

SPECIAL MEETING NORTH SMITHFIELD TOWN COUNCIL

FEBRUARY 6, 2012

KENDALL-DEAN SCHOOL AUDITORIUM

7:00 P.M.

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

ELECTION OF PRESIDENT PRO TEMPORE

MOTION by Ms. Alves and seconded by Mr. McGee to nominate Mr. Zwolenski as the president pro tempore.

MOTION by Mr. Yazbak and seconded by Mr. Zwolenski to nominate Ms. Alves.

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Roll call vote on Mr. Zwolenski: Ms. Alves – yes; Mr. McGee – yes; Mr. Yazbak – yes; Mr. Zwolenski – no; and Mrs. Charest – yes. The motion carried 4 to 1.

PUBLIC HEARING RE: ZONE CHANGE ON VICTORY HIGHWAY/DAS CORPORATION

Mr. Yazbak recused himself from this discussion and left the table.

Attorney Richard Kirby, representing the petitioner, indicated that he has presented all of his testimony at this time.

Mr. Zwolenski asked if there would be any federal funding for this project as he was concerned this could turn into a rehabilitative facility for those with substance abuse problems.

Mr. Kirby responded that would not happen.

Mr. Joseph DeMayo worried that there were still unanswered questions regarding an internal roadway connecting to Silver Pines Boulevard, a traffic light at the access road to Route 102 and sufficient water for the facility.

Mr. Kirby referred to Item #15 of the Planning Board approval for Silver Pines Phase 2 which states, "Upon rezoning of the Renshaw property (that is located on Route 102 and which had been acquired by DAS at that time) the water line shall be looped from Silver Pines through the Renshaw property to the area of the proposed Stop & Shop at Homecrest Avenue provided that the Water Authority agrees with such an extension."

With regard to the access road, Mr. Kirby stated it had been a proposed stipulation of the Planning Board that the haul road that

would be used to build out Phase 2 would become permanent. Mr. Kirby said the developer would try to do everything they could to make the road permanent except they could not agree to it being a stipulation for Phase 2 approval because of the cost of acquiring the property for a haul road when it wasn't required.

The necessity for a traffic light is something that would be determined by the Planning Board.

Mr. Nadeau became concerned that a stenographer had not arrived and recommended that the hearing be continued to a date certain.

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted 4 to 0 on an aye vote to continue this hearing to March 5, 2012.

PUBLIC HEARING RE: MIXED USE ZONING DISTRICTS ORDINANCE
To Mr. McGee it seemed unrealistic to proceed with this ordinance without sewers there.

Redevelopment Agency Chairman John Flaherty responded that a large part of what is envisioned in this redevelopment for Branch Village is for the property that is currently the Branch River Industrial Park. They have their own sewer and access to their own water. They have been clearing sites and getting DEM approval to cross a wetland.

Mr. Flaherty added this is a long-term vision for the town. It aims to create conditions for landowners to redevelop their property in a way that is different from what is currently allowed in the existing zoning ordinance.

Ms. Hamilton agreed this would be a proactive step.

Town Planner Robert Ericson stated the Brickle family has enormous potential for a corporate manufacturing subdivision in the Branch River Industrial Park.

Mr. Zwolenski noted this ordinance will position the town to attract good businesses.

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to close the public hearing.

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This constitutes the first reading and the second reading was scheduled for March 5, 2012.

PAYROLL PROCESS FOR MUNICIPAL OFFICES AND SCHOOL DEPARTMENT

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to table this discussion to March 19,

2012 since Superintendent of Schools Stephen Lindberg was ill and unable to attend this evening.

IT PROCESS FOR TOWN COMPUTERS

School Department Technology Director Eric Butash informed the Council that Phase 1 is about 70 to 80 percent completed. He would like to move forward with Phase 2 which includes replacement of some of the outdated computer equipment, anti-virus, and upgraded software for both server and desktops. Mr. Butash would like to start investigating costs.

MOTION by Mr. Yazbak, seconded by Mr. McGee and Ms. Alves, and voted unanimously on an aye vote to authorize Mr. Butash to move forward with Phase 2 by gathering estimates and whatever else is needed and report back to the Council on March 5, 2012.

CELL TOWER

Mr. Ericson informed the Council that he had twice gone out to bid for an RFP and received no proposals. He feels this is the least likely way to initiate any negotiations with cell phone providers. The School Department solicitor feels that since the RFPs have gone out and there have been no responses, then a direct negotiation could occur.

MOTION by Mr. Yazbak, seconded by Ms. Alves, and voted unanimously on an aye vote to continue this to March 19, 2012.

RESOLUTION RE: GENERAL ASSEMBLY ACTION ALLOWING THE TOWN OF NORTH SMITHFIELD A CONTINUING EXEMPTION TO R.I.G.L. §44-5-2

This was a resolution that had been brought forth last year but did not pass. Representative Brian Newberry informed Mrs. Charest that he would be willing to bring it forward again.

Mr. Nadeau noted that there was a newer version that had been adopted and submitted last year and he recommended that that be the one the Council resubmit.

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted unanimously on an aye vote to resubmit the resolution for a continuing exemption to the General Assembly through Representative Newberry and the town's Senators.

FIRE CODE VIOLATIONS AT POLICE STATION/MUNICIPAL ANNEX

Michael J. DiMeo, Professional Engineer, provided a report with several options for a brick and mortar solution that would make the building in compliance with the fire code. However, there is still a custody issue. Ms. Hamilton will provide plans to the Council once she receives them.

Mr. Yazbak asked if Mr. DiMeo had been given information that had been provided by Mr. Ducharme, a registered architect who had come

before the Council several months ago. Mr. Ducharme, at that time, thought that a fire alarm monitoring and ventilation system with perhaps an internal fire suppression system would suffice. Mr. Yazbak thought those systems could be acted upon with a \$20,000 to \$25,000 cost range and then the town could ask the appeals board to reconsider the hearing and to reconsider that plan. Overtime for the past fifteen months for the custody issue amounts to \$85,408 and will continue to add up until something is done.

Mr. Ericson thought the Ducharme solution would give the police department time to get an officer to the station to handle custody of a detainee.

Fire Marshal Brian Gartland explained in the Fire Code under Business Occupancy Lockups you have two minutes to remove a detainee because of a fire, a fire alarm or any kind of fire emergency.

The only way to

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do that is to actually move the detainee. In that Code it doesn't say whether you have to physically remove them or remove them remotely. The plans that Mr. DiMeo came up with is the way to comply with the Code to remotely remove a detainee by a staff person.

Mr. Zwolenski asked how you would get a prisoner from the cell to

the refuge fire safety area.

Mr. Gartland responded that the Code does not specify incapacitated people under the Business Occupancy Lockup.

Mr. Gartland noted that the high cost of Mr. DiMeo's options is because of the antiquated building.

Mr. McGee stated it all comes down to custody and if that can't be worked out, there's no sense in putting any money into the building.

Mr. Yazbak said that at one time the idea was proposed to have police officers serve as dispatchers rather than have civilian dispatchers.

Ms. Hamilton believed that would cause problems also. What if a detainee is in distress? The police officer dispatcher can't leave his post to assist because then calls would go unanswered.

Mrs. Charest commented that budget hearings are in process and perhaps there could be discussion about reworking the police department schedule to have an officer serve as the dispatcher.

Budget Committee Chairman Paul Vadenais thought the issue might be able to be addressed through police department contract negotiations.

MOTION by Mr. Yazbak, seconded by Ms. Alves, and voted unanimously on an aye vote to table the discussion to April 2nd.

AGGREGATE EXTRACTION ORDINANCE

Mr. Yazbak explained that on August 24, 2011 he requested public information for copies of emails from Mr. Ericson to Michael Kelly/Eric Brainsky, an attorney working in Mr. Kelly's office. Mr. Ericson responded that they did not constitute public records. Mr. Yazbak appealed to Town Administrator Hamilton who responded that Mr. Nadeau had already ruled that those documents were exempt from public disclosure when they were requested by Mr. Ken Murphy.

That opinion is still being considered by the Attorney General's office and once the ruling is completed, Ms. Hamilton will comply with the decision.

Mr. Yazbak stated that four ordinances have come before the Council in the past few months that were not sponsored by any Council member or the Town Administrator. So even though the Charter does state they must be sponsored by one of those people, often they are not and come forward because of work done by a committee.

Mr. Yazbak had requested from Mr. Nadeau an explanation as to how the aggregate extraction ordinance came to be. Mr. Nadeau had provided him with a written response which Mr. Yazbak read during the meeting: "Pursuant to your request, the following is a brief history of the ill-fated aggregate extraction ordinance. The Town's

current ordinances allow aggregate extraction in limited areas and in limited amounts pursuant to a permitted land development project. I first became aware of the problem in 2009 when it was brought to my attention by the Town's Planner, Robert Ericson. Originally, our discussion was sparked by the pending Narragansett Improvement ("NI") litigation, and the clear fact that NI's plan was an ill-concealed gravel grab. Mr. Ericson and I further discussed whether enacting a well-founded aggregate extraction ordinance would help to settle the NI cases, but the utility of an ordinance as a carrot towards settlement quickly became secondary to the Town's need for further regulation. He and I discussed the potential exposure to the Town from a challenge to our ordinances by a developer who could claim to be unreasonably denied the economic value of his property by not being able to extract any material other than in the extremely limited areas and for the extremely limited purposes allowed by the Town. Our concern was that without a reasonable and well-developed regulatory scheme the Town could be subject to claims for damages by a developer

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frustrated by his inability to recover any real economic value from gravel and other below-ground materials. We agreed that a reasonable and well-developed ordinance that smartly regulated aggregate extraction would be upheld by a court and keep the Town from being subject to suit for a regulatory scheme that said in essence "you cannot make any money from the material below

ground on your property”. One concern of mine was my lack of scientific and technical expertise in determining whether any draft ordinance worked to the Town’s benefit. Mr. Ericson told me that he had access to a wealth of material on the subject and would work on it to eventually bring it to the Council for approval; I trusted him to craft a draft ordinance that would protect the Town. It was discussed by Mr. Ericson and me with the Council in 2009 and 2010; I also had several conversations with then Council president David Lovett on the subject. It was clear to me then and it is clear to me now that the 2008-2010 Council was aware of and did not object to Mr. Ericson’s work towards proposing an ordinance that would incorporate the latest science to protect the Town and its residents from strip mining operations, but at the same time respond to the need to allow property owners to obtain some economic benefit from their property.

Further, I fully supported (and still do support) the need for an aggregate extraction ordinance and I fully supported the use by Mr. Ericson of outside resources (as set forth below) to attempt to write an ordinance that would protect the Town and also pass muster with developers – the very class of property owner to whom this ordinance was directed in an attempt to minimize future litigation. Mr. Ericson sought (with my approval) industry participation so as to minimize the potential for lawsuits while at the same time providing solid regulations that would benefit the Town. On May 20, 2010, Mr. Ericson sent an email to NI’s counsel, Attorney Eric Brainsky of The Law Offices of Michael A. Kelly (see attached). Pursuant to that email, Mr. Ericson had just met with Attorney Kelly and discussed an

aggregate extraction ordinance for the Town. Mr. Ericson's email references an attached ordinance from a Town in Minnesota, and states that Attorney Brainsky "can start with the attached MN ordinance that has collective performance standards ... Modify what you need to modify, and add what you think would sell it." Attorney Brainsky responded on June 2, 2010, with an email to Mr. Ericson (on which I was copied). A copy of that email is attached, and it states in relevant part that he is sending back to Mr. Ericson the Minnesota ordinance with proposed redlined changes. Subsequently, Mr. Ericson and I continued to work with NI, Holliston Sand & Gravel, and Material Sand & Stone in an effort to come up with an ordinance that would satisfy the Town's need for regulation and the rights of property owners to extract value from their property. Rather than detail all of those efforts, I have instead attached various emails illustrating the process. Please see the following: 1. 06/16/2010 Ericson to Brainsky; 2. 06/16/2010 Brainsky to Ericson; 3. 06/24/2010 Brainsky to Ericson; 4. 06/28/2010 Ericson to Brainsky; 5. 07/02/2010 Brainsky to Baillargeon; 6. 07/01/2010 Brainsky to Baillargeon (2nd email); 7. 07/15/2010 Brainsky to Kelly and Baillargeon; 8. 07/16/2010 Ericson to Brainsky; 9. 07/19/2010 Brainsky to Ericson; 10. 07/20/2010 Ericson to Brainsky; 11. 08/04/2010 Brainsky to Everson and Kelly; 12. 08/18/2010 Nadeau to Brainsky and Ericson; 13. 08/18/2010 Brainsky to Nadeau and Ericson. On July 21, 2010, a meeting was held at my office. In attendance were Mr. Ericson, Attorneys Kelly, Brainsky, Baillargeon, and Fenton, and me. The discussion involved changes to the draft ordinance that was circulating amongst the three

law firms and Mr. Ericson. At some point after the meeting, Attorney Thomas Plunkett (acting for Material Sand) was also provided a copy for his review and comment. Subsequently, a version of the draft ordinance was produced. On February 10, 2011, a meeting was held in my office. In attendance were Mr. Ericson, Building and Zoning Officer Robert Benoit, and Attorney Plunkett. After the main meeting ended, and Attorney Plunkett had left, I asked Messrs. Ericson and Benoit to remain to discuss the aggregate extraction ordinance. After discussing it in very general terms, I asked each of them if they were comfortable with the draft if I was to send it to the Council for action (which as both of them should know, meant to have the Council review it, send it to the Planning Board for a consistency with the Comp Plan finding, and then enact it). Both Mr. Ericson and Mr. Benoit responded in the affirmative. Accordingly, I requested that the clerk consult with you as Council president and put the ordinance on the next available Council agenda. Mr. Ericson then apparently had
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second thoughts as he immediately started bad-mouthing the draft ordinance to the Ordinance Development Committee. When I learned this and confronted him, Mr. Ericson claimed that he misunderstood my reason for wanting the Council to review the draft; he stated that it was his belief that I only wanted to “get the conversation started” and not actually have the Council enact the draft as it existed. I do not find this claim credible. At this point, without Mr. Ericson’s anticipated support, I requested that the Council remove the draft

ordinance from its agenda so that work could continue on an ordinance that I fully believe is an important piece of the Town's zoning regulations."

Mr. Ericson explained about his refusal to release emails between him and Attorneys Brainsky and Kelly. The emails were in the midst of the process of developing a final product and if they were treated as public records, the Valley Breeze could make requests every week for all the interactions Mr. Ericson had with potential tenants at Dowling Village. If he had to disclose those as public records, there would be no tenants.

Mr. Ericson gave his response as to how he felt the ordinance came to be: "Origins: Town Solicitor Rick Nadeau asked if I could work with Attorney Eric Brainsky of Kelly Law to develop an Aggregate Extraction (AE) ordinance. I agreed mainly for the following reasons: 1) I needed to know the regulatory state of the art anyway; 2) Working with regulated firms provides insight on efficient methods of regulation; 3) Eric has a URI degree in natural resources science and understands the environmental issues; 4) Eric and I had previously worked well together to develop a model solution for a difficult problem in zoning for substandard lots of record. We planned on a July 2010 completion date. Rick noted that the ordinance would be related to, but separate from, a possible litigation settlement. Development: I researched the zoning literature and provided Eric with an ordinance from Minnesota. That state and Ontario province

to the north have focused on extraction policy and laws. Our joint work began May 20, 2010. We both understood that we would draft the best ordinance we could agree upon, and the public process thereafter would determine the ultimate content. We wanted Holliston Sand to participate. They had hired former RIDEM Assistant Director Josh Fenton as a strategy consultant. We thought Holliston would play an active role in ordinance development because 1) They have a different higher value-added operation with possibly different regulation concerns. 2) They expressed a related interest in an ag manufacturing zone (not including electric power generation) for their back land going out to Route 7. We even thought Josh Fenton would be the best person to present the ordinance to the Town Council, but Holliston did not come forward. That may be because their present non-conforming status gives them tax advantages. Eric redrafted the MN ordinance and removed or reduced almost every significant protection. In some cases the draft has parallel and competing processes. I told him he needed to reconsider what he removed, and I provided two additional definitions from another ordinance. He redrafted it with no protections restored. Impasse: We had reached an impasse by the end of July 2010. I told Eric why his draft wouldn't fly in North Smithfield. He had the science background to understand that and wanted time to work with his client. By mid-November, he told me that he had to write for his client, and we agreed that we could go no further. Shortly after Thanksgiving, I had a multi-purpose phone conversation with Rick. I told him that Eric and I had reached an impasse, and he took it under advisement. I expected him to say

that the Town should write its own. Nothing changed. We put the project aside. In March 2011, Eric joined another law firm, but we continued to work together on a subdivision application. At this point, I had expended 20-30 hours, mostly on research, review and communications. We had no other costs. I did not write text. Had we reached some level of agreement, I would have written text as needed and made that publicly known. Submission: In a March 2011 multi-purpose meeting at Rick's law office, he asked Zoning Official Bob Benoit and me to support his decision to submit the proposed AE ordinance to the TC. Bob had not read it but agreed. I agreed because we needed to address the problem expeditiously, and I believed that the public process would produce a good ordinance. If I did it over again, I would have asked Rick to explain exactly what he was trying to accomplish.

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Anyone can submit a zoning ordinance. TC President Ed Yazbak put it on the TC agenda. No sponsor is required under RI law. The TC referred it to the Planning Board to review for consistency with the Comp Plan. I have consistently supported the decision to submit it for consideration. The Ordinance Development Committee and I critiqued it. Former TC member Paul LeClerc did so separately in the Valley Breeze. Withdrawal: Rick did not submit a related Comprehensive Plan revision. I presumed that was a tactic to stop it at Planning Board review for consistency, which would give the TC and ODC time to work on revisions. At the April 10, 2011 meeting of

the PB, Rick Nadeau announced that the AE ordinance had been withdrawn and would therefore not be the subject of review. After that the AE ordinance disappeared. I have consistently disagreed with the decision to withdraw it. TC member Paul Zwolenski asked that the ODC be charged with AE ordinance development. I agreed with him. I noted to the ODC, Rick and others that there are ways around zoning for AE extraction, and I expect them to come into play. An AE ordinance must include process and performance requirements that apply whether extraction is initiated under zoning or otherwise. I have given Rick a list of documents requested under access to public information laws and asked him to remove or redact any materials that lie under client-attorney privilege. I will then release the documents in response to Michael Kelly's allegations about my role in the AE ordinance. Recommendations: In light of past events, I recommend the following: 1) Charge the ODC with developing an AE ordinance. The Planning Department can provide greater than usual technical assistance. 2) Expedite TC processing of the ordinance with focused TC participation in the public hearing process."

Mr. Zwolenski was frustrated with the Council's delay in acting upon four ordinances that have come before it. He urged them to send the aggregate extraction ordinance to the Ordinance Development Committee for its review.

Ms. Alves questioned whether it was a conflict to send this ordinance

to Michael Kelly's office to be drafted.

Mr. Ericson responded that initially a compromised, negotiated ordinance was supposed to be completed by July 30th. It would then come into the public process and be cleaned up. He has stated the reasons why he feels it is appropriate to consult with the industry on development. In hindsight Mr. Ericson probably would not have worked with Mr. Brainsky after learning the context in which he was working. But Mr. Ericson did learn a lot and he knows what needs to be done. The research had to be done to find the regulatory state of the art. It was a decision made by him and Mr. Nadeau jointly. The fact that it has dragged on and on with no resolution has kept the town in a precarious position if this is effected without zoning. Mr. Ericson feels the town has been floating around in a vulnerable position because the town did not opt to give authority to the Ordinance Development Commission.

Mr. Ericson stated that he and Mr. Nadeau have accomplished a lot together. They come from different places and they often disagree initially and wind up with a better solution than either one of them could have found independently. Not too many people are aware that Mr. Nadeau saved the town from a potential \$3 million lawsuit with Jehovah's Witness. He has a strong reputation in getting those things done quietly and to the point. This is the one area where they didn't see eye to eye.

James Lombardi of 7 Indigo Farm Road said asking for input is understandable. Having opposing counsel write it is not understandable and that is why many of the residents are very upset.

Mr. Ericson clarified that opposing counsel did not write through the end of July 2011. It was a combination of the Minnesota ordinance and their input as well. Only after that did they change it and only after that did it become eighty percent of what they wanted and twenty percent what the Minnesota ordinance originally had.

Mr. Yazbak questioned Mr. Ericson, “So when the uproar came and you washed your hands of this back when you said in Council chambers that

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you didn’t have a lot to do with this and the uproar came from these people and then I told you there’s no way in hell I’m going to move forward with it, now you’re going to come back tonight and try to pin this on me?”

Mr. Ericson responded, “No”.

Mr. Yazbak: “Okay, because I’m not moving it forward, I won’t move it forward until I understand how it got here. And nobody wants to answer my request. I can’t pick up the phone and have any member of the administration give me information. I have to file 38-6 or

whatever request they are. I'm a Councilman. I don't know of any other Councilman that's had to file 38-3 requests to get information. It's usually just provided. Why do you want it? Let me sit down and explain it to you. Instead we get this. So you can come down here and you can start to try to blame me on this. I'm trying to get these people some answers."

Mr. Ericson: "My comment was that when I asked Paulette shortly before I went on vacation if I had authority to review that and would be involved in executive session she asked Councilman Yazbak would I and he delayed three weeks until after Irene and responded short answer no way in hell. So that's on the record. We have the documentation. Maybe it was intended to be a private conversation with the Town Administrator but people should know . . ."

Mr. Yazbak: "So exactly what are you talking about? Coming into executive session to talk about the settlement negotiations? That's what you wanted to be in on?"

Mr. Ericson: "To talk about the function of the existing situation of the aggregate extraction ordinance. I was in executive session with the previous Town Council and it went very well."

Mr. Yazbak: "But you've got to understand at this point in time the aggregate extraction ordinance became moot because nobody wanted to take ownership of it. That's why it got pulled off the

agenda. And we didn't have all the facts that we have tonight. And it's only because for the last nine months I've been digging for them."

Mr. Ericson: "No, it's not. It's because you put on the agenda without notifying me and I just wrote a response. My point is . . ."

Mr. Yazbak: "You could have answered my request for public information a long time ago. You know what you could have answered my first email when I asked you what was going on with it."

Mr. Ericson: "No, I already explained my point that you don't have to release intermediate information when it's not the final product. You already had the final product and the point here is very simple. It was currently under a request for information, the exact same information you wanted, we had already gone through that process, that process was already in place, Solicitor Nadeau was already handling it and I'm not going to handle one differently than I'm going to handle the other. If anybody had come to me and said, or the Council had said could we get a report on the history of this, I would gladly have done it. But nobody wanted to take ownership of it and the reality is it wasn't something that was worth taking ownership on."

Ms. Alves: "I think if we all would have seen these emails previously, it might have put a lot of light. We've spent a lot of hours in executive session, speaking to residents, answering emails, answering phone calls and there's information here that would have been a lot of good

to us. And we didn't have it."

Mr. Ericson: "And if I had been invited to even part of executive session, I could have explained all of that to you without having to sit here and people wondering well what is the other way to get aggregate extraction outside of zoning. It would have been very helpful but it was clearly not a way that President Yazbak wanted to go."

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Mr. Zwolenski questioned Mr. Nadeau as to whether he had read the ordinance and whether he thought it would be good for the town.

Mr. Nadeau stated that he had read it, that he is not a scientist, and that when he asked Mr. Ericson and Mr. Benoit about bringing it before the Council, they both agreed he could do so.

Mr. Ericson once again stated that Mr. Benoit had not read it and Mr. Nadeau replied that he had not been told that by Mr. Benoit.

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted 4 to 1 on a roll call vote (Mrs. Charest voted no because she did not feel this was the proper time to open this discussion up as it was not listed that way on the agenda and she would allow discussion from the

public at another meeting) to open the meeting to public comments.

Ms. Caroly Shumway, 76 Great Road, stated this whole process has lost the concept of democracy. If you're going to have developers work on an ordinance, that's fine. Then have three developers and three townspeople that don't have a development perspective and have a balanced approach from the start. This ordinance started from the 3M Mining Company. If you start off with an ordinance from a mining company, it's probably not a balanced ordinance. The other outrageous aspect is the secrecy, the utter lack of transparency, the denial by Mr. Yazbak that it had no connection to the settlement, when it's clear from the documents tonight that it had absolutely every connection to the settlement. Ms. Shumway talked about existing mining operations in town, noting that 75 percent of them have been involved in litigation issues. One of them is the cause of a superfund site. Ms. Shumway commented that in the zoning ordinance there is an earth removal ordinance that looks like a fairly decent ordinance and it includes mining. She wondered why the town would be drafting another gravel ordinance when there already is one. She keeps hearing the threat of lawsuits, which is a very convenient charge when people want to do something in this town. The zoning ordinance only allows mining in a manufacturing zone and there aren't many of those areas.

Mr. Ericson stated that he has read the existing ordinance and the problem with it is that it is very strong on process and very poor on

performance.

Mr. Ken Murphy of 4 Indigo Farm Road had received a copy of a letter from Mr. Ericson that stated that the gravel ordinance was written by Mr. Brainsky, an attorney in Mr. Kelly's office. It was given to the Town Solicitor who then proposed it and had it put on an agenda. Mr. Murphy claims he was told that no one knew where it came from. He cannot understand why the Town would have someone who is suing the town assist in writing a gravel extraction ordinance.

Mr. Ericson stated that he had responded to Mr. Murphy in a letter dated June 20th with a summary of what he had discussed with the Ordinance Development Committee on all the problems and deficiencies of the ordinance. When that went to the ODC, they were prepared to address all of those issues and produce an ordinance that could have been effective in protecting the town from the potential to get this extraction effected without going through zoning.

Former Town Councilman Paul Leclerc of 286 Old Oxford Road thanked Mr. Yazbak and Mr. Nadeau for coming forward with a public statement. Personally he felt Mr. Ericson dropped the ball on this. Despite the concerns Mr. Ericson had regarding the protection elements that was part of the ordinance, he still allowed it to go forward. He notified the attorney and told him you needed to have particular things changed and despite that didn't do any of the suggestions you had so the system that Mr. Ericson had basically

wasn't working. But yet this ordinance still went forward because Mr. Ericson wanted to put it in the public process. Mr. Leclerc thought that if Mr. Ericson had concerns, then Mr. Ericson basically felt it wasn't the right thing to move forward. Saying the process is going to fix this is like saying let's put a tainted document out and let's see what people are going to pick up on and whatever they don't pick up on I guess it's okay. That troubled Mr. Leclerc and he hopes moving forward that things will

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get in the public process but give it a second, a third, and a fourth eye. In addition, going to Mr. Brainsky was a poor choice and because of the situation the town should have sourced another attorney.

In response, Mr. Ericson said he received a request from Paul Leclerc in November 2010 he thinks. Mr. Ericson wrote to both Mr. Leclerc and Ms. Hamilton that Eric Brainsky was working on the ordinance and he was very clear to the Valley Breeze that Mr. Brainsky was working on it. Mr. Ericson knew going in that the town was protected by the fact that the Town Solicitor did not submit a revised Comprehensive Plan so the town could not have gone beyond the Planning Board. When it went to the ODC before the Planning Board, Mr. Ericson initiated the list of all the things that were wrong with it and how it could be fixed. Mr. Ericson feels the ordinance can be fixed pretty quickly. His concern is not with the existing lawsuits; his

concern is with the fact that wholly outside the zoning process this aggregate extraction ordinance can be effected anywhere in town as it already has been.

Mr. Yazbak agrees with Mr. Ericson that a good, well-written aggregate extraction ordinance is probably in the town's best interest but he has no desire to bring it forward until all of the questions get answered and the Council knows where it has to go with it. That's part of the reason why he did not want to send it to the ODC before. If the Council now wants them to start fresh and work towards something, fine. When Mr. Yazbak was Council president, this is part of the frustration that he felt, that you can't get anything done, that you can't get anything moving because there are too many things moving at the same time. He felt that if he stepped aside as Council president and let someone else lead, there may start to be some movement. He feels better about how this came to be and the personal attacks on Mr. Yazbak for putting this matter on the agenda can now end.

Mr. Ericson insisted there is no reason whatsoever to postpone work on the aggregate extraction ordinance.

Mrs. Charest asked that this matter be placed on the February 21st agenda.

MOTION by Mr. Zwolenski, seconded by Mr. McGee, and voted

unanimously on an aye vote at 9:55 P.M. to extend the meeting to 10:30 P.M.

APPOINTMENT TO CONSERVATION COMMISSION

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted unanimously on an aye vote to appoint Ruth Pacheco to the Conservation Commission. This is a three-year term that will expire on December 1, 2014.

APPOINTMENT OF TEMPORARY MUNICIPAL COURT JUDGE

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to move this item up on the agenda.

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski and Mr. McGee, and voted unanimously on an aye vote to appoint Attorney Lloyd R. Gariepy as a temporary back-up Municipal Court Judge.

APPOINTMENT TO SEWER COMMISSION

There was no appointment.

BUDGET TIMELINE

On behalf of the Budget Committee, Chairman Paul Vadenais commented that there are specific dates in the Charter when materials are supposed to be submitted and he feels these dates are not being met. He questioned why it isn't being enforced and who should enforce it. Mr. Vadenais believes the Charter changes to

dates that were approved in the last election are not realistic.

MOTION by Mr. Yazbak, seconded by Ms. Alves, and voted unanimously on an aye vote to ask the Budget Committee for its recommendations as to what the dates should be, run it by the administration, and return to the Council for the March 5th meeting to submit questions for the next general election.

February 6, 2012

RESOLUTION RE: COMPLETE STREET CONCEPT

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted unanimously on an aye vote to approve the following resolution: “WHEREAS, Streets constitute a large and valuable portion of the public space, and WHEREAS, Streets need to be accessible, convenient and connected corridors for all transportation modes and users that complement and support adjoining land uses, buildings and community character, and WHEREAS, Streets that integrate and invite multiple transportation choices contribute to the public life of a community, sustainable economic development and efficient movement of people and goods, and WHEREAS, Encouraging non-motorized transportation provides residents and mobility options, reduces transportation costs, enhances community connections, improves public health, advances environmental stewardship, reduces fuel consumption and maximizes the use of

roadway infrastructure, and WHEREAS, “Complete Streets” are those that provide safe and convenient access for pedestrians, bicyclists, transit riders and motorists of all ages and abilities, and WHEREAS, “Complete Streets” concepts are compatible with the circulation element of the existing and planned North Smithfield Comprehensive Plan. NOW THEREFORE WE THE TOWN COUNCIL OF THE TOWN OF NORTH SMITHFIELD do hereby indicate our support and encouragement of the use of “complete streets” concepts in the planning and redevelopment of transportation related infrastructure improvements within the Town of North Smithfield and the State of Rhode Island.”

APPOINTMENT OF TREE WARDEN

MOTION by Mr. Yazbak, seconded by Ms. Alves, and voted unanimously on an aye vote to reappoint Stanley Zuba as the Tree Warden. This is a one-year term that will expire next January.

RESIGNATION FROM HISTORIC DISTRICT COMMISSION

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to accept the resignation of John Zambarano and to send him a letter of appreciation.

APPOINTMENT TO HISTORIC DISTRICT COMMISSION

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to appoint Elizabeth Martin of 2 Green Street to the Historic District Commission. This is a three-year term

that will expire on December 1, 2013.

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted unanimously on an aye vote to adjourn at 10:24 P.M.

Respectfully submitted,

Debra A. Todd, Town Clerk