

SPECIAL MEETING NORTH SMITHFIELD TOWN COUNCIL

OCTOBER 3, 2011

KENDALL-DEAN SCHOOL AUDITORIUM

7:00 P.M.

The meeting was called to order at 7:00 P.M. and began with the prayer and the pledge to the flag. Council members present were Ms. Alves, Mrs. Charest, Mr. McGee, Mr. Zwolenski and Mr. Yazbak. Town Administrator Hamilton and Town Solicitor Nadeau were also in attendance.

PUBLIC HEARING: AMENDMENT TO ZONING ORDINANCE – NORTH PINE RESIDENCES, LLC AND DAS CONTRACTING CORPORATION

This is a petition to rezone property described as Assessor's Plat 1, Lots 127 and 134, located at 1118 Victory Highway and property described as Assessor's Plat 1 Lot 330 located at 1152 Victory Highway from Rural Agricultural (RA) to Urban Residential (RU-20). Petitioners are North Pine Residences, LLC and DAS Contracting Corporation.

Richard Kirby, attorney for the petitioners, introduced John O'Hearne of O'Hearne Associates Architects who has been engaged for site design work that includes examination of the site and the layout based upon what was presented to him by the engineering firm for architectural renderings for a proposed assisted living facility. Mr. O'Hearne has been a licensed architect in Rhode Island for 28 years.

Mr. O’Hearne gave a slide presentation noting that this facility will be sited on 7½ acres. Wetlands take up about one-third of the property and would be protected. Victory Highway is located to the north. There is a buffer strip to the west and to the east there are mostly residences that would require a buffer of evergreens. To the south is the development, Silver Pines Phases 1 and 2. The facility would be approximately two hundred feet from the highway. There would be two to three acres of green space in the front and some trees to screen the area. A walkway is planned throughout the entire site. The layout is a reverse “c” shape. The front of the building is two-storied but gets to three and four stories in the courtyard based on the topography. The design shows about 140 parking spaces. As far as units, Mr. O’Hearne projects 20 studios, 80 one-bedroom units and 20 two-bedroom units.

Mr. Zwolenski questioned the width of the roadway and the slopes of the walking paths but Mr. O’Hearne did not have that information yet.

Mr. Zwolenski asked in which direction the rain would go.

Mr. O’Hearne responded from left to right towards the wetlands but DEM regulations would have to be followed.

Alan Nelson of 21 Silver Pines Boulevard questioned if the road ties in to Silver Pines Phase 2 and if so, why would it be necessary.

Mr. O’Hearne was unsure if it was necessary but more for the convenience of the Silver Pines residents to access Victory Highway.

Attorney Kirby further explained that the road was intended to be a haul road to satisfy the concerns of the planning department and the Planning Board when there was development plan review for Phase 2. It was never a requirement. He agreed that it would be for the benefit of the residents of Silver Pines.

Mr. Nelson disagreed. He felt it would be used as a cut through from Main Street to Route 102.

Mr. Kirby stated there would be a key system in place where the road transitions to the back side of Phase 2 available only to the residents of Silver Pines. There would also be speed bumps and

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cameras. No other persons from the public or the assisted living facility would be able to utilize the road. It would also be available in an emergency situation for the police, fire or rescue for Silver Pines. Mr. Kirby would be happy to place notice at the entrance of Silver Pines that it is not a through way.

Al Cataldi of 20 Silver Pines Boulevard asked if there was a height limit and was told by Building Inspector Robert Benoit that there was a limit of 35 feet but the average height of the area has to be taken

into consideration.

Bob Gauvin of 54 Alpine Way wondered why this road would even be built if it would only be used by Silver Pines residents and not residents of the assisted living facility, especially if the Silver Pines residents do not want it.

Mr. Kirby answered the Victory Highway property was acquired after Silver Pines Phase 2 was approved. There was never a requirement under the North Smithfield planning ordinance for another means of ingress and egress to Phase 2; however, the developer was encouraged to have another ingress and egress if possible. Mr. Kirby was emphatic when he appeared before the Planning Board that the road was not a requirement of Phase 2 and he would not allow any reference to it being a part of Phase 2 approval if any other property was acquired.

Joseph DeMayo of 62 Alpine Way commented that the pressure at the water hydrants is 45 pounds and the pressure at the hydrant at the pump station is 65 pounds. The water gets restricted for some reason and the pressure in the homes in the development is 25 pounds.

Town Planner Robert Ericson explained that this zone change would be for normal use and would limit special use permits that would be allowed to assisted living, active living and nursing homes. Much of

this will be ironed out in the process of getting a special use permit and after that in the process of getting the land development permit from the Planning Board.

Mr. Zwolenski commented that speed bumps are not generally accepted mostly because of the weight of responding fire apparatus.

Mr. Kirby responded that the developer would accept whatever the town's professionals feel are the appropriate traffic calming and security measures.

Mr. Zwolenski added that if a gate is put in, that would restrict emergency response time and snow removal will have to be borne by the developer.

John Quirk of 38 Alpine Way stated the roads in Silver Pines were not built to withstand heavy traffic and if it has to be accessible for emergency purposes, he feels the association should receive a stipend to be able to replace the roads when that becomes necessary.

Laurie DeMayo of 62 Alpine Way asked for a definition of an RU 20 zone and what can and cannot be built in it. She wants to be sure that what is proposed is what will be built.

Mr. Ericson explained that RU 20 is the highest density of residential development. The issue here is how you limit the special use options

to a subset of what is allowed in the zoning ordinance. What the town would be limiting it to is assisted living, nursing home, and active living which is for residents who are 55 plus who are looking for less than assisted living.

When asked by Mr. Zwolenski if there would be any federal funding, Mr. Kirby responded that his client is not seeking this project to be a nonprofit and is not looking for tax relief. He added that there are a number of for profit developers who borrow money under HUD and use federal funds and pay them back but are still taxed for the real estate that they own.

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MOTION by Mrs. Charest, seconded by Mr. McGee, and voted unanimously on an aye vote to continue the public hearing to October 17, 2011 at 8:00 P.M.

SILVER PINES DEVELOPMENT PHASES 1 AND 2

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted 4 to 1 (Mrs. Charest voted no) on an aye vote to move this item up on the agenda.

Joseph DeMayo of 62 Alpine Way spoke about the rezoning of Silver Pines Phase 2 and the stipulations that had been placed on the

granting of approval. He spoke about a plan recorded in the Town Clerk's office that is stamped "Final Plan" for Phase 2. At a previous Council meeting a motion had been made asking that the Town Administrator complete a thorough review of everything regarding the Silver Pines development from the year 2000 to the present. Mr. Demayo was dismayed that nothing has been done about the findings of the comprehensive review or the lack of compliance with the stipulations that had been placed on the development. He felt the proposed assisted living facility should not be approved until all issues from Silver Pines Phases 1 and 2 have been resolved.

Mr. Ericson explained findings he had set forth in a July 27, 2011 memo. There was a preliminary plan approved in November 2005 and it was approved with fifteen conditions. In January 2006 the applicant filed a final plan. In March 2006 the then Town Planner met with two Planning Board members. His notes indicate they were discussing which conditions were actually needed. In April 2006 the Town Planner wrote, four months late, a preliminary plan decision that included those fifteen conditions. The plan never went before the Planning Board and in August 2006 Planning Board Chairman Lucien Benoit signed two copies of the mylar Silver Pines 2 key plan, one of which was recorded as a final plan. The Town Planner never wrote a final decision. If only the Chair of the Planning Board signs a plan, it means one of two things: the plan has come before the Planning Board, been reviewed and voted upon by the Planning Board and the approval prevails. He can then be designated by state law as the

signatory for that vote. It has been established that the plan never went back before the Planning Board. Therefore, the only other thing that this can indicate under state law is that the Town Planner reviewed the submitted final plan under the fifteen conditions and found that they were met. Upon finding, he cannot sign it himself because it's a major plan but he can bring in the Chair, the Vice Chair or the Secretary and that signature indicates that he agrees it meets all fifteen conditions of the preliminary plan. The problem is that the fifteen conditions were clearly not met. How can anyone now write a final decision which means that the decision is recorded and anyone has twenty days to appeal the decision. The preliminary plan time has expired and they have no right to develop or seek another plan. On the other hand it could be remediated if they met all the conditions.

Mr. Yazbak asked which stipulations are still open.

Mr. Ericson reviewed several of them.

Mr. Ericson recommends this go to an independent review by the Town Solicitor and then he will need guidance from the Town Council to pursue a legal method of closure.

At this point, Mr. Zwolenski commented that Attorney Kirby had left, even though the Council voted to move this discussion up on the agenda, and Mr. Zwolenski has lost his patience.

Mr. Nadeau has been involved in this process to some extent. Mr. Kirby disagrees with Mr. Nadeau that Phase 2 has not been approved. Mr. Nadeau stated that approval is not final and DAS cannot find that it is when stipulations have not been met.

This discussion was continued to October 17th in executive session.

IT PROCESS FOR TOWN COMPUTERS

School Department Director of Technology Eric Butash provided an assessment report based on surveys completed by members of the municipal staff and Jim Lass, a consultant for both the school

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department and municipal government. Through the survey results and on-site assessments it is very apparent that the town's technology is severely inadequate to conduct day-to-day business without any downtime or loss of production. While the current system is working on a day to day basis, the system, as a whole, is designed to allow "malicious attacks" on desktop computers, unfiltered internet access, and the possibility for data theft. This situation presents multiple issues that put the town and its employees at risk not simply just to loss of production but also to loss of data and records which includes theft.

Mr. Butash suggested several initiatives that he recommended be

acted upon in three stages as part of the proposed project. A rough estimate of the total cost is \$107,450.

Since this was the first she was seeing this report, Ms. Hamilton asked for time to review it and then to have a meeting with Mr. Lindberg and Mr. Butash to get a better understanding of the financials and the funding. Mr. Yazbak asked that Mrs. Charest be included in that meeting.

24-HOUR OPENING FOR WAL-MART AND DOWLING DONUTS

Building Inspector Robert Benoit spoke with Attorney Michael Kelly who stated that the lot in question was included in the stipulation to be released from not being able to open for 24 hours. Mr. Benoit is waiting for a copy of the transcript to be sure the motion in the minutes properly reflects what was actually said.

Once the Wal-Mart issue is satisfied, Dowling Donuts will have to go through the process of having a public hearing to be able to be open for 24 hours because it is a victualing house.

MUNICIPAL ANNEX/POLICE STATION FIRE CODE APPEAL

Mr. McGee and others met with the consultant who will be preparing a report in regards to the potential fire code violations. It is not ready yet.

2ND READING ORDINANCE AMENDMENT RE: LENGTH OF SERVICE

Ms. Mally Jones of 19 Indigo Farm Road opposes removing this ordinance because she feels the ordinance as it is protects the community and the Council from entrenched interests. She referenced Mr. Yazbak's comment at the last meeting of how difficult it can be in getting qualified individuals to serve but she urged the Town Council to encourage increasing community involvement as an alternative to removing term limits. Ms. Jones has found it difficult to get information about the various boards, what are their responsibilities and who do they report to.

Mr. Yazbak commented that the town never had term limits until about ten years ago. The ordinance was originally presented in order to be rid of one particular person. This Council has gone to great lengths to try to interest people in serving but it has been difficult at times.

Mr. Zwolenski and Mr. McGee were opposed to eliminating term limits for decision-making boards. They were okay with advisory boards.

Discussion followed about which boards may be decision-making and whether or not someone could return to a board after being away for several years.

MOTION by Mrs. Charest, seconded by Mr. McGee, and voted unanimously on an aye vote to table the second reading to November 7, 2011.

COMMUNICATION/CELL TOWER

MOTION by Mrs. Charest, seconded by Mr. McGee, and voted unanimously on an aye vote to table this discussion to a later date.

MOTION by Mrs. Charest, seconded by Mr. Zwolenski, and voted unanimously on an aye vote at 9:56 P.M. to extend the meeting to 10:30 P.M.

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REIMBURSEMENT OF LABOR COSTS FOR REPAIR OF GRINDER PUMP

Mr. Richard Laverdiere explained that his grinder pump failed on June 6, 2011, one month after the two year warranty expired. It was repaired by F. R. Mahoney & Associates who claimed that a foreign substance was causing a blockage of the pressure switch. Mr. Laverdiere received a bill for \$1,024.00 and subsequent to complaining to the Sewer Department, he received a check from Mahoney for \$396.31 to cover the cost of the parts. F. R. Mahoney refused to pay for the labor. Mr. Laverdiere was seeking reimbursement of the labor costs.

When Sewer Superintendent Russell Carpenter went to inspect Mr. Laverdiere's pump in August, he noticed that this particular pump

was part of a batch of newly-designed E-One pump grinders with a known faulty switch.

Public Works Director Raymond Pendergast stated that he and Mr. Carpenter stand by the decision that Mr. Laverdiere should deal with F. R. Mahoney and the town should not get involved.

Ms. Hamilton stated the warranty is only for a manufacturer's defect. F. R. Mahoney is supposed to call Mr. Carpenter so he can inspect the pump but they have not been diligent. Mr. Laverdiere does have a faulty switch. The town has no recourse because it is an F. R. Mahoney and E-One service agreement.

Mr. Yazbak asked if Mr. Laverdiere would have been taken care of if the town employees had already received the training that has been discussed and if there was an inventory of grinder pumps available.

Ms. Hamilton said that he would fall under the extended three-year warranty. But she clarified that by saying the warranty is only good for a manufacturer's defect.

Mr. Yazbak recommended that the town notify all of the grinder pump owners and tell them to contact the town as well as F. R. Mahoney if they have a problem with the pump so that the town can advocate on their behalf. If a homeowner fails to contact the town in the future, then he will be on his own.

Mr. Yazbak added this is a unique circumstance and he does not expect it to be approved in the future but he thinks the town should reimburse Mr. Laverdiere for the \$627.69 and then the town should send a demand letter to F. R. Mahoney for reimbursement.

MOTION by Mr. Zwolenski, seconded by Mr. Yazbak, and voted unanimously on an aye vote to reimburse Mr. Laverdiere for \$627.69 and notify the grinder pump owners in writing to contact the town in the future in addition to F. R. Mahoney if there are any problems with their pump.

MOTION by Mr. Yazbak, seconded by Mrs. Charest, and voted unanimously on an aye vote that the funding will come from the enterprise fund.

MOTION by Mr. Zwolenski, seconded by Mrs. Charest, and voted unanimously on an aye vote at 10:30 P.M. to extend the hearing until 11:00 P.M.

AGREEMENT WITH RI RESOURCE RECOVERY

MOTION by Mrs. Charest, seconded by Mr. McGee, and voted unanimously on a roll call vote to approve this agreement between Rhode Island Resource Recovery The Corporation and the Town of North Smithfield for solid waste and recycling services.

MOTION by Mrs. Charest, seconded by Mr. McGee, and voted unanimously on an aye vote to authorize the Town Administrator and the Town Solicitor to execute the document.

ORDINANCES FOR STORMWATER POLLUTION PREVENTION PLAN AND MU1 AND MU2 ZONES

MOTION by Mr. Zwolenski, seconded by Mrs. Charest, and voted unanimously on an aye vote to authorize the Ordinance Development Commission to work by themselves and to work with the Planning Board in regards to ordinances for Stormwater Pollution Prevention and MU1 and MU2 Zones.

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2011 NATURAL HAZARD MITIGATION PLAN

Mr. Ericson explained that the town has hired as an intern an honors graduate of Wheaton College in environmental science. She has done a lot of work so far on the integration of catch basins and outfalls and was able to predict where the town will have flooding problems.

The plan now goes to FEMA for state review and then to federal FEMA.

MOTION by Mr. Zwolenski, seconded by Mrs. Charest, and voted 4 to 1 (Mr. Yazbak voted no) on a roll call vote to accept the plan as presented.

SLATERSVILLE FILM CONTRACT

Ms. Hamilton explained there will be a film produced regarding the Slatersville area and grants are in the process of being obtained. She asked that this be continued to the next meeting.

MOTION by Mrs. Charest, seconded by Mr. McGee, and voted unanimously on an aye vote to table this discussion to October 17, 2011.

HOLIDAY TRASH PICK-UP

Mrs. Charest has been approached by some residents who do not feel that their two trash cans are enough after a holiday and wondered if there was anything that could be done.

Mr. Pendergast said he has spoken with Coastal Resources and in the past they have relaxed the policy. If there is a reasonable amount of trash left out, there should not be a problem.

TIMELY REVIEW OF MATERIALS SUBMITTED BY BOARDS

As the liaison to the Ordinance Development Commission, Mr. Zwolenski asked if this Council had any zoning issues that they would like to move forward.

Mr. Yazbak's comment was that the town had to amend/create zoning requirements to conform to the Comprehensive Plan. He thought that

was what the Ordinance Development Commission was created to do but it seems to have morphed into something else.

Mr. Ericson agreed that those are items that need to be worked on and if the commission is given some flexibility, he feels it can be done fairly quickly.

MOTION by Mr. Zwolenski, seconded by Mrs. Charest and Ms. Alves, and voted 5 to 0 on a roll call vote to refer the following to the Ordinance Development Commission: groundwater aquifer protection overlay district, zone changes and zone review, mixed use, business neighborhood, business highway, agricultural, business zone, open space zone, local historic district, retail size ordinance, blasting ordinance, major/minor land development projects, air quality ordinance, development plan review committee, inclusionary housing, design review standards, sidewalk ordinance and environmental green standards.

MOTION by Mrs. Charest, seconded by Mr. McGee, and voted unanimously on an aye vote at 11:01 P.M. to extend the meeting to 11:15 P.M.

EXECUTIVE SESSION

MOTION by Mrs. Charest, seconded by Ms. Alves, and voted unanimously on an aye vote to enter into executive session at 11:01 P.M. pursuant to RIGL 42-46-5(A)(2) Sessions pertaining to collective

bargaining or litigation, or work sessions pertaining to collective bargaining or litigation to discuss a proposed settlement agreement with Police Department Dispatcher Michael Dunton.

MOTION by Mrs. Charest, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to come out of executive session at 11:11 P.M. and to seal the minutes. No motions were made and no votes were taken.

SETTLEMENT AGREEMENT WITH POLICE DEPARTMENT DISPATCHER M. DUNTON

MOTION by Mrs. Charest, seconded by Mr. Zwolenski, and voted 4 to 1 (Mr. Yazbak voted no) on a roll call vote to agree to a settlement October 3, 2011

with Dispatcher Michael Dunton based upon the agreement presented by the Town Administrator.

MOTION by Mrs. Charest, seconded by Ms. Alves, and voted unanimously on an aye vote to adjourn at 11:12 P.M.

Respectfully submitted,

Debra A. Todd, Town Clerk