimensional relief from the Zoning Board of Review as to area. Providing that the applicant secures zoning relief, the project will meet the minimum dimensional requirements of the Zoning Ordinance.

The applicant will need to secure a Preliminary Wetlands Determination and, if necessary, a Wetlands Verification from RIDEM. Depending upon the amount of land which will be disturbed, the applicant may need to secure a RIPDES permit from RIDEM.

The applicant will need to secure OWTS for the two (2) new dwellings on the site (presumably, the existing dwelling will be razed).

Assuming the applicant secures and adheres to the necessary permits from RIDEM, the proposed project will not create any significant negative impact to the environment.”

Mr. Flynn made a motion to approve the plan by reading the Finding of Fact:

“The proposed two (2) lot minor subdivision is consistent with the Town’s Comprehensive Community Plan. The property is located in a Very Low Density Residential Area which provides 1 DU/5 acres of land. The subject parcel is 9.96 acres which is merely .004 acres under the recommended acreage.

The proposed two (2) lot minor subdivision will not create any significant negative impact to the environment. The applicant has secured an Insignificant Wetlands Alteration Permit from RIDEM.

Providing the applicant secures dimensional relief from the Zoning Board, it will meet the minimum standards of the Town Zoning Ordinance. Each of the lots has adequate and permanent access to a public street.

The Planning Commission grants conditional Preliminary Plan approval of the proposed subdivision and recommends that the Zoning Board grant the requested dimensional relief from the Zoning Ordinance. The applicant shall secure OWTS for the 2 dwellings from RIDEM.

Also incorporated is the Planning report, final to be done administratively, Plan 3CA and Class 1 Survey.”

Ms. Fagan-Perry seconded the motion. All were in favor. Motion passed.

A meeting break was then granted at 8:41pm. Meeting resumed at 8:50pm.

Recommendation to Town Council: Article 6 – Zoning District Use and Dimensional Regulations, Section 603, 4. “TRANSPORTATION, COMMUNICATIONS & UTILITIES”

Proposed Amendment to Zoning Ordinance to Clarify Item 15. Windmills, Wind Turbines

Mr. Peabody stated that year long test is being conducted to determine if migratory bird routes will be affected by the wind turbines. There should be no problems with height which is determined by setbacks. Only noise level is being questioned. Currently regulations are at 5 decibels above ambient noise although elsewhere the required decibel level is 65. At present, there is a moratorium imposed on wind turbines. The recommendation will affect new turbines not the existing ones. Mr. Nunes stated that it was not possible to answer questions until the studies are completed. The ordinances will be open to public comment on July 27, 2015.

Mr. Crossman read the Planning Department's recommendation:

"The Planning Department recommends that the Planning Commission endorse the proposed amended ordinance and to advise the Council to adopt the same.

The proposed ordinance is generally consistent with the Town's Comprehensive Community Plan; promotes the health, safety & welfare of the public; provides for a reasonable regulatory scheme for siting of wind turbines; and promotes the orderly growth of the community."

Greg Underwood, 1060 Narrow Lane, representing the Greene Company, stated that the problems with wind turbines are the fall zones.

Karen Carlson, Councilwoman, added that the State had no current guidelines for wind turbines. The ordinance has been pulled from ordinances in other towns.

Ms. Fagan-Perry made a motion by reading the Finding of Fact:

"The proposed Amendment to the Town's Zoning Ordinance is generally consistent with the Town's Comprehensive Community Plan. The Natural Resources Element of the Comprehensive Plan encourages innovative land planning techniques which provide for wildlife protection while allowing flexibility of site design. The proposed amendment ensures that techniques be applied which will not have an adverse effect on birds, migratory patterns or rare, threatened or endangered species. The proposed amendment ensures that wildlife habitats will be preserved. The Community Service Element of the Plan encourages the establishment of energy conservation programs.

The proposed Amendment to the Zoning Ordinance is consistent with the goals of the Town's Zoning Ordinance. The amendment promotes the health, safety and general welfare of the community. The amendment promotes the orderly growth of the Community. The amendment provides for the protection of public investment in public facilities.

The Planning Commission recommends to the Town Council that it adopt the proposed amendment to the Zoning Ordinance and that all future wind turbines go before the Planning Commission for site plan review."

Mr. Flynn seconded the motion. Members voted yay with the exception of Mr. Crowe who voted nay. Motion carries.

Public Works Director

None

Planning Director Report

None

Public Comment

None

A motion was then made by Mr. Nunes to adjourn the meeting. Ms. Fagan-Perry seconded. All members in favor. Motion passed.

Meeting adjourned at 9:14 pm.

Minutes prepared by Susan Volpe