



## TOWN OF PORTSMOUTH PLANNING BOARD

2200 East Main Road  
Portsmouth, RI 02871  
401-683-3717

### PORTSMOUTH PLANNING BOARD Regular Meeting March 9, 2016

**Members Present:** Guy Bissonnette, Ryan Tibbetts, Kathleen Wilson, Michael James and David Garceau. Luke Harding arrived at 8:30 p.m.

**Members Absent:** Edward Lopes

**Others Present:** Leon Lesinski, Administrative Officer, Portsmouth Planning Board, Atty. Kevin Gavin, Portsmouth Town Solicitor.

The Meeting was called to order by Mr. Bissonnette at 7:00 p.m.

**1. Agenda Continuances/Modifications:** As follows.

**Agenda item #3: Northern Waterfront Associates, LP, AP 16, Lot 37, AP 17, lots 8 & 9, AP 22, lots 2, 3, 4 & 10, AP 23, lots 18 & 19 (The Newport Beach Club) discuss the completion of Mare Terrace and update status on the construction of The Newport Beach Club.** Mr. Lesinski reported that the petitioner is awaiting DPW certification of the road plans and supporting documents

**MOTION:** Mr. Tibbitts made a motion, seconded by Ms. Wilson, to continue Northern Waterfront Associates, LP, AP 16, Lot 37, AP 17, lots 8 & 9, AP 22, lots 2, 3, 4 & 10, AP 23, lots 18 & 19 (The Newport Beach Club) to the April 13, 2016 regular meeting. All in favor. So voted.

**2. Minutes for Planning Board Meeting of February 10, 2016**

**MOTION:** Mr. Tibbitts made a motion, seconded by Ms. Wilson to approve the minutes of the regular meeting, February 10, 2016. All in favor. So voted. Mr. James abstained from the vote due to his absence from the meeting.

**3. Agenda item # 4 Apollo Brothers, LLC (Seafare Condominium), AP 24, lot 11 (3352 East Main Road) – Discuss modification to the Landscape Plan** Neil Hingorany, Narragansett Engineering, Inc. and Apollo Brothers, LLC requested and was granted by Mr. Bissonnette time necessary to read Atty. Gavin's opinion, dated March 5, 2016, on the Building Official's and/or the Zoning Board of Review's authority, under Article XII, Section 2.e of the Zoning Ordinance to "[c]onduct inspections of suspected violations of this ordinance and of any special conditions imposed upon any development." Mr. Hingorany also

requested approval of modifications to the development landscape plan.

Mr. Bissonnette confirmed that the Planning Board could review and approve the landscape plan modification. Based on the solicitor's opinion, Mr. Bissonnette ruled that the Planning Board does not have the enforcement authority with regard to the abutters' complaint with regard to the fence installed by Stella Monro, 88 Seafare Lane on her property. He stated that the abutters should bring their complaint to the Building Inspector and the Zoning Board of Review according to the process set forth in Atty. Gavin's opinion.

Mr. Hingorany withdrew the landscape plan modification request. Atty. Gavin clarified that while the Planning Board could not hear the complaint, the landscape plan modification was properly before the Board. Mr. Hingorany reiterated that he was withdrawing the matter.

Doug Levesque, 24 Bourbon Street, abutter stated that he had previously brought the complaint to the Portsmouth Building Inspector who said that it did not fall within his purview. Atty. Gavin directed Mr. Levesque to bring the complaint to the Zoning Enforcement Officer.

In response to Mr. Bissonnette, Mr. Hingorany confirmed that he was withdrawing the petition for the landscape plan modification under the assumption that it should be filed with the Zoning Board of Review in conjunction with a hearing of the complaint. Atty. Gavin clarified that Planning Board would properly hear the petition for the landscape plan modification but if Mr. Hingorany chose not to go forward with the petition, the Zoning Board of Review would hear Mr. Levesque's complaint under the existing landscape plan. Mr. Hingorany thus reinstated his petition for the landscape plan modification. He reviewed the plan, which indicates the ivy plantings along the back side of Mrs. Monro's fence, a standard for future fences with slats so that abutters could view vegetation, and a planting plan which includes arbor vitae and rhododendron in the landscape buffer. Mr. Hingorany stated that the development landscape architect conducted site visits to select plantings and that test plants were established and are thriving. He stated that the residents with dogs want the fences to have contained areas for their pets. In response to Ms. Wilson, Mr. Hingorany stated that he submitted stamped copies of the proposed landscape plan to Mr. Lesinski. Mr. Bissonnette called for public comment to which there was none.

**MOTION:** Ms. Wilson made a motion, seconded by Mr. Tibbitts, to approve the stamped landscape plan as a modification to the original landscape plan and the final approval for Apollo Brothers, LLC (Seafare Condominium), AP 24, lot 11 (3352 East Main Road). The motion carried with four votes approving. Mr. Bissonnette voted against the motion.

**4. Agenda item # 5 JAM Construction, Inc. AP 52, Lot 4A (Randolph Way Subdivision) – Discuss status of road construction of Randolph Way and**

**the extension of the expiry date on the Letter credit**

Mr. Lesinski noted that according to an email from Atty. David Martland, dated March 8, 2016, BankNewport extended the road bond for a period of one year, (Letter, Leland Merrill, Jr., EVP, BankNewport to James Lathrop, Town of Portsmouth, dated March 4, 2016.) Mr. Lesinski noted that the petitioner has yet to submit a road construction schedule. Noting that the matter was over the bond extension, Mr. Bissonnette removed the item from the agenda.

**5. Agenda item # 6 Kyle Hess (Hog Island, Inc.) AP 69, Lot 172 (Hog Island, Greystone Avenue) – Request for combined Master/Preliminary/Final Plan approval for a one-lot subdivision from lot 172 on Hog Island**

Atty. Kenneth Tremblay, 181 Chase Road appeared representing Kyle Hess, petitioner with a request for preliminary and final approval for a 20,000 sq. ft. lot (lot F) along Greystone Avenue Extension, a private road on Hog Island. He explained that Lot 172, the Fairchild property encompasses most of the developable land on Hog Island. He placed into the record the Planning Board's prior decision (2013), which indicates a two-lot subdivision of Lot 172. He explained that the current petition and the previous approval represent the individual subdivision of Lot 172. Atty. Tremblay noted that the Zoning Board of Review approved a variance for frontage and building on a private road on February 4, 2016. Hog Island Inc. approved the petition (letter dated February 24, 2016) and the South End Association granted Mr. Hess permission to connect to SEA's water distribution line (letter dated February 23, 2016). Mr. Bissonnette called for public comment to which there was none.

**MOTION:** Mr. Garceau made a motion, seconded by Ms. Wilson, to grant master, preliminary and final plan approvals for Kyle Hess (Hog Island, Inc.) AP 69, Lot 172 (Hog Island, Greystone Avenue). All in favor. So voted.

**6. Agenda item # 7 Ryan Kirwin, AP 56, Lot 18 (68 Bancroft Drive) – Discuss pre-application for major subdivision**

Atty. Eric Chappell, Chappell & Chappell, 171 Chase Road appeared representing Ryan Kirwin for a pre-application discussion of a major subdivision on Bancroft Drive, which includes 3 residential lots, (two new lots and one existing) on 4.8 acres.

**MOTION:** Mr. James made a motion, seconded by Ms. Wilson, to accept Matthew J. Viana, P.E., Millstone Engineering, P.C., 250 Centerville Road, Warwick, RI as an expert in the field of civil engineering. All in favor. So voted.

Atty. Chappell explained that Lot 18, located at the end of Bancroft Drive, is zoned R30 and is within several overlay districts including the watershed district which contributes by tributary to the Lawton Valley reservoir situated within 500 feet of the site. He noted that a portion of the property changes from R30 to R60. He noted that due to these conditions, the plan is designed to be low impact and will likely involve variance approvals from the Zoning Board of Review. Atty.

Chappell explained that the plan calls for 3 lots, one of which has an existing house and a fourth lot for future development. The plan was designed with the intent to meet the current standards for a three-lot subdivision. He noted that Mr. Kirwin intends to develop the lots for his family members. The lots would be accessed by private driveways, extending from a public cul-de-sac at the end of Bancroft Drive. Atty. Chappell stated that he has presented the plan to the Portsmouth Water and Fire District, the Portsmouth Department of Public Works and the Portsmouth Fire Marshall. He indicated that Mr. Kehew, DPW rejected a green center island in the cul-de-sac. Atty. Chappell noted that the abutting property to the west and to the north/northeast is governed by certain perpetual conservation easements and declared open space precluding the need for paper road extensions for future development. Mr. Viana indicated that the slope is moderate at 8%. Atty. Chappell noted that a variance is necessary for frontage on a public road.

Matthew J. Viana, P.E., Millstone Engineering, P.C., 250 Centerville Road, Warwick, RI gave testimony on the plan. He noted that the nearly 5-acre site with one existing residence is a grassy sloping (southeast to northwest) property with a stone wall along two sides of the 3 sided perimeter. The site is serviced by the Peaceful Way water loop and an old septic system approved in 1960. He noted that Mr. Kirwin is renovating the existing home and that RIDEM approved a new bottomless sand filter septic system. The site has Newport soils, typical for Aquidneck Island. Previous soil testing revealed 18-inch water tables. Mr. Viana explained that the site abuts open space property associated with the Peaceful Way development to the east, conservation easement property to the east, the north and northwest. The site directly abuts to the north and northwest, the Narragansett Electric's fifty-foot wide pole line, which separates the site from the Lawton Valley Reservoir. The Bancroft Drive and Moniz Way subdivisions (R30) abut the site to the south. Mr. Viana noted that the storm water from Bancroft Drive enters a catch basin at the edge of the site. The town has an undefined drainage easement for a drain line to exit the catch basin and discharge in the middle of the site. He noted that the new drainage plan will address this easement. Mr. Viana described the proposed lot layout, noting that the two new lots have adequate area to meet the R30 zoning requirements. A significant portion of Lot 1 is zoned R60, falling within Lawton Valley reservoir setback. He noted that the cul-de-sac has a 45-foot radius and meets the requirements of DPW and the fire department. Atty. Chappell explained that Mr. Kehew, DPW stated that the 45- foot, fully paved cul-de-sac meets the best interests of the town. Mr. Viana noted that the water loop would be located in the cul-de-sac, with a hydrant at the far end of the cul-de-sac. The plan indicates a 14-foot wide shared driveway in accordance with the fire department requirements. Each lot will have a bottomless sand filter septic system with pre-treatment. A proposed drainage system will continue to capture the 1.5-acre run off taken by the current system in the cul-de-sac. All run off will be piped to a storm water treatment and storage facility along the northeast boundary at the lower edge of the site. This area is delineated on the plan as a drainage easement, which will be maintained

by a homeowners association. The plan requires a RIPDES permit for a 100-year storm. Mr. Viana commented that the proposed houses have roof chamber systems to lessen the run-off throughout the property.

In response to Ms. Wilson, he explained that the RIPDES permit allows the drainage easement beyond the 500 foot reservoir setback because the setback is a zoning overlay for the town. He noted that drainage easement is well beyond the 50 foot RIDEM wetlands buffer. He noted that the drop inlet at the end of Bancroft is removed on the plan to accommodate the cul-de-sac. He stated that the drainage easement design and documents are drafted further along in the approval process. Mr. Bissonnette called for public comment.

Andrew White, Fire Marshall, Town of Portsmouth stated that the plan complies with fire department requirements including the hydrant location at the far end of the cul-de-sac, the 45-foot wide cul-de-sac radius and the 14-foot width for the shared driveway.

**7. Agenda item # 8 Janice McLaughlin (Firex, Inc.) AP 44, Lot 18C (Russo Road), Advisory Opinion to the Zoning Board regarding the design of a new commercial building on Russo Road for the Firex, Inc. company**

Tom Principe, P.E., Principe Engineering Company, Tiverton, RI appeared representing the petitioner to request an advisory opinion to the Zoning Board of Review for a site plan approval of a new commercial structure on Russo Road for Firex, Inc. He explained that the site is a 20,629 square foot lot in a C1 commercial zone. The plan proposes a 4,896 square foot building. The plan meets all the zoning requirements for side setbacks, lot coverage and parking requirements. The required 20 parking spaces are indicated on the plan, one being ADA compliant. The interior of the building is designed ADA compliant. The plan indicates an evergreen screening on the east side of the site for a buffer to the abutting residential neighborhood. Mr. Principe reviewed the recommendations in the Design Review Board's opinion as follows: 1. the installation of barn style cross buck garage doors, 2. additional tree features in the front of the building, and 3. the installation of parking bumpers to delineate parking spots on the pervious parking surface. RIDEM approved the proposed septic system located on the north end of the lot. The water table is deep at 72 inches. The drainage system features deep galley systems and a proposed grass swale on the west side of the property line. Electric is underground. Mr. McGlenn, Portsmouth Water and Fire Department approved the water service and the fire department reviewed the plan with no comment. Site access from Russo Road is along three sides of the building.

Chris Fagan, Fagan Design Build Studio, Newport, RI explained that the owner, Firex, Inc. is occupying half of the commercial structure. The other half features commercial rental units. He highlighted green features including pervious pavement and solar energy. He noted that the barn style doors can be installed on the building and that all lighting will be on the structure.

Mr. Principe explained that the Planning Board advisory opinion for the site plan is required due to the size of the commercial building. Mr. Bissonnette further explained that the Planning Board must rule on the site plan's compliance with the Comprehensive Community Plan. In response to Ms. Wilson, Mr. Principe noted that the ADA compliant parking space features a paved surface apron at the front of the building. Mr. Bissonnette called for public comment to which there was none.

**MOTION:** Ms. Wilson made a motion, seconded by Mr. Tibbitts, to make a favorable recommendation to the Zoning Board of Review for Janice McLaughlin (Firex, Inc.) AP 44, Lot 18C (Russo Road), incorporating the three recommendations of the Design Review Board and ruling that the proposed plan and associated commercial building is in compliance with the Portsmouth Comprehensive Community Plan. All in favor. So voted.

**8. Agenda item # 9 Apollo Brothers, LLC (Seafare Condominium), AP 24, lot 11 (3352 East Main Road) – Application for a second modification to the Final Plan to alter buildings 10, 11, 12 & 13 to allow for a first floor master bedroom**

Neil Hingorany, Narragansett Engineering, Inc. and Apollo Brothers, LLC requested approval for a modification to the final plan approval, which changes buildings 10, 11, 12 and 13. He noted that the Planning Board previously approved the same request for buildings 4, 5 and 8. The petition requests approval for a first floor square footage increase to accommodate a master bedroom. The second floor square footage is decreased thus yielding no change in unit square footage. The buildings in question have ample area for the increased footprint and there are no concerns for boundary setbacks. Mr. Hingorany noted that the first floor master bedrooms are more marketable and that there would be no additional bedrooms in the units.

**MOTION:** Mr. James made a motion, seconded by Mr. Garceau to approve the modification to the final plan, which would change the layout and footprint of buildings 10, 11, 12 and 13 to allow for first floor master bedrooms for Apollo Brothers, LLC (Seafare Condominium), AP 24, lot 11 (3352 East Main Road). All in favor. So voted.

**9. Agenda item # 10 Joan M. DeMello Trust, AP 54, lot 17 (346 Vanderbilt Lane) – Request for Final Plan approval for Major Subdivision.**

Atty. Peter Regan, Sayer Regan & Thayer, 130 Bellevue Avenue, Newport, RI appeared representing John Harris, the petitioner who holds an option agreement to purchase the property subject to the development approval. He requested final plan approval for a 7-lot subdivision off of Vanderbilt Lane with a new road named Seaspray Drive. The Planning Board granted preliminary plan approval in March, 2015. The petition has RIDEM approvals and a CRMC assent.

Lyn Small, P.E., Northeast Engineers & Consultants, Inc., 55 John Clarke Road, Middletown, RI reviewed the plan for a coastal site subject to a 200-foot buffer. There is a small cottage with two out buildings located in the northeast corner close to the coastline. The seven lots include individual, four bedroom septic systems. The subdivision has two areas of storm water drainage, which feature pre-treatment and water quality. Storm water flows through structures in the road way and discharges to the coast. Electric and water service is brought in from Vanderbilt Lane. State approvals include CRMC assent, RIDEM subdivision suitability and water quality. CRMC restricted the existing cottage from improvements to its bathroom. The septic tank and the force main for the cottage is removed from the final plan. The southern most drainage feature is relocated further south between lots 2 and 3 to a more downhill point. Ms. Small indicated the water main loop and a water main extension through Sunrise Drive. The extension is subject to approval.

Atty. Regan explained that the preliminary plan had the water main looping back on itself. He noted that Mr. McGlinn, Portsmouth Water & Fire District prefers to have the line extend through the subdivision to Sunrise Drive and connect with an existing dead end line to form a loop. To accommodate this loop, the petitioner has to grant a utility easement over Lot 7 to the water district, which reduces the developable land area for the lot below 40,000 square feet, thus requiring a variance from the Zoning Board of Review. Ms. Small noted that the easement is 7500 square feet. Atty. Regan noted that the location is the most reasonable for the current plan. He requested that the Planning Board make final approval contingent upon the Zoning Board of Review's approval for a variance for area for Lot 7. He also requested an advisory opinion from the Planning Board to the Zoning Board of Review for the variance.

In response to Ms. Wilson, Ms. Small explained that she completed a drainage operation and maintenance report and schedule that was recorded with RIDEM, CRMC and the town. Atty. Regan suggested that he incorporate the maintenance schedules with the maintenance easement currently under review by Atty. Gavin. He noted that the application has the road as a public right of way. Ms. Small noted that the roadway drainage structures and culvert are maintained under the homeowners association, but that easement for the road is granted to the town. In response to Mr. Bissonnette, Ms. Small stated that the cottage bathroom is going to be removed.

John Harris, 280 Vanderbilt Lane, who holds an option to purchase the site, stated that the cottage does not have plumbing or electrical systems. The additional shed has a shower, a sink and a toilet. He noted that CRMC requires removal of this plumbing. Mr. Bissonnette called for public comment.

Richard Toohey, 63 N. Cove Circle, North Kingstown, RI stated that Joan DeMello was his mother and that he grew up at 346 Vanderbilt Lane,

Portsmouth. He noted that his mother and sister past away in 2015. He is one of five siblings who grew up together. He explained that the trust and the subdivision of the land was revealed to him and the family at the death of his mother in August. He stated that the trust is being contested by himself and other surviving children of Mrs. DeMello. He said his attorneys are in the pre-discovery phase based on Rule 27. He requested a continuance to the final plan approval. He said that scheduled depositions have been postponed and he had hoped to bring information forth to the Planning Board. His attorneys advised him to try to obtain the continuance.

Atty. Regan argued that the application submitted by Mr. Harris has nothing to do with the family dispute over the property owned by the trust set up by Joan DeMello to which Dean DeMello, her son is the trustee. He confirmed that neither he nor Mr. Harris have received a stay of the subdivision proceedings through Mr. DeMello's or Mr. Toohey's attorneys. Atty. Gavin agreed with Atty. Regan and advised that the Planning Board that without a stay, the Board cannot hold the subdivision approval in abeyance indefinitely. He noted he is unaware of any action in Superior Court to execute a stay.

Mr. Toohey reiterated that the family just found out about the trust. He stated that he feels his mother would have wanted to preserve the property as a refuge for animals.

Mr. Bissonnette explained the trust dispute would be properly heard in Superior Court and that without a ruling on a stay, the Planning Board must act on the petition.

**MOTION:** Mr. Tibbitts made a motion, seconded by Mr. James, to grant final plan approval and to make a favorable recommendation to the Zoning Board of Review for a variance for area for Lot 7 for Joan M. DeMello Trust, AP 54, lot 17 (346 Vanderbilt Lane) subject to the review and approval by the town solicitor for the maintenance easement, the homeowner's association by-laws and the declaration of restrictions, submitted with the application. All in favor. So voted.

#### **10. Agenda item # 11, Review schedule for the new Comprehensive Community Plan and critical planning challenges and opportunities in Portsmouth**

Gary Crosby, Town Planner proposed a workshop schedule for the Comprehensive Plan. Under the schedule, the Planning Board holds a workshop on the last Wednesday of each month from April to November 2016. Each workshop will focus on elements of the Comprehensive Plan, which are listed in Mr. Crosby's memo, dated March 3, 2016. Mr. Crosby will distribute information packets for each element one month prior to the element workshop. During the workshop, the Planning Board members and the public may make comments to be incorporated into a preliminary draft and reviewed by the members the

following month. After the completion of the workshop process, Mr. Crosby will present a final draft for Planning Board approval. Mr. Crosby noted that 21 other communities in Rhode Island are behind in comprehensive plan drafting. He noted that the state is not holding towns to the June 2016 deadline and that expired plans are still valid for legal purposes. He noted that there is a bill before the General Assembly to push the deadline out to June 2017. He stated that he submitted his proposed process to the state and he expects to receive a letter from the state codifying the process.

**MOTION:** Ms. Wilson made a motion, seconded by Mr. Tibbitts to accept and proceed with the Comprehensive Community Plan workshop process presented by the town planner, which schedules workshops on the last Wednesday of each month at 7 p.m. from April to November 2016. All in favor. So voted.

**11. Agenda item #2 , Discuss Aquidneck Island Planning Commission (AIPC) and report of AIPC activities**

Ms. Wilson reported on the recent activities of the AIPC with updates on membership, staff and projects. She announced that the AIPC is moving to a new office by April. The AIPC hired a consulting firm for fundraising and strategic planning. It is also hiring a staff member for technical research and grant applications as well as an office assistant. Ms. Wilson noted that the AIPC is holding public forums in partnership with the Newport Daily News at the Pell Center at Salve Regina University. She noted possible AIPC participation in the Smart Growth forum.

**12. Agenda item # 13, Discuss the subdivision regulations regarding the Town's ability to oversee the completion and acceptance of public improvements such as public roads and the inclusion of a note regarding the "Release of Lot" form on the Subdivision plan**

Mr. Lesinski explained the lack of follow through by the town with the road completion and acceptance procedures. He suggested that Exhibit F, Checklist for Release of Lots be attached to the final plan mylar prior to plan recording as a way to ensure road completion.

Mr. Tibbitts explained the Planning Board's discussion at the February meeting which, concluded with a motion to ask Atty. Gavin to advise the Board on the ability of the Board to enforce the completion of Exhibit F in association with the recording of a final plan.

The recording secretary read the February minutes for further clarification. Atty. Gavin stated that he didn't think it was appropriate to make such an attachment to land evidence records thus impacting a property owner's title.

**MOTION:** Mr. Tibbitts made a motion, seconded by Mr. Harding to continue the agenda item "Discuss the subdivision regulations regarding the Town's ability to oversee the completion and acceptance of public improvements such as public

roads and the inclusion of a note regarding the 'Release of Lot' form on the Subdivision plan" to the April 13 regular meeting. All in favor. So voted.

**13. Agenda item #14, Approve Monthly Project Status Reports, Administrative Subdivisions and Plat Plan Recording**

Mr. Lesinski presented Monthly Project Status Reports, Administrative Subdivisions and Plat Plan Recording, March 9, 2016.

**MOTION:** Ms. Wilson made a motion, seconded by Mr. Harding to accept the Portsmouth Planning Board Monthly Project Status Reports, Administrative Subdivisions and Plat Plan Filings, March 9, 2016 and to place it into the record. All in favor. So voted.

At 9:05 p.m., a motion was duly made and seconded to adjourn the meeting. All in favor. So voted.

Respectfully submitted:  
Dede Walsh  
Recording Secretary for:

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Leon Lesinski  
Administrative Officer