

New Shoreham Town Council Meeting
Monday, December 7, 2009
Town Hall Old Town Road, Block Island
7:00 p.m.

Present: First Warden Kimberley H. Gaffett, Second Warden Raymond J. Torrey, Town Councilor Peter B. Baute, Town Councilor Kenneth C. Lacoste, and Town Councilor Richard P. Martin. Also present were Town Manager Nancy O. Dodge, Town Planner Jane Weidman and Town Attorney Donald J. Packer. Town Clerk Fiona Fitzpatrick was present to take the minutes of the meeting. Approximately 30 members of the public attended the meeting.

Warden's Report: First Warden Gaffett reminded everyone local shops will be open for Christmas shopping strolls each Tuesday until Christmas. Members of Town boards, committees and commissions will be reappointed at the next meeting, many boards will have openings. People were encouraged to attend Town board meetings.

Public Input: Bill Wilson pointed out the 350th Anniversary of 1661 is approaching fast; he hopes the Town will celebrate the event. Socha Cohen said sidewalks are needed on Chapel Street. Chris Warfel updated the Town Council with regard to his discussions with the Shellfish Commission about aquaculture and other issues.

Councilor Lacoste asked for a pause to remember those at Pearl Harbor on December 7, 1941, and to consider the commitment and sacrifices of all service members since that time.

1. Act on proposed amendments to the TNS Zoning Map and Ordinance re: Public Utility Zone. Public Hearings held on Oct. 5, 2009 and Nov. 18, 2009.

Ms. Gaffett noted the public hearing phase was closed.

Dr. Baute moved:

I would make the Motion to approve the amendments to the zoning ordinance and map as proposed in the Planning Board's transmittal of November 13, 2009 which were approved by the Planning Board November 9, 2009.

I do not make this Motion lightly considering the emotional toll it has taken on us all.

I would like to reiterate my recognition of the many hours of work by the Planning Board, and our Planning Consultant, Jane Weidman, in studying and drafting these amendments. I appreciate and thank them for their efforts.

While I read and considered the Planning Board's recommendation of November 13, 2009, and in particular its opinion relative to consistency with the Comprehensive Plan and Zoning Ordinance, I do not agree with that opinion or the recommendation. I find it particularly of note that the Planning Board originally forwarded us a unanimous, unequivocal recommendation for approval of Utility WECS as a permitted use, dated May 20, 2009. After the first night of hearing it was the Council who sent it back to the Planning Board to consider the Special Use Permit option. It returned to us with a less than unanimous recommendation and with conditions that were not attached to the original recommendation, even though it was to be a use allowed only by a Special Use Permit and not as a permitted use.

I read Attorney Plunkett's undated Memorandum on behalf of the objectors stating their position relative to the Comprehensive Plan. I want to thank Mr. Plunkett for a professional and respectful presentation of his clients' position. However his opinions are those of his clients, who are obviously opposed to the amendment and I do not agree with them.

I also considered Mr. Lombardo's public comments and for the same reasons cannot accept his opinions as mine. I am particularly concerned that they advocate the construction of a utility sized wind turbine in the densest parts of town. Where could such a turbine be installed anywhere downtown and come anywhere near the draft proposal of guidelines Mr. Plunkett obtained from DEM and urged us, on behalf of his clients, to follow?

I listened to the public comments of Mr. Vandemoer, Mr. Taft and Scott Commings. I appreciate all they do, and have done, for the island. While I respect their opinions, and their strong advocacy for their groups, they supplied me with no hard facts in their comments to convince me that a turbine could not be installed on that site and address their concerns.

After having a long time to think about this I find that I generally agree with the opinions expressed by our Planning Consultant in her memo of March 2, 2009.

Specifically I feel that the proposed amendments are in conformity with our Comprehensive Plan as they are consistent with:

1. GOALS AND OBJECTIVES

“One of this plans recurrent themes is that of expanding Island control over Island services.”

6. SERVICES AND FACILITIES

C. Electric Energy

“In the future the Town and the management of the Island’s electric power system should work closely as partners. In order to meet the increasing demands for electric power in a way that maximizes cost-effectiveness, minimizes pollution and noise, and is visually non-intrusive, there is now a need for the Town to take a proactive role in establishing energy goals and priorities, including not only in developing adequate generation and distribution facilities but also in conservation and demand management considerations.”

I feel the amendments foster the implementation of the goals and objectives and the following implementing actions:

IMPLEMENTING ACTIONS

SF 4. Support compatible alternate energy sources and promote conservation as a means of reducing demands on the Power Company’s strained capacity that is complementary to energy conservation efforts.

SF 6. Explore, as is being done, the means by which the Block island community can exercise a more effective voice in guiding management of such critical services as electric power, ferry service and air linkage to the mainland.

SF 9. With the help of expert consultants as needed, undertake studies and adopt an updated Island energy plan as a future element of the Comprehensive Plan. Those studies should include analysis of all reasonable and available energy supply and conservation options. The resulting element should include appropriate future roles for energy conservation as a means of avoiding unnecessary costs and demand on resources, the use of alternative energy sources including WECS, solar power, fuel cells, and others as well as possible extension of an electric cable to the mainland. In recognition of the public benefit to result, the fees to conduct such studies should be requested at the Financial Town Meeting.

SF 13. Explore other feasible steps towards energy goals including use of the sewer plant’s generators to provide power to Town facilities, distributed generation through many small sources, and use of “net metering” as the basis for compensating small electric generators, rather than the less generous “avoided cost” basis.

While the Planning Board found inconsistency with Services and Facilities Action

9. I find that this Section advises us that the Town, with the help of expert consultants, to develop an updated Island energy plan, to include energy conservation, and the use of alternative energy sources. It also mentions the possible cable to the mainland. For the past three years, the Town has had the Electric Utility Task Group studying these issues in detail. Its members are acknowledged experts. Their recommendations have included a wind turbine at the Transfer Station, as well as additional solar applications. You will

note the 12kw solar unit just outside the Town Hall. The School Department is considering the expansion of its solar capability. The Council has also received detailed energy audits of Town buildings, and is in the process of acting on the energy saving potentials arising from those audits. On November 6, 2009, the Electric Utilities Task Group unanimously voted to support the zoning amendments.

Given those observations, it is my opinion that the Council is in fact acting in a manner consistent with the Comprehensive Plan Action 9.

With regard to Natural and Cultural Resources Implementing Action 4, I note that the proposed Zoning Amendments, as revised do require a special use permit and, in that regard, do address environmental considerations. It requires studies and reports to be submitted for consideration by both the Planning Board and the Zoning Board to assess the feasibility of any specific application for a wind turbine which will further insure compliance with the Comprehensive Plan and thus is consistent with the Comprehensive Plan's N and S Action 4.

The Planning Board further expressed concern for the effect of amendments on BIPCO and rate payers as reflected in Comprehensive Plan S and F Section C. We note that the Electric Utility Task Group has, and continues to try to, work with BIPCO on electric energy issues. Directly or indirectly, rate payers and taxpayers are the same people. Unless a WECS can produce electricity cheaper than BIPCO, or at a rate better than available via the grid, it will not pass a feasibility test. The Town and BIPCO will of necessity work together to equitably reimburse BIPCO for distribution services, which will protect rate payers. It is my opinion that consistency with the Comprehensive Plan has been and will continue to be addressed as this process goes forward. I should also note that our zoning ordinance and the state enabling legislation both require that the zoning Board, in granting a special use permit for any particular proposal, must also find that it will be in conformance with the purposes and intent of the Comprehensive Plan. I think everyone needs to remember that these amendments will not allow a wind turbine to be installed of right, as a permitted use, but rather the particulars of any specific application will be scrutinized as they would be with any other special use permit in our zoning ordinance some examples of which are Hotels, Transportation Facilities, Utility Facilities, Cellular Towers and Earth Removal. BIPCO itself has been to the zoning Board a number of times for approval of its improvements.

I also find that purpose of the Zoning Ordinance, as set out in Section 102, are also met by these amendments: by promoting the public health, safety and welfare of the entire town; by providing for a range of uses and intensities of use appropriate to the character of the Town and reflecting current and expected future needs; by providing for orderly growth and development which recognizes the availability and capacity of existing and planned public and/or private services and facilities; by promoting a high level of quality in design in the development of private and public facilities; and by promoting implementation of the Town's Comprehensive Plan.

The zoning enabling legislation expressly requires a municipality include regulation of its sanitary waste. Our zoning ordinance has no provision whatsoever for our solid waste handling.

With the proposed re-zoning of the town transfer station parcel as a public utility zone which will define and regulate the existing use of the site, and which will allow the placement of a municipally owned wind turbine, I find that such rezoning and the attendant requirements for review of all future development plans, as well as review of the benefits and impacts of a utility sized turbine on the human and natural environment by both the Planning Board and Zoning Board, is consistent with both the New Shoreham Comprehensive Plan and the purposes of the New Shoreham Zoning Ordinance by: promoting energy independence for the Town; supporting an alternative energy source, as specifically identified in the Comprehensive Plan, that is both renewable and non-polluting; initiating a process which engages the owners of the energy production and distribution system in order to better serve and protect all island residents and visitors; properly identifying and regulating a necessary public service, that of solid

waste handling and recycling; and allowing for continued improvements to the appearance and operation of the transfer station site.

I would also like to say that I believe, no matter where on the island we would propose to install a wind turbine, there would be a half dozen or more families, those most affected, who be strong, vocal objectors and advocates against the turbine at that site. I reviewed again the survey, carried out under the direction of Dr Lefteris Pavlides, of Roger Williams University, and with the agreement of the Town Council which was referred to by some of those at the hearings.

The response rate for island voters was 42%. For non-voting homeowners, basically summer residents, the response rate was 58%. The survey contained a question which asked whether the respondent would support or oppose a wind turbine at the transfer station. 71.9% of voters responded in support, 15.7% opposed. About 9.8% were neither opposed nor in favor. 2.6% "not sure". 65.9% of non-voting homeowners responded in support, 21.4% were opposed. 9.7 % were neither opposed nor in favor. 3% were "not sure". Although this is not zoning by referendum, as an official elected by the town populace, and not by a neighborhood, there are times when I must consider the greater good of the not so vocal residents of the town in making my decisions."

The motion was seconded by Mr. Torrey.

Mr. Martin said he believes the Town does not need to make the change at this time.

Mr. Lacoste thanked the Planning Board for their work on the ordinance, and spoke in response to Dr. Baute's motion: he said the Planning Board opinion of May 2009 was unanimous; he finds the divided opinion of November, 2009, an evolution of their thought; they were divided on the issue of whether the amendment is supported by the Comprehensive Plan. He would find a WECS visually intrusive. Although the amendment would not guarantee a WECS in the new PU Zone, it would allow the option. He said comments made at the public hearing by local conservation groups in opposition to the site were appropriate in their context; more detailed scientific data would be appropriate in an environmental impact study. He disagrees that opposition to the proposed Zoning change is a neighborhood issue, he is opposed on behalf of the entire Island, and believes it would adversely effect residents, homeowners and visitors, and have a poor effect on business, and the economy. He believes the impact would be the same anywhere on the Island. He believes there are other ways of reaching the same goal without destroying what makes the Island special. He would prefer to proceed in a more conservative manner.

Mr. Lacoste said he would vote against amendment as it stands. Before acting on the ordinance, he recommends conducting an Island-wide energy analysis which would include the cost, supply and distribution of electricity, and whether they are in the end economically feasible, including also the economic effect of different alternative generation systems on those near them. He suggests separating out and approving the portions of the amendment which affect the Transfer Station.

Second Warden Torrey thanked the Planning Board for their work on the ordinance. He agrees that the Planning Board, EUTG, and Town Council should study more sites for a wind turbine. He is in favor of approving the amendment tonight. The Town's Comprehensive Plan suggested WECS seven years ago, it is time to implement.

First Warden Gaffett noted the Council was considering a zoning ordinance change, not a wind turbine. If the amendment passes, it will be the beginning of the process which will include a feasibility study that may find there is a better location for a turbine. She says the issue of visual intrusion is one of personal taste. She agrees an Island-wide energy plan is needed. It will take work and coordination of the Planning Board, the Electric Utility Group, the Block Island Power Company and other members of the community. She supports a scope broad enough to look at not only the economic and environmental effects of alternative generation, but to include the cable, and many other aspects of energy consumption including transportation and heat.

Ms. Gaffett said one of the things that has caused her the greatest pause in the process has been her effort to understand Jack Gray's intentions for the transfer station property. She believes

Mr. Gray was referring to the Town's solid waste management when he refers to the dump in one document and the sanitary landfill in another. The Town is still using the transfer station property for solid waste management, and will continue to do so for the foreseeable future. Ms. Gaffett said Jack Gray was one of the most generous people to ever serve the Town. He gave some of the most beautiful land on the Island for parks and landfill, including a parcel of land for the Town dump in the mid-1970's. From Town records, she provided a timeline of his actions. He sat on the Town Council for over 20 years, his last terms from 1980 to 1984. During his term in 1980 the Town managed the dump with an attendant and a bulldozer, maintained hours, approved money for a small building (a trailer was installed) and established a landfill ordinance. While he was on the Council, monitoring wells were established, landfill trends and future uses of solid waste management were discussed, and the Council discussed the need to acquire more property in the area. In January 1983, a financial town meeting was held to fund a concrete block building on the property to house the bulldozer and an office for the dump attendant. Bids were received and awarded, with Mr. Gray's participation. As First Warden in 1984 he reported on DEM notification that the landfill would require a license later that year, and he discussed the incineration trend in solid waste management. In 1985, two months after Mr. Gray got off the Town Council, he was appointed a consultant to the Town's Landfill Fact Finding Committee. In 1985 the Town continued to evolve uses of the landfill with the LFFC, beginning a recycling program there. In June 1985, at Financial Town Meeting, \$35,000 was voted to acquire more land at the 'landfill.' In August, the Council voted to purchase the second parcel from Jack Gray. The LFFC continued to work on the "Landfill Plan" which now included recycling, sludge pits and compacting metals. Jack gave the second parcel to the Town in 1986. In 1987, while Jack Gray was living and monitoring the actions of the Town Council, the attendant's building was built, and the Town began its use of the term "transfer station" and the trash compactor and containers were bid – all actions as part of a plan to try to establish a transfer station. At a SFTM in September \$230,000 was authorized for improvements and expansion of the landfill and the compactor, container, rolloff trucks, concrete shed, scale, and excavation (much of what is at the transfer station today) were funded and purchased. 1988 the Council and LFFC met with Jack Gray present, for the purpose of discussing a proposal with a contractor to operate the transfer station as part of a larger proposal of uses of the property. Ms. Gaffett said her research led her to believe that Jack Gray used the terms 'landfill' and 'dump' interchangeably to indicate the evolving solid waste management of the Town, for which the site is still used.

Ms. Gaffett said she believes the ordinance is the first step in the Town's energy independence, and that it is consistent with the environment and conservation ethic of the Island. She will promote an Island wide energy plan.

The motion was called:

Ayes: 3 (Gaffett, Torrey, Baute)

Nays: 2 (Lacoste, Martin)

2. Public Hearing: Proposed amendment to the TNS General Ordinances re: Chapter 19, Utilities, Article VII Wastewater Management.

First Warden Gaffett said the ordinance was requested by the Sewer Commission, drafted by Chris D'Ovidio and has been approved by the Sewer and Water Commissions. Attorney Packer said the ordinance will make enforcement and fines more effective. Kevin Hoyt, speaking as a wastewater treatment maintainer, said he believes parts of the ordinance promote a propensity pump of systems which may not need it. He said conventional systems and high technology systems have very different maintenance requirements which are not reflected in the ordinance. A discussion ensued. The Council agreed that the ordinance allows discretion by the Waste Water Management Official to order pumping or not.

Dr. Baute moves that the amendment be approved as written, seconded by Ms. Gaffett.

Ayes: 5 (Gaffett, Torrey, Baute, Lacoste, Martin) Nays: 0

3. Act on Loan Resolution

Finance Director Amy Land was present. The loan resolution is for funding for improvements to Old Harbor and the North Light, authorized by voters at the November 4, 2009 Special Financial Town Meeting. A copy of the resolution is attached to these minutes. Town Manager Dodge said bids are out for the Old Harbor project, they will be back on December 15, 2009.

Mr. Lacoste moved to authorize the loan resolution, seconded by Second Warden Torrey.

Ayes: 5 (Gaffett, Torrey, Baute, Lacoste, Martin) Nays: 0

4. Receive Quarterly Municipal Deficits Report from Finance Director

First Warden Gaffett moved to authorize submittal of the quarterly report, seconded by Mr. Torrey.

Ayes: 5 (Gaffett, Torrey, Baute, Lacoste, Martin) Nays: 0

5. Act on letter from Cemetery Sexton re: increasing fee for cremation lots

Cemetery Sexton Shea recommends charging \$550 for 4 x 4 cremation lots. Burial lots are 4 x 8 and cost \$1,100.

First Warden Gaffett moved, seconded by Dr. Baute, to increase the price of cremation lots in the Island Cemetery to \$550.

Ayes: 5 (Gaffett, Torrey, Baute, Lacoste, Martin) Nays: 0

6. Receive and act on TNS Police Department monthly report: October

Dr. Baute moved to receive the October 2009 report of the NSPD, seconded by Mr. Martin.

Ayes: 5 (Gaffett, Torrey, Baute, Lacoste, Martin) Nays: 0

7. Board of License Commissioners:

Act on Annual Renewal of Motorized Bicycles, Motorized Tricycles and Motorized Scooter Licenses

Mark Emmanuelle was present in the audience and asked the Council to renew conversation with moped renters limiting the height of passengers, for the children's safety. Mr. Lacoste pointed out that the issue is broader: height had been selected as a concern because children's feet should reach the passenger foot pegs on mopeds. Age might be a better criterion because a certain amount of strength and maturity is needed for children to hold on to the driver and keep their feet on the pegs during a long or bumpy ride. Different bikes have different peg configurations. Mr. Lacoste is also concerned that couples often rent mopeds, and only one receives training to operate the moped. He believes it is natural for couples to switch drivers. A discussion ensued. Mr. Lacoste will be meeting with others to reopen safety conversations with moped dealers within the confines of the Town's moped agreement.

Dr. Baute moved, seconded by Mr. Martin, to renew the motorized tricycle, bicycle and scooter licenses for Aldo's Mopeds Inc., Finnimore and Fisher, Inc., dba Island Mopeds, Miles-Un-Limited, Inc. , The Moped Man, Inc. , and Ocean State Bikes, Inc., pending receipt of an insurance activation schedule, registration numbers as issued by the State of Rhode Island and the Vehicle Identification Number as issued by the manufacturer of each vehicle and licensing fees. Each license is for the rental of 34 vehicles in accordance with the ordinances of the Town of New Shoreham, with such license to expire December 31, 2010. Any lease agreement between a moped renter and the licensee shall include hours of operation, safety features, information regarding operation on unimproved roads, and the following language: "The horn on the vehicle is a piece of equipment designed for emergency use and should be used only in this fashion."

Ayes: 5 (Gaffett, Torrey, Baute, Lacoste, Martin) Nays: 0

8. Discuss Fire Alarm Ordinance and User Fees

Town Manage Dodge said participation has been very good. She recommends hook-up fees of \$150, plus monitoring fees of \$350 per year for commercial users. Ideally, the combined commercial users would cover the Town's costs. The Fire Marshal's office will decide which businesses will be required to hook into the system, it is anticipated that commercial customers who choose not to hook up will supply a waiver from the state Fire Marshal's office. The Town is also coordinating with the Fire Marshal's office with regard to a deadline, perhaps late spring.

9. Approval of Minutes: November 16, 2009, November 18, 2009 & November 19, 2009

Ms. Gaffett moved to approve the minutes of November 16, November 18 and November 19 with changes discussed to the minutes of November 18 and 19, 2009. Motion seconded by Dr. Baute.

Ayes: 5 (Gaffett, Torrey, Baute, Lacoste, Martin) Nays: 0

10. Review upcoming Town Council meetings schedule

It is anticipated the School Committee will attend the December 16 Council meeting.

At 8:50, a motion to adjourn was made by Mr. Lacoste, seconded by Dr. Baute.

Ayes: 5 (Gaffett, Torrey, Baute, Lacoste, Martin) Nays: 0

Minutes approved December 16, 2009

Fiona Fitzpatrick
Town Clerk