

REGULAR MEETING NORTH SMITHFIELD TOWN COUNCIL

OCTOBER 15, 2012

KENDALL-DEAN SCHOOL AUDITORIUM

7:00 P.M.

OPEN FORUM

Permission to Hunt

Mr. Eric Piette of 32 Greenwood Street was seeking permission to hunt on land that he believed was owned by the town. However, during the discussion Councilman Zwolenski stated he thought that particular area was privately-owned and Mr. Piette would have to get permission from the landowner.

Zoning Violations

Claire O'Hara of 16 Summit Avenue has complained that a resident of the street appeared to be violating numerous zoning laws. She suggested hiring someone to enforce the zoning laws and providing that person with a percentage of the fines.

Ms. Hamilton responded that protocols have been followed, things have been cleaned up, and at present there are no violations at the property that the town can do anything about.

Mission of Council

Ernest Alter of 600 Victory Highway urged the Council to never lose sight of its mission -- to deliver services to the town at the cheapest possible price, to protect private property and to follow principles of

our founding documents. He noted that median family

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income has dropped, unemployment is at a high level and he cautioned against any capital spending at this time.

Sewer Ordinance

Michael Clifford of 489 Black Plain Road felt the Council was moving too quickly in enacting this ordinance dealing with credits for sewer development and hoped they would wait to amend it until such time as there are five members on the Sewer Commission who could give a valid opinion on it. Mr. Clifford was also concerned that the proposed ordinance has a retroactive effective date.

Narragansett Improvement

Mr. Yazbak submitted the following statement: “I continue to hear feedback and misinformation on the Narragansett Improvement versus the Town of North Smithfield legal issues and the fact that a number of people claim that “public information” is scarce or non-existent. When confronted with this over the past few months I have pointed interested people to the Court Transcripts that are public record. I now understand that not everyone has the understanding or the time to obtain copies from the Courts, and according to my information the Town does not have copies available for public inspection. Therefore I am presenting tonight one (1) paper copy and three (3) electronic copies of Court transcripts and a copy

of this memorandum to the Town Clerk so that requests for copies can be obtained easier by interested parties. In addition, the Administration may want to post an electronic copy on the town's website in the true "spirit" of transparency. In addition for the record may I state that these transcripts will show the following: 1) Any proposed development of the area would have to comply with the N.S. sub-division and zoning regulations, coupled with an outstanding Consent Order of the R.I. Superior Court requiring that action. 2) The Town, through its assistant solicitors Attorney Robert Rossi & Special Counsel Attorney Patrick Dougherty filed a Declaratory Judgment action against Narragansett Improvement, which was dismissed as unfounded in law; the Court has invited Narragansett Improvement to file Abuse of Process complaints against the Town of North Smithfield, as well as a Petition for the Assessment of Sanctions against the (1) Town of North Smithfield and (2) Attorney Patrick Dougherty for the legal costs incurred by Narragansett Improvement in defending against these two Complaints. 3) Attorney Patrick Dougherty attempted to recuse Judge Hurst from hearing any further issues (including the trial) which was denied; he thereafter sought to have the issue reviewed by the R.I. Supreme Court via an appeal which was also denied. 4) Judge Hurst has advised Attorney Patrick Dougherty to obtain legal counsel to represent him personally on the issue of sanctions and I am not aware that he has done so as of this date. Other information: (not in Court Transcripts supplied) For the record, I have no relationship with Narragansett Improvement or Mike Kelley, or its

principals. Narragansett Improvement repaved my parking lot three (3) years ago while I was NOT a member of the Town Council because they were recommended to me from a client and they were the low bidder out of three quotes. I have stated this publicly before and I state it once again tonight. I was not a member of the Town Council when the proposed “settlement” discussions commenced; to the best of my knowledge, any proposed settlement has been withdrawn and the matter is proceeding to trial sometime after January, 2013. To the best of my knowledge, the Town has expended over \$200,000 in the last 8 years (\$80,000 in 2) to defend the Narragansett Improvement lawsuit and/or to bring Counter Claims and/or Judgment Actions. Due to Attorney Patrick Dougherty’s issues outlined in the transcripts and potential significant costs to be assessed against the Town of North Smithfield, I once again recommend a fresh look at this legal issue with a new, fresh and independent legal advisor. My interest, in taking the oath of office, is to represent all of the Town of North Smithfield, with consideration for all concerns; even if settlement negotiations with Narragansett Improvement were to resume today, I would require full hearings before the Planning and Zoning Boards as stated earlier in open session of this Town Council.”

DISCLAIMER

Mrs. Charest read the following disclaimer: “It is the board’s understanding that this meeting is being videotaped for future broadcast on cable television. Please be advised that this

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videotaping is being done by private citizens. It is not being done on behalf of the Town of North Smithfield, nor is the Town of North Smithfield in any way sponsoring or affiliated with it. It is not a public record. The Town of North Smithfield especially disclaims any liability for the contents or the accuracy thereof. Any video tape of this meeting or any other use of said video tape or other recording and the contents thereof are solely the responsibility of the parties doing this videotaping.”

REGULAR MEETING

The meeting began at 7:22 P.M. with the prayer and the pledge to the flag. Council members present were Ms. Alves, Mr. McGee, Mr. Yazbak, Mr. Zwolenski and Mrs. Charest. Town Administrator Hamilton and Assistant Town Solicitor Savastano were also in attendance. Town Solicitor Nadeau was unable to attend due to a business commitment.

APPOINTMENT TO JUVENILE HEARING BOARD

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

MOTION by Mr. Zwolenski, seconded by Mr. McGee, and voted unanimously on an aye vote to appoint James L. Tracy, Jr. to the Juvenile Hearing Board to complete a three-year term that expires December 1, 2012.

EXECUTIVE SESSION

MOTION by Mr. Yazbak, seconded by Mr. McGee, and voted unanimously on an aye vote to enter into executive session at 7:25 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. the Town of North Smithfield.

MOTION by Mr. Yazbak, seconded by Ms. Alves, and voted unanimously on an aye vote to come out of executive session at 7:34 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 unanimously on an aye vote to approve the agreement as presented by the attorneys this evening which includes a small monetary settlement of \$16,000 which will be paid by the Interlocal Risk Management Trust and other stipulations to be worked on in accordance with the report received in the Council's packet, based upon the recommendations of the Town Solicitor and outside counsel.

CONSENT AGENDA

MOTION by Mr. Yazbak, seconded by Ms. Alves, and voted

unanimously on an aye vote to remove the Council minutes of September 4th and the payment of bills from the Consent Agenda.

MOTION by Mr. Yazbak, seconded by Ms. Alves and voted unanimously on an aye vote to approve the remaining items: 1.) Minutes of August 20th, September 17th and October 1, 2012; 2.) Parks & Recreation Commission minutes of August 27, 2012; 3.) NSF&RS Inc. Monthly Incident Report for September 2012; 4.) NS Police Department Monthly Activity Report for September 2012; 5.) NS Municipal Court Monthly Activity Report for September 2012; and 6.) Minutes from Town Council/School Committee Joint Meeting of August 21, 2012.

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to correct the minutes of September 4, 2012 regarding discussion of the Pacheco Park field lights to indicate that Mr. Yazbak was pretty sure that the town could never guarantee a loan for a private entity and that he had asked Finance Director Silvia to come back to the Council with alternatives for funding of the lights.

Regarding the payment of bills, Mr. Yazbak questioned what steps have been implemented so that the town can verify that the invoices from the City of Woonsocket regarding water billing are correct.

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted 4 to 0 (Mr. Yazbak abstained because he has a client on the list) on a roll

call vote to approve payment of the following: General fund - \$333,404.45; Sewer - \$6,514.52; Water - \$57,908.18; School Department -

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\$1,498,072.00; and Fire Department - \$195,147.00 for a total of \$2,091,046.15.

2ND READING ORDINANCE AMENDMENT RE: SLATERSVILLE HISTORIC DISTRICT MAP

MOTION by Mr. Zwolenski, seconded by Ms. Alves, and voted 4 to 0 (Mr. Yazbak recused because he is a property owner in the district) on a roll call vote to approve the extension of the Slatersville Historic District map to November 30, 2014 as incorporated on the map and legend.

PUBLIC HEARING RE: DISTRICT USE REGULATIONS

This zoning ordinance amendment divides the town into the following fourteen zoning districts: Residential rural Conservation (RRC), Residential - Rural (RR), Residential - Suburban (RS), Residential - Urban (RU), Residential - Village (RV), Professional Services (PS), Business - Neighborhood (BN), Business - Highway (BH), Business - Agricultural (BA), Limited Commercial (LC), Mixed Use - Commercial (MU-1), Mixed Use - Industrial (MU-2) Manufacturing (M) and Open Space (OS). Additionally, there are two Overlay Districts: Groundwater Aquifer and Historic.

Town Planner Robert Ericson reviewed the proposed changes made by both the Ordinance Development Committee and the Planning Board for Agricultural uses, Residential uses, Office uses, Public and semi-public uses, Open recreation, Restaurants and entertainment, Retail business and service, Wholesale business and storage, Service industries, Industrial uses, Transportation uses and Accessory uses.

Mr. Yazbak questioned a Transient Residential Facility in a Mixed Use 1 zone. Nowhere in the definition does Mixed Use 1 mention residential.

Mr. Ericson stated that was an oversight and should be corrected because that was always the intent of a Mixed Use 1 zone.

Mr. Paul Keenan of 23 Indigo Farm Road asked if there were changes in this ordinance that would help distinguish between aggregate removal from the site versus traditional residential development where no material is removed from the site, just simply redistributed.

Mr. Ericson responded that in the Manufacturing zone aggregate extraction is not allowed across the board. However, given the case law in the state of Rhode Island, it is possible to increase aggregate extraction from an existing site outside of zoning. The existing zoning ordinance says you can remove aggregate to the extent that it was taken from clearing right-of-ways plus, he believes, ten

truckloads and the minor one is where it is replaced by some other material such as a basement. The big issue is the removal of aggregate used to create rights-of-way. The Dowling Village developer did remove a great deal of material from that site but not nearly as much as they could have under zoning. One of the options in zoning in the future is to restrict that whole right-of-way issue and limit the amount within the right-of-way that you can extract off-site and require the other to be redistributed.

When questioned, Mr. Ericson explained the process for obtaining a special use permit.

A woman asked if traffic use pattern research had been done for Nos. 23 through 29 under Retail Business and Service because they are all allowed in the Business Highway zone.

Mr. Ericson responded that the Planning Board always asks for a traffic impact study whenever someone comes in with a new commercial use, which is considered a major land development.

Mr. Yazbak felt that the definition of Open Space, as listed in the ordinance, conflicts with the table of uses. There are a number of items allowed in the Open Space zone and he thought each one should be reviewed because there could be potential issues.

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

unanimously on an aye vot at 9:16 P.M. to take a five-minute recess.

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The meeting resumed at 9:21 P.M.

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to continue the public hearing on the District Uses to November 19, 2012 and that this evening's meeting is not considered the first reading.

WOONSOCKET WATER RATE SETTLEMENT AGREEMENT AND REPRSENTATION OF TOWN

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

A draft of a settlement agreement regarding the City of Woonsocket Water Division Application to change rates was provided.

There was agreement that Ms. Hamilton and Mrs. Charest had spoken to Attorney Michael McElroy about representing the town in this matter.

When Mr. McElroy submitted an invoice for his legal services, Ms. Hamilton felt he had gone beyond his intended duties and she did not

have the authority to remit payment for this invoice.

Mr. Yazbak was very concerned that the Council members had not been notified about what was happening and also that the Town had not been represented before the Public Utilities Commission.

MOTION by Mr. Yazbak, seconded by Mr. Zwolenski, and voted unanimously on an aye vote to continue this to November 19th.

Because of her recent surgery, Mrs. Charest left the meeting at 9:47 P.M.

PUBLIC HEARING RE: PROPOSED BUSINESS HIGHWAY ZONE CHANGES

Once again Mr. Ericson reviewed the areas on Quaker Highway, Victory Highway and Eddie Dowling Highway that have been recommended for a Business Highway zone change based upon the Comprehensive Plan.

Quaker Highway

Mr. Ericson recommended that Plat 1, Lot 128, located on Cider Mill Road, remain residential.

Knowing that Flagg RV wanted to relocate across the street, Mr. Zwolenski had concerns about maintaining a buffer zone and protecting the residents who are already there.

Mr. Yazbak commented that Mrs. Charest had also received a concern from a Cider Mill Road resident who was worried about a buffer zone and light pollution.

Mr. Ericson stated the major variable is going to be the thickness and opacity of any buffer acquired to residential because in the zoning ordinance, parking abutting residential only has to have a fence or evergreens.

Mr. Stephen Wowk of Cider Mill Road wondered what will happen if the zone does get changed for Flagg RV to move across the street and then ten years down the road they move out. The zone will have been changed and who knows if whatever business moves in there will be as accommodating.

Mr. Ericson answered that if the rezoning is done with the buffer built into the rezoning, then whoever comes in after can't change that. There can also be specific requirements for lighting and enforcement under zoning.

(MOTION by Mr. Yazbak, seconded by Ms. Alves, and voted 4 to 0 on an aye vote at 10:05 P.M. to extend the meeting to 10:30 P.M.)

Victory Highway

There is a large area of wetland behind Brigido's Market and DEM

requires an additional 50-foot buffer. This makes the proposed line questionable.

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Mr. Ericson felt it would be better for the Council to reject this proposal and rezone the area as MU1.

Eddie Dowling Highway

The recommendation is to change Plat 21, Lot 21 from Business Neighborhood to Business Highway to be consistent with the rest of the area.

MOTION by Mr. Yazbak, seconded by Ms. Alves, and voted 4 to 0 on an aye vote to continue this public hearing to November 19, 2012 and this does not constitute a first reading.

PUBLIC HEARING RE: PARKING AND LOADING ZONING ORDINANCE AMENDMENT

Since Mrs. Charest had left earlier in the evening and had asked that no vote be taken on the ordinances, MOTION by Mr. Yazbak, seconded by Mr. McGee, and voted 4 to 0 on an aye vote to continue the hearing and the second reading to November 19, 2012.

PUBLIC HEARING RE: ZONING ORDINANCE AMENDMENT GROUNDWATER AQUIFER PROTECTION OVERLAY DISTRICT

MOTION by Mr. Yazbak, seconded by Mr. McGee, and voted 4 to 0 on an aye vote to continue this hearing to November 19, 2012 and this does not constitute the first reading.

APPOINTMENT TO ZONING BOARD

There was no appointment.

2ND READING ORDINANCE AMENDMENT RELATING TO CREDITS FOR PRIVATELY FINANCED SEWER CONSTRUCTION

Once again Attorney Eric Brainsky, representing Industrial Drive Development Company, explained why his client was seeking sewer credits.

MOTION by Mr. Yazbak, seconded by Ms. Alves, and voted 4 to 0 on an aye vote to continue this on November 5, 2012 for a second reading.

Mr. Yazbak asked if the administration could provide for the next meeting any documentation of anyone having made an application like this and who has been denied.

Mr. Michael Clifford asked if this town had proof of ever establishing a retroactive ordinance.

Mr. Brainsky commented that retroactive ordinances are allowed by state law.

CREDIT/ABATEMENT OF SEWER ASSESSMENTS - INDUSTRIAL DRIVE DEVELOPMENT CO.

MOTION by Mr. Yazbak, seconded by Ms. Alves, and voted 4 to 0 on an aye vote to table this to the November 5th meeting.

ANDREWS TERRACE/BRANCH VILLAGE SEWER PLAN

Mr. McGee questioned what the decision would be on this. He has presented several scenarios.

Ms. Hamilton stated that the option Mr. McGee wanted to go with, which was Option #4 by James Geremia, would cost close to \$800,000.

(MOTION by Mr. Yazbak, seconded by Ms. Alves, and voted 4 to 0 on an aye vote at 10:38 P.M. to continue the meeting to 11:00 P.M.)

The proposal was to take the money that is currently in the sewer lot development fund, that would be considered an investment of \$500,000 to \$600,000, and the remainder would be paid by the residents.

Mr. McGee said that Sewer Administrator Jim Wilcox came up with a scenario running a gravity feed from the Brickle property up to Branch Avenue. This would include more properties than just Andrews Terrace residents. That cost was estimated to be \$400,000.

Out of the sewer lot development fund, \$300,000 would be needed and that would allow the property/business owners to pay the remainder which would be about the same as those people in the Phase 1A and Phase 1B district.

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Ms. Hamilton stated the administration has been looking into bonding or grants that could reduce taking funding from the sewer lot development fund.

Public Works Director Raymond Pendergast feels that it is owed to the town and to the sewer users who have already paid into this fund to see if other avenues of revenue can be explored, whether it be loans, grants or whatever. There are already certified, stamped plans for this area. Mr. Pendergast felt he could come back in a month or so. That would give him time to do more homework on this and put more thought into this process. He is not comfortable with taking \$400,000 to \$800,000 out of the sewer lot development fee fund. Mr. Pendergast has met with Marc Nyberg, a local surveyor, and there are other plans on the table.

Mr. Yazbak explained the process of floating a sewer bond for a district and the sewer lot development fee. He feels the whole Branch Village area should be opened up to make the project more worthwhile than getting sewers for Andrews Terrace alone.

Mr. Pendergast stated he has been dealing with the Department of Environmental Management for the past year and funding is a problem.

MOTION by Mr. Yazbak, seconded by Ms. Alves, and voted 4 to 0 on an aye vote to adjourn at 11:00 P.M.

Respectfully submitted,

Debra A. Todd, Town Clerk