

PLANNING COMMISSION MINUTES

May 20, 2009

7:30 PM

Jamestown Town Hall

93 Narragansett Ave.

The meeting was called to order at 7:30 p.m. and the following members were present:

Gary Girard Michael Swistak

Richard Ventrone Barry Holland

Alexandra Nickol Nancy Bennett

Jean Brown – arrived at 7:35 p.m.

Also present:

Lisa Bryer

Cynthia Reppe

Michael Gray

Wyatt Brochu

Michael Darveau

Joseph Palumbo, Esq.

Michael & Janice Dutton

William Johnstone

Betty Hubbard

Jim Buttrick

Lisa Geigan

Roy Geigan

Dan O'Neill

Barbara Herman

Bill Ritter, John Upton, Arthur Milot, Quenton Anthony, Rosemary Enright, Kim McDonough, Abby Campbell King, Jack Hubbard, Ken Newman

I. Approval of Minutes May 6, 2009

A motion was made to accept the minutes as written by Commissioner Swistak and seconded by Commissioner Ventrone. So unanimously voted.

II. Correspondence

1. CRMC – Cease & Desist Order-Ernest Pullano, 3620 West Shore Rd., Warwick, RI 02886; clearing within 200 ft of a coastal feature, Plat 14 Lot 8, Seaside Dr. Jamestown, RI. Received

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

IV. Reports – nothing at this time

1. Town Planner's Report
2. Chairpersons report
3. Town Committees

- a. Harbor
 - b. Fort Getty
 - c. Buildings and Facilities
 - d. Tree Preservation and Protection
 - e. Affordable Housing Committee
 - f. Wind Energy
 - g. North Rd. Bike Path Committee
4. Sub Committees

PUBLIC HEARING

VP Enterprises LLC – Dutton, Plat 1, Lot 61 and a portion of Lot 244 Minor 3 lot Subdivision with Private Street Extension of Prospect Ave.

Commissioner Girard opened the hearing. Mr. Joe Palumbo attorney representing VP Enterprises LLC, principals are Michael & Janice Dutton.

This application has been remanded from Superior Court on their appeal from the Planning Commission subdivision denial. The Town entered into an agreement acceptable to the court with the applicant and the town has approved the legal relocation of **a portion** Holly St. that will tie into Prospect Ave extension which will service the proposed lots of the subdivision.

Michael Darveau from Darveau and Associates gave a brief overview of the plan. The amount of runoff is small for the road. No impact to wetlands. Mr. Palumbo pointed out there are areas subject to stormwater flowage, which are regulated by DEM. There are also drainage easements within the subdivision and on an adjacent lot owned by Janice Dutton..

Commissioner Swistak, asked about the second lot that will have a lot line moved to make sure there is enough sq ft on the lot that has wetlands on it. He was answered by Mr. Darveau that that lot is part of the subdivision. Commissioner Ventrone asked Mr. Gray about Holly St. It was just accepted by the Town Council as a public ROW. The Town Council subdivided lot 47 to make Holly St. ROW 80 ft wide, so the council subsequently accepted it for public use. At this time there are no other plans for that road, it will remain as is.

Commissioner Bennett asked if the applicant would be willing to put any buffer on Prospect Avenue for the neighbors. Dutton said no.

Mr. Darveau stated that the drainage swale is where you would plant. Lisa Geigen 28 Summit –are their options for the drainage swale as far as placement? Is it the understanding that there is no road there now she asked Mr. Gray. Mike Gray said the applicant has apparently done some work already without an approved plan. Before we go further she again asked, Is Prospect a proposed street or is it there already? Mr. Darveau has not been there since work has been done he said. It's possible he has done some clearing. She and her husband both called the town and were told there is no approval for a road when they called. She does not want this to slip through the cracks without being noted that he has built a road without approvals. Mr. Gray stated that it was at his own risk and it may have to be rebuilt to meet the specifications and for the purpose of inspection.

Mr. Palumbo stated 2 years ago an administrative subdivision was approved and that the road was part of that subdivision. Lisa Bryer addressed the board as the administrative officer who approved the administrative subdivision. She stated for the record that she has a conflict with the current application and is not involved with that application but approved the administrative plan several years ago prior to their being a conflict. She gave the history of the property and noted that when the paper streets surrounding the subdivision parcel were abandoned by adverse possession through court that Mr. Dutton was required to merge the roads into his existing lots and she was advised by Legal Counsel at that time that since all access roads were abandoned that the lots must have frontage or they are not legal. It was then that Prospect Avenue extension appeared on the administrative subdivision. Approval and road construction for the purposes of development are 2 different things. In any similar situation, a paper street is not ready for permitting development until it is sanctioned by either the Planning Commission or the Zoning Board. In the case of all of the lots on Prospect Avenue, they were required to go to the Zoning Board for approval to build on the paper street and the Zoning Board specified the road requirements for construction and it was inspected by the Town.

Mrs. Geigen wants it done by the law and the rules of the town ordinances. They called while construction was going on and was told there was no approval for construction of a road. If the town is telling me there is no road there I want the town to go to the area and tell me that. Commissioner Girard stated if they built a road without approval it is their risk and that is an enforcement issue.

Roy Geigan – 28 Summit – Dutton has been working for the last 3 months on it, without DEM or OSHA posted signs. Heavy equipment is being used and there is a full road there. You can tell me there is no road there but its there. Drainage is going into my property because he raised the grade at the cul-de-sac and it is higher than his property now and water impounds.

Commissioner Girard asked if Mr. Palumbo can address these comments? He stated that any improvements will have to be inspected by the Town Engineer when the plan is approved.

Mr. Gray stated that Mr. Dutton was told by him that the town does not have an approved plan for Mr. Gray to be able to inspect, Mr. Dutton continued at his own risk. Mr. Gray advised the Planning board that they should look at the plan as it is presented to you. An as built survey plan is required just as it was done for the Manning subdivision was so there will be conditions that he has to meet regardless as what improvements have already been made. The road will have to be constructed the way it is approved.

Commissioner Brown – addressed the neighbors and stated that what you see now probably will not be what the final product will be.

Mrs. Geigan said the fact that it is already built concerns her. Mr. Gray stated that is what the bond is for, to insure that it is built as proposed. Mrs. Geigan said on the plans it shows bales and such for erosion and there is nothing there like it is supposed to be. Mr. Brochu said this sounds like an enforcement issue.

Mr. Geigan said if Dutton can do this without approval then I can put up a 3 car garage without your approval. Is this not similar to putting in a foundation before approval? Mr. Brochu cannot give an opinion on this since Mr. Brown has not talked to him regarding what enforcement has been given. Generally speaking there are certain things you need permits for and an enforcement officer will have to be consulted.

Commissioner Ventrone stated we do not have enough knowledge to make a decision on this now.

Mr. Palumbo said Mr. Chairman you have hit the nail on the head and stated at least 3 times that whatever he is doing is at his own risk at this time and the bottom line is this approval is subject to conditions and it has to be certified by the Town Engineer. It's irrelevant at this point - why take a snapshot today when you don't know what the final project will be. Mike Gray cannot inspect anything at this time.

Mr. Gray stated that the Board should not get hung up on whatever has been done since it will be certified with an as built survey and his engineer must certify it. This will be a private road, just like an approved subdivision with a private road that was approved last year. Whatever the board approves is what will be required. Mike Gray has not inspected the work that has been done at this time. It will be maintained as a private road and the covenants will be approved. Commissioner Bennett asked where can the neighbors take their questions and concerns to. Attorney Brochu said that if they have a question on enforcement talk to Fred Brown.

William Johnstone – 40 Summit Ave – His property was is completely underwater last month and it never has been before. He showed the board pictures of the flooding. He discussed the debris that had fallen into his yard from a pile of dirt that Mr. Dutton stockpiled next to his lot while working on Prospect Ave. He has bothered every neighbor on that street. Holly St. is now 80 ft wide. He has been courteous for 33 years. He has complained repeatedly he bothers all the neighbors. He built an apartment illegally.

Dan O Neill – 33 Summit Ave. – He asked a question about the square of roadway at the end of Holly Street on Prospect Avenue and he questioned whether Mr. Dutton took that since there is a pipe running through it. Maintenance of that pipe should be included in the motion.

The cross section for the road that show proposed contours lines show part of the gravel road will be below the grade line of the property line is that correct for the record. Mr. Darveau said it is a representation of what is possible. This cross section is used with the grading plans. It is just a "typical" drawing and does not represent what is on site and should be looked at in conjunction with the grading plan. The swale will not be higher than the neighbor's property.

Commissioner Holland asked the solicitor - one of his concerns is the plans before us do not show ~~it does~~ the new administrative subdivision for the road that was approved by the town on these plans. Commissioner Ventrone said that is a very good point. We need more information before we can continue. How can we make an intelligent decision?

Mr. Palumbo said assuming you take action tonight they can do this according to the final and do it administratively and make it conditionally.

Commissioner Girard ended the public comments but did not close the public hearing. The Planning Commission has different options; they can add more conditions to their approval or remand this to our staff to do. They need clarification on how to legally handle the Prospect Ave issue and the association issue. Mr. Brochu would like to consult with Mr. Gray. Mr. Palumbo said his client is committed to sign whatever he needs to so that he can maintain the road. He will maintain in perpetuity.

Commissioner Holland suggested making preliminary approval based on administrative review. Maintaining the culvert so that it does not impound water on the abutting or drain onto abutting property is very important. Commissioner Brown wants to make sure that the elevations of the road and the abutters are very clear with the plan they see so there are not surprises as to where the water is flowing.

Solicitor Brochu suggested the hearing stay open during the construction of the conditions of approval.

Commissioner Swistak suggested adding Item 10 to Findings of Fact in response to the abutters:

10. Newly created homeowners association will maintain and be responsible for maintenance of Prospect Avenue at the intersection of Holly Street which is recognized as Town owned property.

Conditions of Approval:

14. Final plans should include recorded maintenance plan for drainage, swale and all related drainage systems.

15. Final plans updated to incorporate newly improved configuration of Holly St.

16. Sheet flow shall flow as it was prior to any construction, so it does not impound natural flow of runoff from and to adjacent lots.

Mr. Palumbo asked if they can ~~we~~ combine preliminary and final approval that night. The Board would like to see the final plan.

The hearing will be continued to the June 3rd meeting. So unanimously voted.

V. **Old Business** – nothing at this time

VI. **New Business**

1. Shoreby Hill Historic Zoning Proposal

Betty Hubbard made a presentation to the Planning Commission and the audience. They are asking the town to make lower Shoreby Hill a Historic District. The plotting of first or lower Shoreby Hill was in 1898 then upper 1911-1912 up until WWII. This is the era she is talking about not the houses built after 1952.

Jim Buttrick from upper Shoreby Hill said the committee was formed to look at the issue of historic districts they looked at how they function in the state. Once an ordinance is passed a commission is appointed and an overlay district is created. Exterior changes only are looked at and they have no control of paint color. The committee found that 74% of lower Shoreby Hill residents were supportive of this. There are tax credits in the state if you are in a historic district.

Betty Hubbard took them on a short tour of homes in a power point presentation, 70% of all dwellings there now fit into that time period from 1898-1936.

The secretary of Lower Shoreby, Barbara Herman said they have prepared a package for the Planning Commissions review. They started with the RI model ordinance and tweaked it to be theirs. They structured it to add additional districts in the future. The design guidelines came out of the charrette process that the town had done. They feel this is the best way to preserve Shoreby Hill. In the last 5 years 4 houses have been demolished and they were historic houses. Guidelines will help this process for the homeowner. They think the moment has arrived in Jamestown. And they hope the Planning Commission will recommend this to the town council.

Commissioner Girard commended the committee for their hard work.

Bill Reider – Upper Shoreby over 50% signed they are against it.

Arthur Milot – Walnut St. not a resident of Shoreby but in his neighborhood he sees that things have gone cocoo. He is supportive of a Historic District.

John Upton – 13 Standish - lower Shoreby – this is an important resource to the island. The built environment is part of the appeal in Jamestown, character and scale of existing buildings. Once something is gone it's too late.

Kim Mc Donough 33 Standish Rd. – supports the historic district.

Quenton Anthony - on behalf of Jack and Judy Healan please do not make this recommendation to the Town Council without really doing research on this. It is so regulatory. Please go slowly and cautiously because they are not convinced that anyone has given a compelling reason to have an ordinance that controls a process that has been going on 110 years. The original appearances have been maintained as it is now. If it is because of 1 house that is not a reason to jump on a bandwagon.

Abby Campbell King – Friendship St. people are coming into communities and don't care about what is here and that they can do what they want to do. We can all be fearful of regulatory and that's a good scare tactic. This is a diverse community. She supports the historic district.

Jack Hubbard – He agrees with Quentin Anthony lets look at this very carefully. We have private roads I like it this way. We could have tour buses coming through here then. It can be made as restrictive as the commission wants. It can be a stop and think function in terms of demolition.

Ken Newman – 23 Ave B – He supports the historic district. In communities that have historic districts their values have gone up. Look at it as a model and let's see how the town reacts to it.

Rosemary Enright – president of Historical Society. Yes 50 years old would be a starting point. Most structures are post Colonial - very few 1880. State voted to look into and give Shoreby the nomination.

The Planning Commission agreed to continue the meeting past the 10 o'clock end time.

Commissioner Ventrone said thank you for the work you have done, a word, endangered species comes to mind. He has seen 1 building that he is not happy with. This is a responsibility to RI to preserve this neighborhood.

Commissioner Swistak – asked where did the committee come from and what are the source of the objections?

Commissioner Bennett – how do you think buildings that do not conform will be impacted? How will they be dealt with? You have to give a lot of latitude to these houses. Should the person decide to make a change then they go through the process. The guidelines are specific to whatever is approved in the end.

Betty Hubbard stated that in their discussions, Shoreby Hill will not be as strict as other historic districts.

Commissioner Nickol this commission has faced some challenges in terms of regulating architecture; Providence is heavily weighted to architects. If 2 or 3 of the board were design professionals they could be more effective.

Barry Holland – question of process - to get ordinance in place what percentage of owners is needed to approve the ordinance? They were told they should not go ahead without 75% in agreement. Set of standards would be specific.

Commissioner Bennett asked How many properties have been renovated or developed each year for the last 5 years? Of the other communities how big are they?

2. Clinton Corners – Plat 9, Lot 193 – Minor Subdivision Preliminary Review
– continued

Commissioners Ventrone and Swistak made a motion to adjourn at 10:20 p.m. So unanimously voted.

Attest:

Cynthia L Reppe
Planning Assistant

This meeting was digitally recorded