

REGULAR MEETING NORTH SMITHFIELD TOWN COUNCIL

JANUARY 17, 2012

KENDALL-DEAN SCHOOL AUDITORIUM

7:00 P.M.

OPEN FORUM

Narragansett Improvement/Rankin Estates

Mr. Ernest Alter of 600 Victory Highway defended residents living near this proposed development who oppose this project, believing they have legitimate legal objections. He stated that no one is standing in the way of the developer to resubmit the Master Plan before the Planning Board.

Labor Unions

Mr. Alter commented that public sector unions, compliant politicians and public officials have acted in ways that threaten to bankrupt cities, towns, and property owners. The Town Council needs to focus on developing an operational plan to cut back spending in the school department to a point where the town can produce a budget surplus large enough to allow for substantial cutbacks in real estate taxes.

Thank You to Public Works Director

Carol Nasuti expressed her appreciation to Public Works Director Raymond Pendergast for quickly fixing an issue she had on her street.

REGULAR MEETING

The meeting began at 7:01 P.M. with the prayer and the pledge to the flag. Council members present were Mr. McGee, Mr. Yazbak, Mr. Zwolenski and new Council President Christine Charest. Ms. Alves was away. Town Administrator Hamilton and Town Solicitor Nadeau were also in attendance.

PUBLIC HEARING RE: WETLAND SETBACK FOR ONSITE WASTEWATER TREATMENT SYSTEMS

Dr. Caroly Shumway commented that a meeting had been held with John Marcantonio, Executive Director of the Rhode Island Builders Association. They agreed that it would be helpful to have a map indicating the areas that would be affected by this ordinance. She added there are sixteen Rhode Island communities who have adopted ordinances with setback regulations greater than what is required by the Department of Environmental Management. Dr. Shumway stated there is an economic gain to the developer in that they can obtain green credit if they have a buffer of a minimum of 100 feet. She continued

January 17, 2012

that setbacks remove sediment, they remove nutrients, they help provide some heavy metal absorption and they could provide some buffer for fecal contamination. The Clean Water Act prohibits towns from adding pollutants to impaired waters.

Mr. Marcantonio introduced Scott Rabidoux, who is a professional

wetland scientist. He owns Natural Resource Services, Inc. which is a wetland consulting firm. He recognizes the town is trying to limit surface water runoff going into streams and wetlands and also trying to protect groundwater quality coming out of septic systems. But the resource areas are not mapped and there is no indication of which resource areas are more valuable than others. There are wetlands that are extremely valuable to the general health and well being of the community and there are those that are isolated. They happen to be at or near where groundwater is near the surface. This ordinance will be extremely difficult and costly for landowners. Simplifying the ordinance by just requiring that a homeowner present a plan that is within 150 feet of a freshwater wetland to incorporate LID techniques to manage the stormwater on their site and present it to the building official prior to getting their building permit is an absolute, simple way to come up with the protections that the town is looking for. As a professional practitioner, Mr. Rabidoux would not support this ordinance, believing that it can be simplified to achieve the town's goals.

Mr. Yazbak asked what was deficient about the Department of Environment Management requirements that would require a town to impose further restrictions. If DEM is charged with the responsibility for the environment on a statewide basis and they have the resources, who is the town to deviate from those requirements or should the town deviate from them. Although he wants to follow regulations, Mr. Yazbak feels this ordinance is too complicated and

too expensive.

Mr. Rabidoux responded that there are opportunities for local government to impose slightly more stringent regulations on homeowners and property owners in order to make sure they are protecting their resource areas to a level that they have to under different regulations than DEM has. Their regulations provide adequate protection of water quality and wetland resources in the State of Rhode Island and in the Town of North Smithfield. If the town is concerned about its stormwater management and pollution plan and its waterways, the town has to decide what it can do to encourage land use that doesn't exacerbate that problem. Mr. Rabidoux's opinion is that this proposed ordinance starts to impose on individual property rights.

Mr. Yazbak, Mr. McGee and Mrs. Charest all agreed that the ordinance would put too many restrictions on property owners at too great a cost.

Mr. Yazbak stated the town should be starting with the state regulations and amending on a minor basis to get it to fit with North Smithfield if we feel we have identified areas that are deficient.

Based on comments by Mr. Marcantonio, Mr. Yazbak proposed that, if we work off of DEM regulations and identify those areas where there is an issue, those property owners be notified that their rights are

going to change.

Mr. Gary Ezovski of 88 North Main Street believed this to be excessive regulation and bad public policy. Maps are definitely a necessity to identify issues and solutions. If there is a need for regulatory change, it should be at the state level.

MOTION by Mr. Zwolenski and seconded by Mrs. Charest to continue the public hearing for a month to allow the Ordinance Development Committee the opportunity to meet to identify and place on a map the areas that are restrictive right now.

Mr. Yazbak felt the Ordinance Development Committee should be given some direction for a starting point which he believed should be the DEM regulations with some minor tweaking.

January 17, 2012

Mr. Zwolenski wanted to hear what Lorraine Joubert of the University of Rhode Island had to say before considering including Mr. Yazbak's comments in his motion.

MOTION amended by Mr. Zwolenski and seconded by Mrs. Charest to continue the public hearing to a date certain of March 19, 2012.

Roll call: Mr. McGee – yes; Mr. Yazbak – no; Mr. Zwolenski – yes; and Mrs. Charest – yes. The motion carried 3 to 1.

PUBLIC HEARING ZONING ORDINANCE AMENDMENT RE: MIXED USE DISTRICTS

Redevelopment Agency Chairman John Flaherty explained this ordinance was drafted to reflect the vision and the buildout that was adopted by both the Town Council and the Planning Board. It does not force any landowner to do anything to their property. It does provide added flexibility to landowners within the Branch Village district, or any other district they may choose in the future because the ordinance is not written specifically for Branch Village, to mix uses. The ordinance allows for greater density, provides a framework for framing future development in Branch Village and provides a friendlier pedestrian environment. Mr. Flaherty feels it will create the conditions and incentives to attract private investment in Branch Village when the market will support it.

MOTION by Mr. Zwolenski, seconded by Mr. McGee, and voted 4 to 0 on an aye vote to continue the public hearing to February 6, 2012.

PUBLIC HEARING RE: ADDITIONAL STORE HOURS FOR DOWLING DONUTS D/B/A DUNKIN'DONUTS

James Lynch, owner of the Dunkin' Donuts located inside the new WalMart store at Dowling Village, was seeking approval to open the Dunkin' Donuts store additional hours from 2:00 A.M. to 6:00 A.M.

There were no comments from the public.

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted 4 to 0 on an aye vote to approve the request for additional hours to be open.

CONSENT AGENDA

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted 4 to 0 on an aye vote to remove the following from the consent agenda: 1.) Payment of Monthly Bills, 2.) Monthly Financial Reports for December 2011 and 3.) Ordinance Development Committee Minutes.

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted 4 to 0 on an aye vote to approve the following: 1.) Minutes of December 19, 2011 and January 3, 2012, 2.) Payment of Nixon Peabody LLP Invoice for \$1,170.00, 3.) State Quarterly Summary Report, 4.) Budget Committee Minutes from October 27, 2011, 5.) Animal Control Monthly Report for December 2011, 6.) Animal Control Yearly Report for 2011, 7.) NSF&RS Inc. Monthly Incident Report for December 2011 and 8.) Resolution from the Town of Charlestown re: Affordable Housing.

Monthly Bills

Mr. Yazbak had questions on several bills and had received a response from Mr. Silvia on those although Mr. Yazbak did not agree with those expenses.

Mr. Yazbak asked if anyone from the town did an annual or biannual review of the Interlocal Risk policy. He suggested removing the skate

park from there because it no longer exists.

MOTION by Mr. Zwolenski, seconded by Mr. McGee, and voted 3 to 1 on a roll call vote (Mr. Yazbak voted no) to approve payment of the following: General Fund - \$304,013.58; Sewer - \$12,931.70; Water - \$784.63; School Department - \$1,440,455.00; and Fire Department - \$195,147.00 for a total of \$1,953,331.91.

Monthly Financial Reports for December 2011

In response to a question by Mr. Yazbak, Finance Director Brian Silvia gave a quick overview of where departments stood in regards to revenue and expenses.

January 17, 2012

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted 4 to 0 on an aye vote to accept and place on file.

Ordinance Development Committee Minutes

Mr. Yazbak commented that it would have been helpful to have these minutes in a more timely fashion especially as they related to a topic of discussion at a prior Council meeting.

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted 4 to 0 on an aye vote to accept and place on file.

SILVER PINES DEVELOPMENT

(Mr. Yazbak recused himself from this discussion)

Mr. Joseph DeMayo claimed that the sewer laterals in the development should be taken care of by the town. As a user, he pays a fee to have waste removed and the lines maintained, and yet a contractor had to be hired to have the lines jetted. Mr. DeMayo had attended a Sewer Commission meeting and was told by them that the town does not maintain the lines in a private road that is in a private development.

Town Planner Robert Ericson commented that there is a distinction between those roads that are intentionally private and have been so ever since they were approved and those roads which the town has failed to accept.

Mr. Zwolenski supported the idea that the town should pay for jetting the lines because the residents are paying a user fee and it is a public health issue. However, if the pipes fail, would the town be liable to replace them. He did not want to give the impression of tacit acceptance of the lines by the town.

Ms. Hamilton stated she would be very uncomfortable going on private property using town equipment.

Mrs. Laurie DeMayo did not understand how the town could accept

the sewer line that was constructed in Main Street by the same contractor who constructed the lines in Silver Pines and yet the town will not accept the lines in Silver Pines.

In addition to the sewer lines, Mr. DeMayo had concerns about stipulations placed on Silver Pines that have not been met. On May 9, 2011 the Town Administrator was asked to do a thorough review and Mr. DeMayo stated he has not heard anything about the results.

Ms. Hamilton responded that she did meet with Attorney Kirby, Town Planner Robert Ericson and Mr. Philip Godfrin and they went over every item. The developer has not responded.

Mrs. DeMayo was of the understanding that the rezone of Phases 1 and 2 were not done in a proper manner.

Mr. Ericson responded the issue is in two parts. One is whether there were conditions of zoning approval that still have to be addressed and the other was whether there are conditions of the preliminary plan approval that still have to be addressed. A final decision has to be posted for twenty days.

Mrs. Charest asked if Sewer Superintendent Russell Carpenter could meet with the Sewer Commission to get their recommendation regarding the sewer lines.

Mr. Carpenter stated he would meet with the Town Administrator and Public Works Director Raymond Pendergast, develop a recommendation, bring it to the Sewer Commission, and then return to the Council.

Mrs. Charest asked Mr. Nadeau if he could review minutes referring to Silver Pines and offer his opinion.

Mr. Ericson added that there are zoning violations that could be handled by Building Inspector Robert Benoit.

January 17, 2012

RESIGNATION FROM CONSERVATION COMMISSION

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted 4 to 0 on an aye vote to accept the resignation of Aimee Mandeville from the Conservation Commission with deep regret and to send her a letter of appreciation.

MUNICIPAL ANNEX/POLICE STATION FIRE CODE VIOLATIONS

Ms. Hamilton explained that Chief Reynolds and the expert are wrapping up their discussions on a brick and mortar solution. It appears to be very costly and there are still custody issues.

NORTH MAIN STREET/VICTORY HIGHWAY INTERSECTION

Ms. Hamilton said the state would be going out to bid in March to have all four sides at the light stop at once. They are also checking into lengthening the yellow lights and adding left hand turn signals for traffic going north and south on Victory Highway. The project is expected to be completed by the end of the year. Ms. Hamilton added that there has been more police presence there also.

APPOINTMENT TO SEWER COMMISSION

There was no appointment.

2ND READING ORDINANCE AMENDMENT RE: STORMWATER POLLUTION PREVENTION PLAN

MOTION by Mr. Zwolenski to adopt the Soil Erosion and Sediment Control and Stormwater Pollution Prevention Plan. There was no second.

Mr. Ericson stated that this ordinance is required for the town's state permit. When the town has the permit from the state, under the federal EPA law the town cannot be sued by anybody who has damages related to stormwater runoff to their private waterbody. Not having this ordinance means that no one can develop a major area of the town without running the risk of being sued.

MOTION by Mr. Zwolenski and seconded by Mr. Yazbak, for discussion, to adopt the Soil Erosion and Sediment Control and Stormwater Pollution Prevention Plan as a second reading.

Dr. Lucien Benoit, Planning Board member, Ordinance Development Committee member and Economic Development Commission member, finds several areas of the ordinance objectionable. He disagrees with Mr. Ericson in that he feels it will make economic development more difficult and this ordinance is stricter than what is required by the state. Dr. Benoit hopes it is returned to the Ordinance Development Commission for further review.

Mr. Yazbak asked if Dr. Benoit could make a list of his concerns for the Council who can then remand it to the Ordinance Development Committee for direction.

Mr. Nadeau suggested that the Ordinance Development Commission come up with a version that is strictly state law to use as the framework then have a separate document that includes recommendations from other towns.

Mr. Ericson said that state law does not sufficiently address EPA requirements for the permitting process of 2011/2012.

Mr. Zwolenski withdrew his motion and Mr. Yazbak withdrew his second.

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted 4 to 0 on an aye vote to continue this to March 19, 2012 to allow Dr. Benoit

to provide his comments to the Council.

ABATEMENTS

Mr. Yazbak had asked Tax Assessor Chris Belair to elaborate on the tangible and real estate abatements over \$2,500 and the motor vehicle abatements over \$1,000.

MOTION by Mr. Yazbak, seconded by Mr. McGee, and voted 4 to 0 on an aye vote at 10:01 P.M. to extend the meeting to 10:30 P.M.

(Mr. McGee left at 10:02 P.M.)

January 17, 2012

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted to approve the abatements as presented by the Tax Assessor.

WIND ENERGY PROPOSAL

The Council received this evening a letter from rTerra Renewable Energy Partners notifying them that they would have considerable interest in providing a bid for the project.

Mr. Ericson stated that the wind turbine LLC will pay the town \$40,000 per year to lease the two-acre Town-owned lot. The Town would be responsible for all taxes which means the town would avoid the issue of tax exemption for the old entity. The savings from the contract would be \$10,000 in the first year so the net benefit to the town would

be \$50,000. Mr. Ericson explained various rates. He also stated that North Smithfield would benefit from a multi-town wind-energy purchasing consortium and specifically mentioned possibly joining with Lincoln and Smithfield.

There were several questions that still needed to be answered so MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted 3 to 0 on an aye vote to table this to February 21, 2012.

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted 3 to 0 on an aye vote at 10:26 P.M. to extend the meeting to 10:45 P.M.

AWARD OF BID RE: CLEANING UNION VILLAGE INTERCEPTOR

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted 3 to 0 on an aye vote to award the bid to National Water Main Cleaning Company in the amount of \$13,310.00 based upon the recommendations of the Finance Director, the town's independent consultant, Geremia & Associates, the Public Works Director and the Town Administrator. Funding will come from Account #1-007-4360-800 (O & M Line Cleaning).

EXECUTIVE SESSION

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted 3 to 0 on an aye vote to enter into executive session at 10:28 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 Sullivan vs. Town of North Smithfield.

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted 3 to 0 on an aye vote to come out of executive session at 10:32 P.M. and to seal the minutes. No motions were made and no votes were taken.

SULLIVAN VS. TOWN OF NORTH SMITHFIELD

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted 3 to 0 on an aye vote to hire Joe Casali Engineering, Inc. for a total cost not to exceed \$7,865.00.

MOTION by Mr. Zwolenski, seconded by Mr. Yazbak, and voted 3 to 0 on an aye vote to adjourn at 10:33 P.M.

Respectfully submitted,

Debra A. Todd, Town Clerk