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TOWN OF JOHNSTON **PLANNING BOARD**

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MINUTES SEPTEMBER 1, 2009

The Planning Board of the Town of Johnston held its regular monthly meeting at 7:00 p.m. on Tuesday, September 1st, at the Johnston Senior Center, 1291 Hartford Avenue. All persons interested in the following proposals had been requested to be present at that time.

I. **Roll Call**

Final joint public hearing of Planning and Zoning Boards called to order at 7:31 p.m.

Present for the PLANNING BOARD: Anthony Verardo, *Chair*; Mohamad Yaser Sasa, *Vice-Chair*; Lauren A. Garzone, *Secretary*; Thomas Breckel, Michael A. Campagnone & Peggy A. Passarelli, *members*; and Timothy J. Chapman, Esq., *Solicitor*.

Present for the ZONING BOARD OF REVIEW: Kenneth Aurecchia, *Chair*; Richard Fascia, *Vice-Chair*; Douglas Jeffrey, *Secretary*; Anthony Pillozzi, *member*; Bernard Frezza & Costanzo Caparrelli, Sr., *alternates*; and Joseph Ballirano, Esq., *Counsel*.

Also present for the TOWN OF JOHNSTON: Lorraine Caruso, Town Engineer; William J. Conley, Esq., Town Solicitor; Merrick A. Cook, Jr., Administrative Officer, Anthony W. Lachowicz, Planning Consultant; Makram H. Megalli, PE, Director of Public Works; Bernard Nascenzi, Zoning Official; W. Mark Russo, Esq., and Moshe S. Berman, Esq., Ferrucci Russo P.C.; and Rian Smith, Assistant Planner.

Present for NATIONAL GRID: Peter V. Lacouture, Esq., Nixon Peabody, LLP; and David J. Beron, PE, PMP, and Susan E. Moberg, PWS, Vanasse Hangen Brustlin, Inc.

**II. Rhode Island Reliability Project**

JOINT PUBLIC HEARING

Johnston Planning Board & Johnston Zoning Board (*continued*)

(PB '09-28)

PROPOSAL: Relocate two existing 115kV and construct one new 345kV transmission line within a National Grid (Narragansett Electric Company) right-of-way running through numerous lots in A.P. 29, 30, 31 43, 44, 50, 51, 53, 54 and 55 in Johnston.

Mr. Lacouture introduced *expert witness* Webster A. Collins on real estate for National Grid (NG) (*c.v.* submitted May 27). Employed by C.B. Richard Ellis in valuation and advisory services for New England. *NG-Exhibit A*: July 23 report by Mr. Collins. Overview of process: reviewed application, gathered data, conducted inspection, studied assessors' cards, and evaluated comp plans. Analyzed property values, finding increases along r-o-w. No major adverse impacts; no change to character of Town and complete compliance with Town Comp Plan. Discussion of impacts: not quantifiable adversely. Studied impacts of right-of-way, concluding that five areas required further study.

Mr. Russo introduced index as *ToJ-Exhibit A*, summarized proceedings to date, and raised issue of additional setbacks where 115kV lines as close as 25' to r-o-w. *ToJ-Exhibit B*: Building Official (BO) e-mail to NG engineer requesting guidance when building proposed on adjacent lots. *ToJ-Exhibit C*: correspondence from BO and Town Engineer (TE) re specific case proposing building envelope within 25' of lines. No response. Agreement to allow Town to engage expert to consider issues. *Tab 4, ToJ-Exhibit A*: report by Mr. McGavran, expert on transmission lines for the Town. Concluded that [1] significant safety risk posed by building accessory structures on roofs; and [2] complicated grounding and lighting system needed for metal buildings, pools, etc., according to NG standards. No response when BO asked NG to participate. Discussion of electric safety code standards—national is minimum standard, lower than federal. Proposed limiting condition of additional 20' setback for structures from r-o-w.

Statewide Planning Program (SPP) opined that affected municipalities to expect tax revenue gains from project construction, and property values unlikely to decrease appreciably due to proximity to lines. Conclusion: no potential impact on abutting properties. If cost is \$47 million (*Tab 2, p. 3*), new property tax revenues in Johnston to equal \$1 million per year, calculated by SPP at \$56-per-thousand rate. Only ~\$16 million coded as new construction, and thus earning tax revenue; \$30 as rehab of existing. Limiting condition proposed: \$1,267,000 minimum be collected by Town, plus ability to explore accounting for 'existing facilities.'

Proposed limiting conditions (tab 5) submitted by Town as guide, whether voting for or against. [1] Reimbursement for McGavran and other legal activities by Ferrucci Russo P.C. [2] 20' setback from right-of-way. [3] NG contact designated for Town residents on ongoing basis. [4] All necessary permits acquired prior to construction. [5] Copies of permit applications within 5 days. [6] Town designated representative to inspect site with reasonable notice. [7] Traffic management plan during construction to be approved by Town, and mailed to abutters. [8] Mail and e-mail construction schedule to abutters and Town officials 2 weeks in advance. [9] Spill prevention plan during construction. [10] Environmental consultant on site to monitor impacts. [11] Noise mitigation—discussion: timing of 'heavy' equipment start up, etc., for BO and DPW review. [12]



Solid waste and debris disposal. [13] Lighting control plan. [14] & [15] Contact to provide status of various r-o-ws and easements to Town. [16] Dedicated reviewer of abutters' plans for proper grounding. Discussion: BO unable to verify r-o-w boundaries. [17] Identify all existing and proposed structures in r-o-w (so Town can assess taxation).

[18] NG to pay Town \$1.267 million in additional property tax revenue from new construction. [19] Personal property tax rate of at least current \$56/1,000 rate. Discussion of tangible property tax rate v. real property tax rate; monitoring of cost of construction—EFSB to issue permits and monitor, with annual accounting to tax assessor.

Discussion: whether limiting conditions is standard practice. If conditions not implemented, NG would not have to come back for approvals. Member of audience verified noise ordinance hours as 7:00 a.m. to 6:00.

Mr. Lacouture asserted Dr. Bailey's expertise on electric and magnetic fields; McGavran's setbacks not previously mentioned; side and rear setbacks never addressed. Debate over timing of receipt of Collins' report. Index just handed out with 17 proposed conditions, of which last two on taxes were new. Explained NG calculation of \$47 million based on \$18.91/1,000. SPP used \$56. *NG-Exhibit B*: 4-page list of responses to conditions.

Mr. David Beron, Project Manager, Transmission, responded to conditions. [1] NG objected—\$5,000 provided for McGavran report; unaware of other expenditures. Discussion of outstanding balance for McGavran and legal fees; latter not covered by state law; to be paid by Town.

[2] NG objected—Siting Board without jurisdiction outside of r-o-w or non-utility property. Discussion of whether setback from boundary line or within r-o-w. (*Steno read back Beron testimony.*) Discussion of transmission of electrical current outside of r-o-w; Mr. Beron cited high-speed relaying to de-energize circuit instantaneously. NG had submitted evidence of full compliance with national safety code. Clarification: 20' within row. [3] NG agreed. [4] NG agreed. [5] NG agreed. [6] NG agreed—active construction site, however: 3-day notice to arrange for escort; using appropriate personal protective equipment. Discussion of whether building permit required—'no'. State building code adopted national electrical code for transmission and installation. BO regulates footings and foundations associated with structures; no exemptions allowed; project does have structural component.

[7] NG agreed—discussion of public input. [8] NG agreed to e-mail. [9] NG agreed. [10] NG objected—already contracted for entire project; "self perform" (not self regulate) environmental monitoring, regulated by DEM, Army Corps of Engineers; public utilities commission scrutiny, therefore redundancy not allowed. [11] NG agreed. [12] NG agreed. [13] Discussion of when work proposed; NG agreed—nothing permanent proposed. Light on public roads: 6/295 wire stringing at night required by DEM. [14] NG agreed to designate ombudsman. [15] NG objected—book/page citations only. [16] NG objected—laid out in national code, responsibility of individual. [17] NG objected—records already submitted, also in annual tax record. [18] Mr. Russo corrected amount to \$2.5 million. NG objected to specific number; actual value based on actual installed costs, not estimates. [19] NG objected—\$18.91 more applicable.



Unanimous joint motion by both boards to send unfavorable recommendation to Energy Siting Board based on entire record and Town proposed limiting conditions. Inconsistent with Comprehensive Plan, including goals and policy statements; not compatible with neighborhood uses; environmentally incompatible with orderly growth of Town; not serving public convenience; not alleviating concerns about public health and safety; insufficient evidence for hardship to warrant dimensional or use variances, and existence of other uses involving least relief necessary and not requiring variances.

Unanimous amendment to motion to send unfavorable recommendation based on positive findings on two-point test, not consistent. Counsel from both sides to prepare finding of fact based on notes presented for 17 limiting conditions.

Unanimous amendment to joint motion to send unfavorable recommendation to Energy Siting Facility based on Planning Board's positive findings as to two-point test set forth in RIGL §45-24-52; inconsistency with Comprehensive Plan, including goals and policy statements, implementation program, and all other applicable elements, as well as findings as delineated in RIGL §45-22.2-1-14, including recognition and consideration of each applicable purposes of zoning ordinance, as presented in RIGL §45-24-30, and 1-B. For above reasons, adoption of proposed Rhode Island Reliability Project inconsistent with good planning and Comprehensive Plan., therefore, unfavorably recommend that Rhode Island Reliability Project, Assessor's Plats 29, 30, 31, 43, 44, 50, 51, 53, 54, and 55, based on 17 stipulations known as Limiting Conditions submitted by Town's attorneys, request that legal counsel for both Boards prepare findings of fact and prepare a decision based on notes presented. (Breckel, Campagnone, Passarelli, Sasa, Verardo; Aurecchia, Fascia, Frezza, Jeffrey, Pilozzi—aye)

September 1, 2009, Joint Public Hearing on Rhode Island Reliability Project with Zoning Board of Review adjourned.

September 1, 2009, regular monthly Planning Board meeting convened at 9:45 p.m.

Board members present: Thomas Breckel, Michael A. Campagnone, Lauren A. Garzone, Secretary, Mohamad Yaser Sasa, Vice-Chair, and Anthony Verardo, Chair. Also present: Lorraine Caruso, PE, Town Engineer; Timothy J. Chapman, Esq., Assistant Town Solicitor; Merrick A. Cook, Jr., Administrative Officer; Anthony W. Lachowicz, Planning Consultant to the Town; Makram H. Megalli, PE, Director of Public Works; and Rian Smith, Assistant Planner.

III. Conservation Development (PB '09-33)

WORK SESSION

PROPOSAL: Adopt planning techniques to preserve open space and significant natural and cultural features of new subdivision and land development projects, and to provide flexibility in the siting of structures, services and infrastructure, through amendments of zoning ordinance, subdivision regulations and comprehensive community plan.

Mr. Lachowicz facilitated the first of a series of work sessions on conservation development (CD). First draft of amendments to Johnston's *Subdivision Regulations, Zoning Ordinance, and Comprehensive Plan* submitted to board for comment, as required to enable CD planning and



zoning techniques in design of new residential subdivisions and land development projects. Differences from traditional development: assess natural resources first, not building sites.

Consultant fees have been provided by grants from DEM and PWSB, to cover seven meetings, including three public hearings and joint work sessions with Town Council. CD has been adopted by 10 other RI communities, with 3–4 more in process. Zoning Board was invited to participate, but isn't involved in the application of CD; no special-use permits or zone changes required.

Mr. Lachowicz urged the board to read the draft carefully, and provide feedback on key questions.

Key questions for Town:

1. Required or optional. At Planning Board discretion and for major subdivisions only? (Four out of 10 RI towns adopted CD at applicant discretion).
2. Zoning districts. R-40, R-20 and R-15 only?
3. Residential uses. 1- and 2-family, accessory apartments, and multi-family only? (Single in rural communities like Gloucester & Exeter; multifamily in more developed areas like N. & S. Kingstown. State law allows accessory family dwelling units where residential uses allowed.)
4. Open space uses. Farms, passive recreation/low-intensity conservation (i.e., hiking trails), and structures up to 2% of space only? (Other active/intensive recreational uses: sports fields, tennis courts, parking lots, clubhouses, etc.)

Size of open-space area based on minimum lot size (i.e., R-40 with no septic or well, 25% open space; with water and sewer, 60%). Protected in perpetuity through conservation easement similar to cluster developments. Difference: 10-step design process in which valuable features are identified at outset by master plan checklist (watersheds, historic, natural, and vegetative features, stonewalls, etc.). Board designates open space and determines features to protect/conserves.

Development potential/incentives: [1] Less infrastructure—roads, pavement, drainage, other underground structures, therefore lower costs. [2] Maximum density—‘density neutral’ in that developer retains ability to develop as many lots as with conventional. No bonus provisions proposed. [3] Less damage to environment. [4] Reduced land consumption. [5] Preservation of open space. [6] State stormwater requirements advanced. Even where optional, RI developers opting for CD to save money on same number of lots—a win-win situation.

Number of lots to be developed. [1] Initial number of units determined by board under conventional subdivision. [2] Total adjusted based on alternative CD plan. [3] Number of units adjustable during subsequent review. [4] Final basic maximum number of units established.

Ownership and management of open space: [1] non-profit conservation group, i.e., land trust; [2] town, for parks, recreation or agricultural use; [3] homeowners' association; [4] private with conservation restrictions if use limited to agriculture, habitat or forestry. Town to approve open space management plan. Discussion of adoption process, and sequencing of amendments v. implementation. Possible simultaneity of three required public hearings. CD not operative until all adopted. (Per state law.)



Staff review and input recommended by DPW Director; overriding objective of technical compliance with pending state-mandated stormwater regulations emphasized. CD cited as tool to comply with stormwater mandate—minimum required compliance as staff’s responsibility; additional requirements to be determined by board. Staff coordination of non-mandated CD with other ordinances also essential.

Discussion of R-40 example: 30,000 sq. ft. developable with no utilities, with 10%, or 10,000 sq. ft., open space. With onsite well and septic, 60% open space (sliding scale provided in draft). Trade-off between number of units and open space: single-family large lot with less open space than multifamily of only 3 buildings—possibly three-quarters open. Maximum density constant.

Most controversial issue for CD in most towns is optional implementation vs. board mandate.

Richard Blodgett, Providence Water Supply Board, spoke in support of Town efforts, and welcomed working with Town to make better subdivisions.

Assistant Planner identified as conduit for communications between board, consultant and staff.

IV. **Adjournment**

September 1, 2009, regular monthly Planning Board meeting adjourned at 10:33 p.m.

Lauren A. Garzone, SECRETARY
PLANNING BOARD

For September 1, 2009, Joint Public Hearing on Rhode Island Reliability Project of Planning Board and Zoning Board of Review:

Douglas Jeffrey, SECRETARY
ZONING BOARD OF REVIEW