

PLANNING COMMISSION MINUTES

May 7th, 2008

7:30 PM

Jamestown Town Hall

93 Narragansett Ave.

The meeting was called to order at 7:34 p.m. and the following members were present:

Gary Girard	Barry Holland
Jean Brown	Richard Ventrone
Michael Swistak	Alexandra Nickol
Nancy Bennett	

Also present:

Lisa Bryer, AICP – Town Planner
Cynthia Reppe – Planning Assistant
Michael Gray – Town Engineer
Christopher Orton – Town Solicitor
Joseph Palumbo – Attorney
Michael Darveau – Land Surveyor
Joe McCue – Wetlands Biologist
Michael Dutton
William Johnstone
Dan O’Neill
Donna O’Neill

I. Approval of Minutes April 2nd, 2008

A motion was made by Commissioner Holland that was seconded by Commissioner Bennett to accept the minutes with the following changes:

Page 5 - Village Hearth Bakery, 4th paragraph first sentence, is that 40 seats is ~~to~~ **too** many

Also on page 5 Village Hearth Bakery add to the 3rd paragraph a new sentence which reads:

Commissioner Ventrone asked for architectural plans stamped by a registered architect but there was not a consensus from the rest of the Planning Commission.

So unanimously voted. Commissioners Girard and Swistak abstain.

Approval of Minutes April 16th, 2008

A motion was made by Commissioner Ventrone and seconded by Commissioner Bennett to accept the minutes as written. So unanimously voted. Commissioners Brown, Holland and Nickol abstain.

A motion was made by Commissioner Girard and seconded by Commissioner Swistak to accept the Executive Session Minutes of April 16, 2008. So unanimously voted. Commissioners Brown, Holland and Nickol abstain.

II. Correspondence

1. CRMC – Residential Boating Assent – John P Somyk, 3 Umbrella Way, Manville, RI 02835: to construct a residential boating facility to consist of a 4'x192' fixed pier with a 4'x20' lower access terminus and a boat lift system extending 148' beyond MLW; located at 401 Seaside Dr. Jamestown RI Plat 16 Lot 232. Noted
2. FYI – Letter from Susan Shim Gorelick to the Planning Commission. Received
3. FYI – Memo to Debbie Shea Re: Planning Commission Stipends. Received

III. Citizen's Non Agenda Item – nothing at this time

IV. Reports

1. Town Planner's Report

Town Planner Lisa Bryer met with Sandy Sorlein today, they discussed some changes to the smart code and they will be made available to the Planning Commission on Friday and ready for the meeting on the 21st of May.

Town Planner Lisa Bryer stated the chairman wants to form a nominating committee for the upcoming election of officers so any Planning Commission members interested in being on the committee should either contact Lisa Bryer or Gary Girard.

2. Chairpersons report

3. Town Committees

- a. Harbor

Commissioner Bennett attended the facilities meeting and they will vote on seal pier, the wood pile pier is contentious and it will be voted on in the future.

- b. Fort Getty

- c. Buildings and Facilities

- d. Others

4. Sub Committees

Tree Committee – Commissioner Bennett reported they have planted trees at the museum site, they look nice. The Town Council is happy with the report they have received from the committee.

Parking Committee – Commissioner Brown reported parking times have changed; they can now park until 6:00 p.m. in the downtown area which used to be at 4:00 p.m. The business owners think this might bring in more evening boaters for dinner at the local restaurants. The committee is working on the problem with the distribution trucks on Narragansett Ave to minimize impact and she will update the commission on this issue.

Commissioner Swistak recused himself on the next issue on the agenda the Public Hearing and left the table.

Town Planner Lisa Bryer recused herself for the Public Hearing and left the room.

Commissioner Girard asked Attorney Joe Palumbo if he had received the letter from Mike Gray, yes he did. As far as improvements Mr. Dutton is not willing to pay for any materials used to construct the road with the various improvements. According to Mr. Palumbo this was never the commitment made from the outset. In so far as Mr. Gray's materials request for the road base he is willing to provide the labor but not the materials. The town can provide the materials.

Mike Gray's memo is clear; he disagrees with the idea that the material is being removed from the existing road. The new road should be constructed first before removal of the

current road. How are the residents of Prospect supposed to get to their residences if the road is not there? Mr. Dutton can stock pile the old road materials for his new road on Prospect.

V. Public Hearing

Dutton - 2 lot Minor Subdivision with Street Creation, Extension of Prospect Avenue off Summit Avenue and Holly Street – Plat 1, Lots 61&244- continued from 1-16-08

Commissioner Girard opened the hearing at 7:48 p.m.

Joseph Palumbo – Attorney - Valley Rd. Middletown, RI.

Mr. Palumbo has 2 witnesses here. Mr. Michael Darveau the Land Surveyor and Joe McCue an ASSF wetlands biologist whose company has submitted a letter which was distributed to the Planning Commissioners in their packets.

Michael Darveau - 1725 Mendon Rd. Cumberland RI he is a registered land surveyor.

He gave the board and audience a presentation as to what the applicant has proposed.

He discussed the drainage issues. The applicant has DEM approval for insignificant alterations for wetlands, suitability approval for ISDS, and leaching field design approval.

Mr. Palumbo added that he has prepared and submitted a form of easement for the lot and ASSF's that will be subject to the Homeowners Association to maintain that area, he provided the town solicitor with a document on whose obligation it will be to maintain the road.

Joe McCue - project manager at Natural Resource Services - Wetland Biologist.

DEM has looked at this property and scoured the site and their review of the insignificant alteration determined there are not additional wetlands on the property. ASSF was probably created years ago. DEM issued the permit and determined that there are no adverse impacts.

Mr. Palumbo asked the Planning Commission if they are familiar with this letter. He was answered yes; it was part of the packet.

William Johnstone - 40 summit Ave. – where it says Johnstone on lower left of the plan it says cesspool and it's not a cesspool but it is a leach field. This was the only evidence the land surveyor could find without digging up Mr. Johnstone's yard. If Mr. Johnstone will provide them with copies, they will be happy to change it on the plan. Referring to Mr. Mike Grays report he said that he agrees with what was written, which states:

“The cross section we discussed and agreed upon is 6” of processed gravel over 12” of bank run gravel. Until the applicant has agreed to the construction means and methods that we originally agreed upon at our site meeting in February, I cannot support this application. Presently I do not believe that this application has met the burden of adequate and permanent physical access to a public street and therefore the planning board should not approve the preliminary subdivision application.”

Dan O'Neill - 33 Summit Ave. as a resident he would like to comment - it appears that the egress has been transferred to the residents of Summit Ave. the way he feels is that it should be Mr. Dutton's responsibility to run the road along his property, he is suggesting that the commission does not approve the subdivision of lot 61 that puts the burden on Summit Ave.

Mr. Palumbo responded stating, the only means of access to these lots is by Summit Ave. a portion of Prospect is being claimed by a neighbor by adverse possession which cannot be used by Mr. Dutton, based on the review of historical facts their claims, which are based on their long time usage will be successful in court which leaves Mr. Dutton with Summit Ave. Access could be provided on Holly St., but it would require the consent of the property owners.

Town Solicitor Chris Orton said with all due respect Attorney Palumbo has expressed his opinion on this pending case and it is just his opinion.

Mr. O'Neill said there is another road and the lot lines can be moved around to develop it like an extension of Union Ave which is more to the east. He thinks it is a false argument to say there is no other way.

Mr. Johnstone – there is a lot of confusion with access roads, there was a hearing December 2001 appeal of Michael Dutton and Jean Dutton Union Ave lot 243 and in July 23 2003 appealed by Michael and Janice Dutton he read from the legal documents and gave dates, lot 61 is owned by VP enterprises he could not find it in licensing in the state of RI, there is a lot of heavy equipment on lot 243 is this going to be used to do the roads he asked? Summit Ave is a valuable piece of land and it is the highest point on the north end.

Donna O'Neill – if she is hearing correctly they at one time used Union Ave as a street address cant they use it again? This is putting a huge burden on the Summit Ave residents. The homeowners will drive by the west side and east side, as a lay person there should be another solution here. This is very upsetting.

Plat 1 lot 10 is where the O'Neill's are located. Mrs. O'Neill approached the Planning Commissioners to show them where she is located.

Commissioner Ventrone asked if when that lot was bought were there roads scheduled to be put in, there would have been roads at some point. There was always potential for roads there.

Commissioner Girard stated that according to the solicitor the portion of Prospect is in litigation so we can't assume anything.

Mr. Palumbo would like to address the main topic of this hearing Holly St. Union Ave is wetlands and cannot be used as a means of access, there is a small portion that comes in from North Rd. They have 4 lots of record now and they want to make it into 5 lots. To the extent of an issue being raised the applicant is relying on expert testimony that says this is the only way they can get in there and he needs to have an expert testify that at a hearing, his understanding of this issue before us today is they provided access and it is up to the commission to make a determination. The proposal by Mr. Gray in his memo is not what the applicant is going to do.

No submissions on the fly they can propose something else but not on the fly said Solicitor Orton.

Mr. Palumbo asked if he will be able to address, make a comment or closing comment on the Holly St. issue.

Mr. Johnstone - They were shown a map back at the January 16th meeting Summit Ave is flat. His well is in the road according to what some think but its not. All the streets are chaos. They don't want their property being diminished.

Commissioner Girard stated that he appreciates his input but this has nothing to do with the application. Confine your discussion to the application.

Commissioner Bennett asked before the hearing is closed can she ask questions of the applicant?

Commissioner Girard said the Public hearing is now closed.

Mr. Palumbo wants to make a closing statement and comments of his client's intentions.

Mr. Palumbo said the subject of whether or not Prospect should be the access has taken him by surprise since the solicitor has not been here for all the meetings, the board was satisfied with the explanation of Prospect Ave. The public does not understand the Prospect Ave issue. Up until tonight it was a given that the means of access to this subdivision would be Summit Ave. to Holly St. and then Prospect. The client is willing to fix a problem as an accommodation to the town that the former Town Solicitor sought to have fixed to no avail; his client says OK he will put Holly St. where it should be. If the town is willing to provide the 6 inch gravel he is willing to do the manual labor to incorporate that. The Town Engineer requesting drainage and landscaping in connection to this application with his applicants willingness to rectify what was an oversight on the town's part he feels his client should not have to fix it. What his client is proposing is fair and he stands by it.

Commissioner Ventrone asked this question a few meetings ago. When a new development goes in, is the applicant responsible to make adequate and physical access to the property? In the subdivision regulations it says that if that did not exist the applicant would have to provide that access and that is what Mr. Gray is stating.

Commissioner Ventrone said there are 3 ways to access this subdivision, Summit, Prospect, Union Ave's. The commission can only act on what is before them now. Do they approve this subdivision now; no they cannot approve it without access to a public road. The Town Engineer Mike Grays objection is that for some period of time there will be no road. This cannot be approved this way, it is irresponsible, what if there is an emergency?

Commissioner Bennett asked Mr. Gray," are you asking for more than what should be required?" The applicant came into the office to meet with Mr. Gray and they did a site visit with Mr. Dutton's Land Surveyor Michael Darveau, Mr. Gray and Mr. Dutton. They were all in agreement which is stated in the memo from Mr. Gray to Mr. Dutton.

Mr. Gray went into detail with the Planning Commission on basic road construction which is what was requested. He was not expecting anything more than that. When you disturb vegetation it needs to be reseeded the road he is removing that it be restored and allowed to vegetate. Commissioner Holland asked, if we don't allow him to take the old road. If he has not touched it then he does not have to restore it.

Displacing material in the right of way.

Commissioner Bennett asked the applicant, what is your biggest objection to doing that? It's not my obligation Mr. Dutton said. It's not uncommon for the Planning Commission to ask for improvements Commissioner Bennett said. Mr. Dutton says he was blindsided by Mike Gray. He agreed to flip the road if the town wants to supply the gravel. Mr. Dutton says

make a decision tonight. After tonight his offer is off the plate. The applicant said they are not going to do the road.

Commissioner Brown asked Mr. Gray if there is any alternative to the water runoff going into a particular direction.

Mr. Gray said Holly St. is a private street that was constructed to provide sole access to the 3-4 lots south of Mr. Dutton's property. It's irresponsible of everyone to have a road built and not accommodate runoff.

Commissioner Brown it is his understanding that he has made the improvements.

Commissioner Ventrone again stated the responsibility lies with the one that builds a development to make it accessible, the applicant says he is not going to do it this way, it's his way or the offer is off the table.

Commissioner Nickol said that the financial set back initially is a much smaller number than the 3 saleable lots.

Mr. Dutton said he will provide the labor if the town provides the material.

Commissioner Holland said the town has some responsibility to fix the road, and he thinks it is a reasonable compromise for the town. He is bothered by the deliberations; you can't move an illegal road? Is it a road or not?

Commissioner Girard stated, you can't stop people from getting to their homes. This is a safety issue.

Commissioner Holland thought the town's failure to act in a reasonable time is not acceptable regarding this road.

Commissioner Girard said this subdivision has to end up on a legal road. Let's not make more mistakes on this issue. We need to make a decision on what is here tonight.

Commissioner Holland asked the Town Solicitor if it is legal for the town to declare a new improved legal right of way through a zoning change. Chris Orton, Town Solicitor said off the cuff he cannot give an opinion, maybe he can look at this.

Commissioner Nickol said that there is no burden to the town to have this road as it is right now.

Mike Gray said he will take another look at the drainage issue and whether the town suggested by Commissioner Bennett should have some responsibility to this.

Chris Orton is concerned about comments regarding the responsibility of the town. Morally you may think that the town is responsible but a distinction needs to be made. Public safety issues exist to safeguard the residents stated Commissioner Brown.

Dan O'Neill asked if the Planning Commission has the authority to make a decision on what the town is responsible to do. No they are not said Commissioner Girard.

In order to make this work the road has to be moved. The applicant will not do it to the towns standards.

The Planning Commission needs to make a decision, Commissioner Girard thinks they cannot approve this as it is.

Commissioner Ventrone said regarding the town spending money on materials, the Planning Commission cannot make that decision. The client is saying he is not doing it, it's his way or no way. There are rules and regulations in this town that need to be abided by.

Mr. Palumbo said it is not a parallel he wants to make a comment that Mr. Dutton did not create the problem. He does not want to postpone this for any further delays. He wants a vote tonight.

Commissioner Girard is asking the staff to prepare a motion for approval or denial, and informally asked the Planning Commission what they thought.

Does Mr. Gray have any discretionary funding for maintenance of public roads, asked Commissioner Bennett and yes he does for public roads only he said.

Commissioner Holland who respects the applicants request for a motion tonight one way or the other, he thinks it should be continued. Subject to the answers he asked would make a determination but as of right now he would vote No.

Commissioner Bennett looks at drainage issue and if it could be solved come back and take care of it. If based on tonight, no.

Commissioner Ventrone – No

Commissioner Brown – feels an unnecessary burden to applicant there should be a compromise. She would abstain.

Commissioner Nickol – No, it is black and white the applicant has refused.

Commissioner Girard said they cannot force people to get together.

The general consensus is for no approval.

Commissioner Girard asked the staff to construct a motion for denial for the Planning Commissions consideration at the next meeting.

They can deliberate the motion at the next meeting.

They will be acting on a motion that was decided upon tonight. Once the motion is before them they can discuss it amongst themselves.

If additional information is needed from the applicant they can request it.

Mr. Palumbo said if there is any more deposition please let him know in advance.

Commissioner Girard said this is continued to the next meeting.

VI. Old Business – nothing at this time

V. New Business – nothing at this time

A motion to adjourn was made by Commissioner Ventrone and seconded by Commissioner Holland at 9:25 p.m. So unanimously voted.

Attest:



Cynthia L Reppe
Planning Assistant

This meeting was digitally recorded