



**TOWN OF PORTSMOUTH
PLANNING BOARD**

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

**PORTSMOUTH PLANNING BOARD
Regular Meeting
January 11, 2017**

Members Present: Guy Bissonnette, Ryan Tibbetts, Kathleen Wilson, Luke Harding, David Garceau, Edward Lopes and Michael James.

Members Absent: none

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: Russo Road Subdivision, AP 44, lots 18 & 19 – Discuss completion of construction and acceptance of Russo Road

Mr. Lesinski reported that the applicant requested a continuance to the April 12, 2017 regular meeting.

MOTION: Mr. Harding made a motion, seconded by Mr. Tibbetts to continue Russo Road Subdivision, AP 44, lots 18 & 19, to the April 12, 2017 regular meeting. All in favor. So voted.

2. Approval of minutes for Special Planning Board meeting of October 26, 2016 and Regular meeting of November 9, 2016

MOTION: Mr. Lopes made a motion, seconded by Mr. Harding to approve the minutes of the special meeting, October 26, 2016 with the following correction: Correct the spelling of Mr. Tibbetts name, page 2, last sentence. All in favor. So voted.

MOTION: Mr. Harding made a motion, seconded by Mr. Tibbetts to approve the minutes of the regular meeting, November 9, 2016. All in favor. So voted.

3. Agenda item #4, Hope & High Properties, LLC, AP 30, Lots 17 & 17A – Discuss completion of construction and acceptance of Brown Terrace Extension

Carl Benevides, 72 Tupelo Street, Bristol, RI, owner, was present for the hearing of the agenda item. Mr. Lesinski noted that the Board received a copy of a memorandum, dated January 6, 2017, from Brian D. Woodhead, Deputy

Director, Public Works Department, Town of Portsmouth in which Mr. Woodhead certified Brown Terrace Extension as completed. Mr. Lesinski recommended that the Board make a favorable recommendation to the Town Council for the acceptance of Brown Terrace Extension. He explained that the Planning Board must stipulate the requirement of a 5% maintenance bond for a period of one year in the recommendation. Mr. Bissonnette explained to Mr. Benevides that the construction bond is terminated when the maintenance bond is put in place.

MOTION: Mr. Harding made a motion, seconded by Ms. Wilson to make a favorable recommendation to the Portsmouth Town Council for the acceptance of Brown Terrace Extension (Hope & High Properties, LLC, AP 30, Lots 17 & 17A), based on the DPW certification of January 6, 2017 and subject to the posting of the required 5% maintenance bond (for a period of one year) at which time the existing construction bond may be released. All in favor. So voted.

4. Agenda item #5, Jam Construction, Inc., AP 52, lot 4A (Randolph Way) – Discuss completion of construction and acceptance of Randolph Way
Atty. Sean Bouchard, Silva, Thomas, Martland & Offenber, LTD, 1100 Aquidneck Avenue, Middletown, RI appeared representing the developer. He requested a positive recommendation to the town council for the acceptance of Randolph Way.

Mr. Lesinski noted that the Board received a copy of a memorandum, dated January 3, 2017, from Brian D. Woodhead, Deputy Director, Public Works Department, Town of Portsmouth in which Mr. Woodhead certified Randolph Way as completed. Mr. Lesinski recommended that the Board make a favorable recommendation to the Town Council for the acceptance of Randolph Way. He explained that the Planning Board must stipulate the requirement of a 5% maintenance bond for a period of one year in the recommendation.

MOTION: Mr. Harding made a motion, seconded by Mr. Lopes, to make a favorable recommendation to the Portsmouth Town Council for the acceptance of Randolph Way (Jam Construction, Inc., AP 52, lot 4A), based on the DPW certification of January 3, 2017 and subject to the posting of the required 5% maintenance bond (for a period of one year) at which time the existing construction bond may be released. All in favor. So voted.

5. Agenda item # 6, Highlands at Prescott Point, LLC (owner: Roman Catholic Diocese of RI), AP 55, lot 1, 2543 West Main Road, approve Master Plan Decision

In response to Ms. Wilson, Christopher C. Bicho, 96 Diane Avenue, developer confirmed that the number of lots (11) granted in the Master Plan approval had not changed.

MOTION: Mr. Tibbetts made a motion, seconded by Mr. Harding, to approve the Master Plan Decision for Highlands at Prescott Point, LLC (owner: Roman

Catholic Diocese of RI), AP 55, lot 1, 2543 West Main Road, as prepared by Leon Lesinski, the Planning Board Administrative Officer. All in favor. So voted.

6. Agenda item # 7, Craig and Arlene Mulligan, AP 22, lot 7 (69 Brownell Lane) – Request for Preliminary and Final approval for minor subdivision (2 lots)

Jo-Anne Gorton, 87 Freeborn Street, appeared representing her uncle, Craig Mulligan with a request for preliminary and final approval for a 2-lot, minor subdivision. Mr. Bissonnette explained why Ms. Gorton could not represent her uncle in the hearing of the application. He recommended that Ms. Gorton have Mr. Mulligan file a signed and notarized Owner/Applicant Representative Form, Town of Portsmouth, allowing her to represent him. Mr. Lesinski provided Ms. Gorton with a copy of the form.

MOTION: Mr. Lopes made a motion, seconded by Mr. Harding, to continue Craig and Arlene Mulligan, AP 22, lot 7 (69 Brownell Lane) to the February 8, 2017 regular meeting. All in favor. So voted.

7. Agenda item # 8, Prescott Point, LLC, AP 55, lot 1A, 2547 West Main Road – Request for Final Plan approval for Planned Resort Development

Atty. Laurent Rousseau, Moore, Virgadamo & Lynch, Ltd., Middletown, RI appeared representing the petitioners, Prescott Point, LLC and Prescott Point Investor, LLC with a request for final plan approval for a planned resort development on 96-acre site on West Main Road. He explained that 149 units were granted in a previous Zoning Board of Review decision to construct and operate an assisted care/retirement residential community approved in June 3, 2000 and recorded in Book 641, Page 264 of the Portsmouth land evidence Records as amended by a decision of the Portsmouth Zoning Board of Review dated November 12, 2005 recorded in Book 1163, Page 164. Approximately 54 units are built, under that approval, leaving a remainder of 62 units. The current application for the planned resort development has an additional 77 units, yielding a total of 139 units for future development, for which the Planning Board has previously granted master and preliminary plan approval. He noted that the project engineer, Lyn Small, P.E. has made minor revisions to the plan for final approval. He also noted that, beyond the lots located in Portsmouth, a portion of the development is located in Middletown, RI to the south. The plan has received the necessary advisory opinion for a special use permit from the Middletown Planning Board. The Middletown Zoning Board approval of the special use permit is pending. Mr. Lesinski certified the Planning Board checklist and the submitted plans. Atty. Rousseau noted that within 60 days of final plan approval, he is required to submit a development agreement to the Planning Board for approval. In response to Ms. Wilson, Atty. Rousseau explained that the \$100,000.00 cash bond for the purpose of designing a traffic light at West Main Road was put in place by the original developer and taken over by Prescott Point, LLC. He noted that RIDOT issues a determination if there are enough warrants (based on traffic flow) for the light.

MOTION: Mr. Lopes made a motion, seconded by Mr. Harding, to accept Lyn Small, P.E. Northeast Engineers & Consultants, Inc., 55 John Clarke Road, Middletown, RI as an expert in the field of civil engineering and a registered P.E. in the State of Rhode Island. All in favor. So voted.

Lyn Small, P.E. Northeast Engineers & Consultants, Inc. explained the minor modifications to the plan, which were required by RIDEM. She noted that there are no changes to layout, lot coverage, parking, and roadway width or geometry. Referring to the proposed plan, she reviewed a list of requested variances that she submitted early on in the approval process, some of which are no longer necessary. The required variances are as follows:

1. A variance for distance of interior roadway to structure is limited to the corner lots as represented on the preliminary plan.
2. A variance for road width reduction is for 24 feet (30 feet required).
3. A variance for road curve radius for "New Private Drive" is for 57 feet (150 feet required). Ms. Small stated that this variance meets with the fire code.
4. A variance for tangent between roadway curves is for Roadway A along areas that are slightly less than the 103 feet requirement.

Ms. Small noted that the final plan meets all the requirements for parking. She noted that RIDEM has granted approvals for septic, RIPDES and wetlands. Ms. Small commented that the Middletown Planning Board required that three culverts on the Middletown portion of the site be inspected for condition, and monitored periodically for to determine their capacity and operation for 25 and 100-year storms. In response to Mr. Lopes, Ms. Small noted that the wetlands permit was recorded in both towns.

Atty. Rousseau reviewed the status of items and conditions listed on Mr. Lesinski's memorandum to the Planning Board, dated January 4, 2017 as follows:

1. LMI units: 7 of the 77 additional units are designated LMI. However, the developer would prefer a payment in lieu of construction options if it becomes available under a new ordinance. Atty. Rousseau stated that he drafted a proposed ordinance for the payment in lieu of option and submitted it to the town over a year ago. Mr. Lesinski will distribute a copy of the draft to the Planning Board members. Atty. Rousseau agreed that the LMI units could be built according to a phasing plan.
2. Design Review Board approval: Atty. Rousseau will present the current Prescott Point Condominium Association's architectural standards to the DRB with the addition of enforcement language that is similar regular subdivision restrictions, allowing the developer, the unit owners and the condominium association to enforce the standards. He will also present the landscape and lighting plan, designed by a registered landscape architect to the DRB.
3. Development Agreement (Zoning Ordinance Article VIII, section D 12)

Included Elements:

- a) Phasing of development: Atty. Rousseau noted that the development is unique because much of the infrastructure is in place. Remaining infrastructure will be phased in as the remaining land units are developed. He presented a general schedule of seven construction phases, highlighting elements and actions. He stated the construction phases as follows:
 - Phase 1: Demolish the existing school building
 - Phase 2: Construct 6 residential units on Master Land Unit 3 know as "Commercial" along West Main Road
 - Phase 3: Construct 16 residential units on Master Land Unit 9 know as "Spyglass Ridge"
 - Phase 4: Construct the clubhouse and pool (located in Middletown) and the tennis courts
 - Phase 5: Construct 18 residential units on Master Land Unit 7 known as "Assisted Living"
 - Phase 6: Construct 37 residential units on Master Land Unit 6 known as "Island View"
 - Phase 7: Construct a 20 unit assisted living facility in Middletown.
 - b) Performance Guarantees: Atty. Rousseau stated that the need for performance guarantees is limited because much of the infrastructure is completed. He noted that the \$100,000.00 cash bond for the traffic light is held by the town and that his office is holding \$200,000.00 in escrow for operation and maintenance of the sewer treatment plant, should RIDEM require its posting.
 - c) Inspections and maintenance of facilities: The development agreement will reflect the right of the town to inspect facilities. The condominium association is obligated to enforce and carry out the maintenance of facilities.
 - d) Design Review Board approval: Atty. Rousseau will present the development agreement to the DRB for a positive recommendation to the Planning Board.
4. Performance Bond:
 - a) Traffic Light: The \$100,000.00 cash bond will remain in effect.
 - b) Construction and Maintenance of common areas: Most of the infrastructure is in place but the developer will comply with any requirements for performance bonds, as the Planning Board deems necessary.
 5. Approval of all legal documents by the Town Solicitor: Atty. Rousseau agrees to comply with this requirement.
 6. Demolition of existing school building: Phase one of the construction schedule calls for the demolition of the school building.
 7. Conditions in the Preliminary Plan Decision:
 - a) *The easement to protect the existing parking area, which encroaches lots 94 and 95 in Land unit 3.*: Atty. Rousseau will

provide an easement to protect the said parking area and to allow the unit owners to continue to park in the area.

- b) *The plan includes walking paths on limited common areas to the walking trail system.:* The plan designates the walking paths and their constructions will be included in the phasing schedule.
- c) *The applicant investigates alternate walking trail surface such as rubber material, which would provide more stability for older adults:* Ms. Wilson objected to the suggestion that rubber mulch be used for the trail surface. She suggested an interlocking rubber mat surfacing which is better for wetlands protection and ADA accessibility since the development has an older population. Ms. Small stated that the mats are not necessary because the trails are not located in wetlands or associated protection buffers. She noted that the gravel base for the coastal walkway in Newport Beach Club has held up very well and that the maintenance provision for the walking trails will be included in the development agreement. Ms. Small noted that the age restriction for the development was eliminated and that the trails, which are rustic in nature, are not advertised as ADA compliant.

Christopher Bicho, Prescott Point, LLC, developer, 96 Diane Avenue also commented that the age restriction was lifted. He noted that the walking trails are recreational in nature and designed with RIDEM approval. Mr. Harding noted that since the age restriction was lifted most unit purchasers are over 55.

- d) *The project engineer will review the landscape plan and the utility plan #22 to determine where drainage and sewer lines encroach on tree root system.:* The developer agrees with and will complete this condition of approval.
 - e) *The applicant will consider and look into hiring a landscape architect:* A registered landscape architect designed and stamped the landscape plan for the common areas. Atty. Rousseau noted that the units are sold as land only condominiums whereby the owners or builders are obligated to adhere to the architectural standards set forth in the condominium documents.
 - f) *The applicant will make a fee in lieu of development of LMI housing provided that the Town Council enacts such an ordinance based on the state enabling legislation. If the Town Council does not pass such an ordinance, then the applicant will provide the regulated number of LMI housing units in the development or elsewhere within the Town of Portsmouth:* The developer prefers to pay a fee in lieu of construction should the Town Council pass the necessary ordinance, however he agrees to comply with constructing LMI units, should the Town Council not pass such an ordinance.
8. Develop Architectural Review Standards for Single Family Residences in Prescott Point Master Condominium: Atty. Rousseau will re-draft the existing architectural review standards to include enforcement provisions.

He provided the Planning Board members copies of the existing standards.

Atty. Rousseau reviewed all the provisions of the development agreement that are required by ordinance. He agreed to submit the agreement to the town solicitor for review. He stated that the agreement includes lines for signing by the Planning Board, the solicitor and the developer.

In response to Mr. Lopes, Ms. Small noted that the water service extends to the water treatment plant and that Newport Water does not require a bond for the service.

Mr. Bissonnette called for public comment.

Raymond Morrissette, 46 Brook Farm Road, Assistant Secretary for the Executive Board, Beech Hill at Prescott Point read a lengthy letter to the Planning Board, dated January 9, 2017 from the Executive Board, Beech Hill at Prescott Point, signed by Dennis Chandler, President. The letter was accepted into the record. The letter details grievances that the Executive Board has with the developer and requests delay of final plan approval until said grievances are resolved. Mr. Morrissette read "Beech Hill At Prescott Point Executive Board, Unauthorized or Uncoordinated Changes to the Plans for Prescott Point/Phase 2 (Rev. #1), dated January 9, 2017. The document was accepted into the record. At the request of Mr. Morrissette, the Planning Board accepted into the record a letter, dated January 5, 2017, from Noel Ashworth, a resident of Prescott Point to the Planning Board, concerning the condition and restoration of the historic walking trails in the development.

Noting that he received the Beech Hill Executive Board's statement that day, Atty. Rousseau argued that he and Mr. Bicho are present for a final plan approval and that they followed required procedures and made required filings for the master and preliminary plan approvals granted by the Planning Board. He argued that the purpose of the final plan hearing is to approve the development plan application, provided that it complies with the previous approvals. He argued that the Beech Hill Executive Board should bring their grievances to the town zoning enforcement officer. He argued against several of the grievances made by the Beech Hill Executive Board. He requested action on the final plan approval.

Ms. Small stated that the trails referenced in Mr. Ashworth's letter are located inside the wetlands area and would require an application to alter wetlands to RIDEM. She noted that trails are also separate from the proposed development of the project. She spoke on the difficulties associated with such an application.

Referring to the Beech Hill Executive Board's concerns for soil mis-classifications, Mr. Morrissette argued that this issue has been overlooked in the

storm water analysis and may have negative impact on the 6 proposed lots on West Main Road, which have 25-35% slopes. Ms. Small stated that the drainage design is not based on a no-flow condition but on a no-increase-in-peak-run-off condition to the design point, which is the existing wetlands. She continued stating that if the run-off is safely conveyed through the site, an increase of run-off from one lot to another, within the development, is allowable by town and state codes. She explained that behind each of the 6 lots is a rain garden with an under drain for collection. Ms. Small stated that the analysis shows that there is no increase in peak run-off under the design. She noted that the area was previously designated for a commercial building with considerably more associated impervious surface than that of the proposed 6 houses, which have a common access driveway. In response to Mr. Lopes, Ms. Small concurred that RIDEM reviewed all the storm water run-off and its impact on the wetlands before rendering its RIPDES and wetlands permits for the plan.

Dennis Chandler, 120 Stony Brook Lane, President, Beech Hill at Prescott Point Executive Board expressed concern that Mr. Bicho promised the construction of the pool and the clubhouse first and that now its further down on the phase schedule. Atty. Rousseau responded stating that if the Board approves the plan and he proceeds with the development agreement, the Planning Board can require changes to the phase schedule. Mr. Bissonnette explained to Mr. Chandler that the PUD development agreement is a contract that the developer has with the town and nothing within the agreement is final without Planning Board approval. Mr. Chandler inquired about measures the Planning Board could take to have the traffic signal installed at the development entrance. Mr. Bissonnette suggested that Mr. Chandler call the State Traffic Commission.

Robert Steele, 45 Freedom Trail Drive requested that the Board require that the assisted living facilities be moved higher in the phase schedule. Atty. Rousseau explained that phase 7 includes the assisted living facility which is located in Middletown and that the Portsmouth Planning Board has no jurisdiction over when the facility may be built. He also noted that the developer is not bound by a phasing requirement in Middletown. Mr. Bicho explained that he is unsure when the facility will be constructed. He is putting the parcel up for lease as soon as possible and the market will determine the outcome. In response to Mr. Harding, Mr. Bicho stated that the use of the parcel cannot be changed without the consent of the condominium association. Mr. Steele inquired as to whether the Planning Board receives the iterations of the public offering statement for the development that is provided to potential buyers. Mr. Bissonnette explained that the plans and the development agreement are a matter of public record but that a public offering statement as described by Mr. Ashworth are beyond the purview of the Planning Board. Atty. Rousseau explained that a public offering statement is a document that is mandated by law, which the developer has to produce prior to putting forth lots for sale. He stated that the public offering statement is not recorded and not relevant to the proceedings of the Planning Board.

Neil Ashworth, 110 Rebels Way noted that at a homeowners meeting on December 15, 2016, Mr. Bicho suggested a meeting with Ms. Small to discuss the status of the walking trails that Mr. Ashworth references in his letter. He said the meeting has yet to be scheduled. At Mr. Bissonnette's request, Mr. Bicho committed to scheduling a meeting with Mr. Ashworth before leaving for the evening. Atty. Rousseau concluded requesting that the Board move on final approval.

Ms. Wilson inquired about an RIDOT line shown on sheet 2543, "Proposed Utility Plan, Sheet 3", which extends from just northwest of Rebels Way to the southwest and is under the footprint of an existing building to the west of Rebels Way. She suggested that Ms. Small investigate an existing easement with RIDOT for this condition. Ms. Small responded stating that the line is an existing condition in Phase 1 and not part of the proposed project. It appears on the sheet because there is a small portion of proposed conditions in the lower left hand corner of the sheet. She explained that she added the line to the plan during the permitting process (between preliminary and final approvals) at the request of Gary Crosby, Town Planner, who had received notification from RIDOT regarding an issue with the line. She explained that she investigated the existing covers and when she drew a straight line from the line structures to the outfall, the line fell underneath the building footprint. She noted that the location is approximate and that further investigation may reveal that the line has a bend outside the building footprint. In response to Mr. Harding, Atty. Rousseau stated that there are seven units left to be sold in Phase I. Mr. Harding commented that the future property owners in the said building should be made aware that the line falls under the footprint.

In response to Ms. Wilson, Mr. Bicho explained that under the proposed development, the lighting plan indicates lights at the roadway intersections to allow for clear reading of street signs.

MOTION: Mr. Lopes made a motion, seconded by Mr. Harding, to make final plan approval for Prescott Point, LLC, AP 55, lot 1A, 2547 West Main Road, Planned Resort Development based on and incorporating the following:

1. The plan, dated December 5, 2016, submitted to the Portsmouth Planning Board.
2. The testimony of the project engineer, Lyn Small, P.E. Northeast Engineers & Consultants, Inc. during the final plan hearing, January 11, 2016 that dictates the requested modifications and variances, etc. as necessary that may have been modified or changed from the original preliminary approval
3. The letter, dated January 4, 2017 from Leon Lesinski, Administrative Officer, Portsmouth Planning Board to the Planning Board members as well as the testimony, during the final plan hearing, January 11, 2016, on those criteria and actions outlined in the letter. The applicant will incorporate those criteria and actions in the development agreement

- which the Applicant will be subject to at a later date;
4. The RIDEM Insignificant Alteration Permit, Application No. 16-01 12, RIPDES File No. RIR 101406, dated September 16, 2016
 5. The Checklist for Final Plan Application, Prescott Point, LLC, AP55, lot 1A, Planning Board, Town of Portsmouth, signed by Leon Lesinski, Administrative Officer, Portsmouth Planning Board on December 28, 2016
 6. The development lighting plan submitted by the applicant.
- All in favor. So voted.

8. Agenda item #9, Discuss in-law apartments as a Low and Middle Income (LMI) housing option (see new zoning ordinance – section 45-24-37)

Ms. Wilson inquired about the definition of an in-law apartment under the existing ordinance and if that definition would comply with the State definition of LMI housing.

Michael Asciola, Assistant Town Planner stated that the zoning ordinance does define accessory family dwelling unit under Article II Definitions, section B as "...for the sole use of one or more members of the family of the occupant or occupants of the principal residence, but not needing to have a separate means of ingress and egress." He also noted that under Article V, Use Regulations, Section I, item 15, the accessory family dwelling unit is allowable "...providing there are no separate cooking facilities and no separate means of ingress or egress."

Mr. Bissonnette noted that under the state statute, Title 45, Towns and cities, Chapter 45-53, Low and Moderate Income Housing, Section 45-24-17 (3) (e), "...an accessory family dwelling unit in an owner-occupied, single-family residence shall be permitted as a reasonable accommodation for family members with disabilities or who are sixty-two (62) years of age or older. The appearance of the structure shall remain that of a single-family residence and there shall be an internal means of egress between the principal unit and the accessory family dwelling unit." Mr. Asciola noted that the town's definition does not meet the state's definition.

Ms. Wilson stated that she requested the discussion because in the case of a recent development application that indicates a subdivision sewer system, there may have been an opportunity for a developer to create LMI housing in the form of in-law apartments.

Mr. Bissonnette commented that Ms. Wilson's idea is a good one but requires a petition to the state legislature for an amendment to the statute.

9. Agenda item #10, Discuss Rhode Island Low Impact Development (LID) site planning and design guidance

Mr. Lesinski stated he was asked to place this item on the agenda. He noted the packet of documentation that he provided the Board members.

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

Ms. Wilson reported that the AIPC held a meeting on the previous day, which she was unable to attend. She spoke on the AIPC audit, which will be presented to the town finance director.

Tom Green, 110 Thayer Drive, inquired as to why the AIPC went forward with the audit when it would not in the past. Ms. Wilson stated that the organization acquired a one million dollar grant, which stipulated an audit for governing agencies.

11. Agenda item # 12, Approve Monthly Project Status Reports, Administrative Subdivisions and Plat Plan Recording

Mr. Lesinski presented Monthly Project Status Reports, Administrative Subdivisions and Plat Plan Recording, January 11, 2017.

MOTION: Mr. Harding made a motion, seconded by Ms. Wilson to accept the Portsmouth Planning Board Monthly Project Status Reports, Administrative Subdivisions and Plat Plan Filings, January 11, 2017 and to place it into the record. All in favor. So voted.

At 9:20 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:

Leon Lesinski
Administrative Office