

**Planning Commission
Special Session
Minutes of December 8, 2015 Meeting**

1675 Flat River Road – Town Annex
Coventry, RI 02816

Meeting Called to order at 7:03 pm by Chairman Russell Crossman.

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

Members Absent: Mr. Mattson

Also Present: Attorney Assalone, Mr. Sprague, Mr. Joyal

Mr. Crossman reviewed the exits in the room in case of an emergency.

This matter comes before the Planning Commission on continued hearing for its recommendation to the Town Council respecting the Adoption of District Use Regulations and a Wind Turbine Ordinance.

On November 18, 2015 the Commission heard, in part, the matter involving the recommendation to the Town Council respecting the proposed amendment to the Zoning Ordinance. Mr. Crossman noted that at this meeting, a presentation on wind energy development was given by Attorney Brusini, the applicant representative, and an informational package was distributed for each Planning Commission member to review. He asked Attorney Brusini if he had any further questions. Attorney Brusini replied he had no additional information.

Chairman Crossman read the Planning Director's report:

PLANNING DEPARTMENT RECOMMENDATION

At the outset, it should be noted that amendment or repeal of zoning ordinances is purely a legislative act left to the discretion of the city or town council.¹

The Planning Department suggests that the Planning Commission make a positive recommendation to the Town Council to approve the proposed amended ordinance & Article 20 subject to the following conditions:

The proposed wind energy ordinance is consistent with the Town's Comprehensive Community Plan and State Guide Plan 120. The Natural Resources Implementation Element of the Plan encourages the Town to develop policies on protection of groundwater & wetlands resources; to modify regulatory standards to protect

¹ Consolidated Realty Corporation v. Town Council of the Town of North Kingstown, 513 A.2d 1 (R.I. 1986)

environmental quality; to maintain the Town's environmental quality and preserve open space.²

The Community Services & Facilities Implementation Element of the Plan encourages the Town to provide adequate educational facilities, protect the Town's groundwater and surface water and to effectively and cost efficiently carry out the Town's administration.³

The proposed ordinance is also consistent with State Plan Guide #120 inasmuch as it adopts zoning and siting standards for renewable energy projects.

The Planning Commission has recognized and taken into consideration the applicable purposes of zoning in its review of the proposed ordinance. In doing so, the Commission has taken into account public health, safety & welfare. In doing so, it has weighed these elements against the need for acceptable fall zone requirements; addressed maintenance procedures and financial requirements to ensure they are implemented; considered noise pollution and the need to mitigate such adverse noises; addressed the level of design for such facilities; and otherwise taken into consideration the applicable purposes of zoning.

It is recommended that the proposed ordinance require that all engineering and architect plans be reviewed and stamped by a licensed, R.I. registered professional engineer.

With respect to "Historic Site" the public has questioned as to the breadth of its definition and the prohibition of siting a wind facility within an historic site as set forth in the proposed ordinance. It is suggested that the Commission consider limiting the area of a property within an historic site to the fall zone district from any structure within a property listed on the National Register of Historic Places. In addition, the language of the proposed ordinance that states that a historic site means "*...any site, district or archaeological site...which is established by qualified testimony as being of historic significance...*" should be stricken as being overly broad and burdensome.

It is further recommended that all surety bonds be "cash" bonds deposited with the Finance Director of the Town of Coventry. Also, although silent in the ordinance, consideration may be given to requiring that the applicant/owner deposit a "cash" bond for a given period of years for maintenance & repairs which should be deposited with the Town's Finance Director. Moreover, it is recommended that the amount of the "cash decommissioning bond" be established by an independent firm selected by the Town of Coventry.

Also the proposed ordinance should provide that "as-built" engineering drawings and written, periodic maintenance reports should be submitted to the Town Engineer upon completion of the project and inspection of the facility.

² Comprehensive Community Plan , Implementation Action Program, § 6.2, 6.3, 6.4, 6.9

³ Id, § 5.1, 5.6 & 5.7

As part of its submission to the Zoning Board of Review, the applicant should be required to provide correspondence from the FAA and local Air National Guard that the proposed development will not present a hazard to air navigation; a maintenance plan & schedule; and an environmental impact study which indicates that the facility will not have a negative impact on migratory bird patterns.

It is further suggested that time periods for municipal review exclude holidays, Saturdays and Sundays.”

Ms. Fagan-Perry questioned if the Town would receive compensation. Mr. Crossman felt the Commission should give thought to allowing what was addressed and outlined in the new ordinance with special use permits in Industrial and Business Park zones as well as the residential zones. Mr. Nunes was in agreement as long as all the requirements were met. Ms. Fagan-Perry stated properties owned by the Town should be developed before private interests were developed. Mr. Crossman said that recommendation would be for the future. Mr. Kalunian asked if Ms. Fagan was referring to page 1 of the Finding of Fact alluding to payment to the Town for wind facilities. Ms. Fagan-Perry stated that was correct.

Ms. Fagan-Perry then made a recommendation for a favorable recommendation to the Town Council for this Wind Turbine Ordinance by reading the Finding of Fact:

Recommendation to Town Council ‘Wind Turbine Ordinance’

The Planning Commission recommends that the Town Council enact the proposed wind turbine ordinance subject to the following stipulations:

The Wind Turbine Ordinance is consistent with the State Guide Plan #120 inasmuch as it develops zoning & siting standards for renewable energy projects.

The Community Services & Facilities Implementation Element of the Plan encourages the Town to provide adequate educational facilities, protect the groundwater and surface waters and cost efficiently carry out the Town’s administration.

Wind facilities on Town property or wind energy facilities that provide a net payment to the Town will assist in funding education and municipal facilities.

The Natural Resources Implementation Element of the Plan encourages the Town to maintain the environmental quality of the community. “Green Energy” such as wind energy facilities will avoid the negative environmental consequences of carbon emissions to the atmosphere while still providing a means of energy for the public.

Consideration of Purposes of Zoning

The proposed Wind Turbine Ordinance is consistent with the following general purposes of zoning ordinances:

It promotes the safety and welfare of the public by providing energy without increased carbon emissions to the atmosphere.

Wind Energy facilities provide for a wide range of energy uses and intensities.

Wind Energy ordinance protects valuable natural resources by reducing the Town’s “carbon footprint”.

The proposed ordinance protects air quality through the use of renewable, non-carbon energy.

The proposed ordinance promotes a high quality of design in the development of private and public alternative means of production of energy.

Additional Recommendations

Section 1.6 requirements respecting analysis by a qualified engineer should also require review and stamping by a licensed R.I. professional engineer.

Section 1.7.1 Fall Zone should state, “...and/or property under the control of applicant which is dedicated to the exclusive use of a Fall Zone by easement or other property ‘for a period of not less than twenty (20) years or the duration of the existence of the wind turbine.’” In addition, such easement, lease or other instrument evidencing the instrument shall be subject to review and approval by the Town Solicitor.

Section 1.10.1 should be amended to require the applicant to submit its application to the Planning Commission simultaneous with its filing an application with the Zoning Official.

Section 1.5.2 prohibits “wind turbines on any site determined to be a historical site as defined in Town Ordinances”. The Ordinance’s definition includes National Register sites and sites of “historical significance”. Included on the National Register are “Hopkins Hollow-Roaring Brook” (120 acres) including the cranberry bogs; Rice City Historical District (1570 acres); South Main Street Historical District (10 acres); Anthony District (252 acres). The Planning Commission may wish to consider the breadth of the Ordinance and limit it to the radius around a particular structure on the National Register or to a local Historical District (i.e. The Paine House).

Consider allowing the Planning Commission to engage the services of the qualified engineer or other expert at the expense of the applicant.

Section 1.7.9 should be amended to add the applicant must meet or exceed industry standards including but not limited to the Nation Institute Standards (including IEC 61400) for wind turbines.

It is recommended that onsite construction and installation of wind turbines to be periodically reviewed by a R.I. licensed architect and/or R.I. licensed engineer. “As-built” drawings submitted upon completion of work. FAA approval and/or Air National Guard approval as to height of the tower. All bonds, improvement and decommissioning should be cash.”

Mr. Nunes seconded the motion. He commented the Planning Commission’s “breath of ordinance” statement should be defined around a particular structure. Mr. Sprague cited the cranberry bogs fall zone as an example. Mr. Crossman used Read School House as an example by clarifying the fall zone was twice the height of the wind turbine tower. Mr. Osenkowski requested incorporating the Planning Director’s report and recommendation into the motion with an environmental impact study as a stipulation with issuance of a wind permit exclusively for residential zones R3, R5, R2. However, environmental assessments may not be necessary in heavy industrial areas. Mr. Kalunian stated a special use permit for I-1, I-2 and BP should be required.

Before voting, Mr. Kalunian questioned if the original motion would incorporate all the amendments. Attorney Assalone stated the entire motion would need to be re-read.

All members opposed motion as originally read. Motion denied.

Ms. Fagan-Perry then made another motion for a favorable recommendation to the Town Council by again reading the Finding of Fact:

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It is recommended that onsite construction and installation of wind turbines to be periodically reviewed by a R.I. licensed architect and/or R.I. licensed engineer. “As-built” drawings submitted upon completion of the work. FAA approval and/or Air National Guard approval as to height of the tower. All bonds, improvement and decommissioning should be cash.

Also incorporated into the motion is the Planning Director’s report and recommendation. An Environmental Impact Assessment report covering all residential zones will be done. Special Use permits in the Industrial 1 and 2 areas as well as Business Park zone required. The ordinance, with respect to Section 1.5.2, limits the radius around a particular structure to the fall zone as opposed to the entire property that might be on the National Register or within a local historic district.”

Discussion: Mr. Bouchard asked if this ordinance is passed by the Town Council will it limit building anything other than small wind turbines. Mr. Crossman stated that wind turbines less than 36 feet are exempt from this ordinance. This proposed ordinance is for large wind turbines or energy facilities. Anything over 100 kw or 36 feet high would require a Special Use permit.

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

Public Works Director

None

Planning Director Report

None

Public Comment

Todd George, Carrs Trail, approached the Planning Commission. He questioned what was involved for protecting residents from visually looking at these monstrous structures. He inquired if signatures on a petition would help the cause to prevent wind turbines from being constructed. He stated that wind turbines were only benefitting the landowner who was being paid \$50,000.00 a year but coming at the expense of other landowners. Not only are the structures an eyesore, but they negatively affect property values of homeowners in the area.

Mr. Crossman explained the Planning Commission had nothing to do with the construction of the wind turbines or the approval process for the 10 turbines that have already been approved. The Town Council was in the process of drafting a new ordinance regarding future wind turbine construction. Currently there was a moratorium in place prohibiting any wind turbine construction but the moratorium was to end in January, 2016. Public hearings and a long intensive review process for Special Use permits will be required with this new proposed ordinance. Chairman Crossman further stated the Planning Commission was tasked with making a recommendation to the Town Council, but it was up to the council to enact an ordinance. Mr. Crossman questioned Mr. George why there was objection to 'Laid Back Forest' but never any opposition to wind turbines earlier. Mr. George and other members of the audience stated residents were not aware of these wind turbines. Mr. Crossman confirmed that the Planning Commission was not aware either.

Mr. George stated that nobody wants to see these monstrosities constructed just for the benefit of a few greedy people and, if the Planning Commission didn't know of their proposed construction, how would residents in the area know. Mr. Kalunian pointed out that someone constructing a garage would need signatures from area residents because abutting residents would have to be notified; however, it didn't happen with the wind turbines. This recommended ordinance would require residents to be notified. The Town Council putting in a moratorium prevented additional applications for wind turbine construction which was a step in the right direction.

Karen Carlson, District 1 representative, stated these wind turbines were pushed through by the former Town Council president and former Town Manager. Public comment could be voiced at the December 14, 2015 Town Council Meeting.

Dotty Jacvony, Carrs Trail, approached the Commission. She stated she was blind-sided by the construction of these wind turbines. None of the residents in the area received a letter regarding the turbines. Only someone running a business such as Laid Back Forest, were required to notify residents before getting a permit.

Paul Rollins, Carrs Trail, commented to the Planning Commission the noise generated by wind turbines has been downplayed. These machines are not quiet and the constant humming noise can be deflected up to ¼ to ½ mile away. The humming noise which sounds similar to a jet engine, spooks horses, dogs, and cows and can be a serious issue to

migratory birds. In some areas, wind turbines are required to be turned off at night and on weekends. He stated wind turbines were an industrial, commercial enterprise and had no place in a rural setting. He further stated there was only a short term monetary gain; the actual return is only 1.3%. He noted this information from studies conducted since 1988 in California, Vermont and Massachusetts.

Mr. Sprague reiterated the Planning Commission is not a legislative body and it was important for concerned residents to voice their concerns to the Town Council at the December 14, 2015 meeting.

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 8:03 pm.

Minutes prepared by Susan Volpe