

D R A F T

**TIVERTON PLANNING BOARD
MINUTES OF MEETING
July 15, 2014**

Chairman Stephen Hughes called the regular meeting of the Tiverton Planning Board to order at 7:02 P.M. at the Town Hall, 343 Highland Road. Members present were: Vice Chairman Stuart Hardy, Patricia Cote, Rosemary Eva, Susan Gill (new member), Carol Guimond, Edward Campbell (new member), Peter Corr and David Saurette.

Also in attendance were: the Planning Board's Clerk and Administrative Officer Kate Michaud, Director of Public Works Stephen Berlucchi, consulting engineer Deirdre Paiva of Commonwealth Engineers and Consultants and the Planning Board's Solicitor, Peter Ruggiero, Esq.

1. Campanelli Properties of Tiverton – c/o Jeremiah Leary, Esq. – 1340 Main Road – Tiverton, RI 02878 – Request for Acceptance of Improvements and Release of Surety (\$428,000) – Cottrell Farms Major Subdivision - Phases I and II – W/S Fish Road, South of Route 24 – Cottrell Road and Alexandra Circle

Attorney Jeremiah Leary, owner / developer Ralph Campanelli of Campanelli Properties of Tiverton and engineer Christopher Duhamel of DiPrete Engineering were present on behalf of the petition. Mr. Campanelli's other attorney John Kupa was also seated in the audience. The Chairman stated that a large binder of information prepared by the applicant for each Board member had arrived the previous Thursday or Friday and that he had not had a chance to review it all. He stated that the normal deadline for submission of documents for an agenda item is 21-days prior to the scheduled meeting. Mr. Leary replied that he had not anticipated a problem when the agenda request was submitted, and that the recent unanticipated resistance by the Director of Public Works encountered was the reason for the late submission. Mr. Leary reviewed the Land Development and Subdivisions Regulations Section 23-74 – Acceptance of Improvements and Release of Surety. He noted that the request for acceptance would go to the Town Council, and then if approved, the applicant would return to the Planning Board for release of the surety.

Mr. Leary stated that Mr. Berlucchi had objected to the request for acceptance, referring to his [Mr. Berlucchi's] letter dated July 12, 2013 (See file). Mr. Leary stated that Mr. Berlucchi's letter had been written prior to the installation of a leveling course of asphalt, the top course of asphalt and numerous corrections totaling a cost of approximately \$400,000. He also noted that the leveling course was not required by the plans or the subdivision regulations.

Mr. Leary reviewed the timeline, noting that the binder course of asphalt had been installed in 2007 and that from May 14, 2007 through August 24, 2007 the former DPW Director, David Webster had conducted almost daily inspections of the development. Mr. Leary referred to copies of Mr. Webster's notes contained in the large binders distributed to the Board. Mr. Leary stated that on or about Labor Day, 2007 Mr. Webster left the employ of the Town and another DPW Director was briefly employed. In January 2008 Mr. Berlucchi began working for the Town, at which time the binder coat had already been installed. Mr. Leary noted that Commonwealth Engineers had performed inspections after Mr. Webster's departure for the Town. Mr. Leary distributed notes from the paving in November, 2007.

Mr. Leary stated that the top course of asphalt had been installed in 2013 after an April 22, 2013 letter from Commonwealth detailing the corrective actions required prior to top course. In addition Commonwealth had supervised the corrective actions as well as inspection of the top course installation. Mr. Leary noted that the cost of Commonwealth's inspections was approximately \$22,000 which had been paid by Mr. Campanelli.

Mr. Leary noted that the winter of 2013/2014 had some of the worst weather in memory. He concluded that the road had been in place for seven (7) years and that there was no reason not to recommend acceptance.

Mr. Duhamel stated that early stages of construction had been supervised and inspected by Mr. Webster, and opined that Mr. Webster had some unusual requests. These requests included stripping the loam and subsoil to

an excavation depth of three (3) feet, at a total extra cost of \$150,000. Mr. Duhamel stated that with the installation of barrow fill, this had improved drainage. He also stated that the perched water table had been averted through Mr. Webster's extra work request. Mr. Duhamel added that leeching catch basins had also been required by Mr. Webster and that the installation of utility trenches had provided for an additional outlet for drainage through the sand bedding and stated that these actions lowered the water table.

Mr. Duhamel reviewed the corrective work, which included cutting out and replacing areas of base course. He stated that this was not due to frost heaving. He stated that the inside of the catch basins had been parged, opining that this was not what Mr. Webster would have wanted. Mr. Duhamel stated that the drainage basins were all operating as designed and concluded by opining that the improvements were above and beyond what was required, and that the improvements were designed and built properly.

Mr. Berlucchi stated that there were many patches around the drainage structures. He agreed that when he began working for the Town the binder had already been installed. He stated that if Mr. Webster had required unparged catch basins, he did not agree. Mr. Berlucchi stated that he would stand up for all of the work installed after the binder and for the quality of the corrective actions. He stated that he could not recommend anything below the top course of asphalt as he was not present for installation.

Ms. Paiva stated that she had visited the site once with Mr. Webster before he left and that she had copies of Mr. Webster's notes. She stated that his notes were silent on the issue of parging. She also stated that she was not on site full time for inspections after Mr. Webster left. She addressed the catch basins, noting that the ADS pipe was smaller in diameter than the concrete hole in the structure, leading to settlements. She stated that [in 2013] the pipes had been parged from the inside and it appeared that there were no interior cracks. She noted that one pipe had been crushed by a rock during backfilling and had to be replaced. Mr. Corr asked if parging pipes would be standard protocol. She stated that it would be standard to parge the inside and the outside, but that she did not know what Mr. Webster had wanted. Mr. Corr expressed concern that silt could enter the system, and that unless the pipes were cleaned completely the parging wouldn't stick. Ms. Paiva replied that everything had been cleaned and flushed.

Mr. Corr asked how many pipes showed evidence of settlement. Mr. Paiva replied that twenty (20) had settled and thirty-one (31) had not. The settled pipes had been repaired. Mr. Corr referred to Mr. Berlucchi's concerns (in the July 12, 2013 letter) regarding the four (4) inches of crushed stone under the binder. Mr. Corr stated that during construction he had visited the site with former Planning Board Administrative Officer and Chairman Noel Berg, who was also a professional engineer, to look at the stone in several areas. He opined that Mr. Berg had been satisfied with the stone. Mr. Corr asked why all of the pipes hadn't been dug out and parged when the problem was found. Ms. Paiva replied that this would have required digging out the entire road.

Mr. Corr questioned the cost to repair failures in the catch basins that had not been repaired yet. Mr. Berlucchi estimated the cost to be \$5,000 to \$10,000 per catch basin, depending upon the depth and type (some were doubles). Mr. Duhamel stated that the unsettled catch basins had been in place for seven (7) years. Mr. Berlucchi stated that the granular materials falling through the cracks took time and that it was a slow process. He also noted that a basin two basins up from the bridge had only recently begun to settle like the others. Mr. Corr asked if Mr. Berlucchi was satisfied with the repaired basins. Mr. Berlucchi replied in the affirmative.

Mr. Leary stated that the developer had done what Mr. Webster wanted him to do, and that he should not be forced to pay for the Town's confusion. Mr. Duhamel stated that there were two RIDOT (Rhode Island Department of Transportation) standard details for catch basins – open and sealed. He stated that Mr. Webster had wanted them open. Ms. Paiva noted that the pipes could have been parged and the parging material could have washed away. She confirmed that all catch basins were now parged from the inside.

Mr. Saurette acknowledged that Mr. Webster was not present to explain his preferences, but the approved plan depicted a sealed basin and noted that there was nothing in writing approving a change to the approved plan. He added that he had never seen pipes that were not parged in his experience. Mr. Duhamel agreed that Mr.

Webster's notes did not address the pipes being either parged or unparged, but he stated that he found it hard to believe that Mr. Webster never checked the catch basins during any of his inspections. Mr. Duhamel stated that if the structures had not settled, why dig them out? He asked how long settlement would take. Mr. Berlucchi replied that no one could tell.

Mr. Corr asked if the crushed stone around the bottom of the tank, surrounded the tank and went up to the pipes. Mr. Duhamel replied in the affirmative, noting that the crushed stone extended to the base gravel. Mr. Corr asked if the crushed stone would settle. Mr. Berlucchi replied that it appeared to be good granular gravel material. Mr. Corr asked which pipes had been parged on the outside. Ms. Paiva replied that the repaired basins were parged on the inside and the outside, and that the rest were just parged on the inside. She added that pipes that had sagged were also repaired.

Mr. Hardy inquired about financial liability, if the structures settled. Mr. Berlucchi repeated his estimate of \$5,000 to \$10,000 per structure. Mr. Hardy inquired about the likelihood of settlement. Mr. Berlucchi replied that it was inevitable that some would settle, but that he couldn't predict how many. Mr. Saurette asked if an option would be to for the applicant to post some amount of surety for a certain period of time.

Mr. Campanelli stated that he had been on this road for seven (7) years and that normally he is in and out of a project. He stated that the terrible housing market had caused the delay. He added that he would consider a reasonable amount of surety for a short term. Ms. Guimond noted that twenty (20) of the fifty (50) basins had failed, opining that it was not right for the Town and the taxpayers to get stuck with the expense of fixing them. Mr. Campanelli stated that the Town had received an extra 1.25 inches of pavement (leveling course) over and above their requirement and opined that this development currently had the best roads in Tiverton.

Ms. Gill stated that she was surprised by the amount of work that needed to be redone and understood why there were reservations about the work. She added that she had driven the site that day and it appeared to be in great shape, but the history made her nervous. She was also concerned that repair work could affect the top course of asphalt. Mr. Leary stated that most developments had not been reviewed this closely. Ms. Eva agreed that Mr. Webster had been a stickler.

Ms. Cote stated that Planning Board needed to protect the Town and to be fair to Mr. Campanelli and suggested that there should be a point of compromise. Mr. Hardy stated that he was not on the Board when the development was approved, but that it appeared that the developer did as he was told at the time. He asked if there was precedent to hold a reasonable amount of money for a reasonable amount of time.

Ms. Michaud noted that Land Development and Subdivision Regulations Section 23-71 f. (Procedure for setting and use of performance guarantees.) allowed for a maintenance surety for stormwater control facilities. Mr. Ruggiero suggested that the Board could take two actions:

1. Decide on the recommendation for acceptance, and
2. Discuss releasing the performance guarantee and replacing it with a maintenance guarantee.

Mr. Hardy asked if it would be appropriate for Mr. Berlucchi, Ms. Paiva and Mr. Duhamel to caucus and come up with a reasonable figure for a maintenance guarantee. The Chairman asked the Board members how they felt about recommending acceptance and releasing the surety upon the submission of a maintenance surety. Ms. Michaud also noted that the Homeowner's Association (HOA) was still outstanding. Mr. Leary stated that if the improvements were accepted the HOA would be physically formed. He stated that a meeting had not been called yet and that he did not want anyone else in this process other than Mr. Campanelli at this time. Mr. Ruggiero stated that the full surety could be held until the HOA was formed.

Mr. Berlucchi added that the streets would need to be swept and the basins cleaned noting that RIDEM (Rhode Island Department of Environmental Management) usually requires cleaning every year. Ms. Eva noted that the HOA's had been an issue of concern for the Town Council and the Street Committee.

By consensus, the Board agreed to move forward with determining an acceptable maintenance surety. Mr. Corr asked if the roads were accepted, could the Planning Board be forced to release the surety. Mr. Ruggiero replied in the affirmative. Mr. Corr opined that it might be better to come up with a maintenance surety amount prior to going to the Town Council to make sure that it was agreeable to all. Mr. Berlucci suggested that this item could be recessed to allow for him, Ms. Paiva and Mr. Duhamel to discuss and bring back a figure. Mr. Hughes made a motion to recess this item. Mr. Hardy seconded the motion. The motion passed unanimously. Mr. Hughes, Mr. Hardy, Ms. Cote, Ms. Eva, Ms. Gill, Ms. Guimond, Mr. Campbell, Mr. Corr and Mr. Saurette voted in favor of the motion. This item was recessed.

After the discussion of agenda item number 2. at 8:45 P.M., the discussion of this item resumed. Mr. Leary suggested that the Board should release the surety, to be replaced with a maintenance surety of \$37,500 cash to be held for a period of four (4) years. He stated that sums could be withdrawn by agreement of Mr. Berlucci and Mr. Campanelli and if there was no agreement the Planning Board would settle any disputes. Mr. Ruggiero stated that an escrow agreement could be executed, which would state the specifics.

Mr. Berlucci explained the figure that was proposed. There were thirty-one (31) unrepaired basins. He assumed that 15% of the basins would fail, with an average cost to repair of \$7,500, which totaled \$37,500. Mr. Saurette made a motion to recommended acceptance to the Town Council, conditional upon the applicant returning to the Planning Board for release of surety and posting of a cash maintenance surety in the amount of \$37,500 for a term of four (4) years, to be placed in an escrow account. In addition, the applicant must provide proof that the Homeowner's Association had been formed. Mr. Hardy seconded the motion. The motion passed unanimously. Mr. Hughes, Mr. Hardy, Ms. Cote, Ms. Eva, Ms. Gill, Ms. Guimond, Mr. Campbell, Mr. Corr and Mr. Saurette voted in favor of the motion.

2. Daniel B. & Elizabeth Rocha – 427 Fish Road – Tiverton, RI 02878 – Preliminary Plan Review – Two-Lot Minor Subdivision (Existing house plus one lot) – 427 Fish Road – Plat 112 / Lot 258 – W/S Fish Road, E/S Richard Drive – R-30 Zoning District (Zoning Board Relief Required for Frontage) Owner / applicants Daniel B. and Elizabeth Rocha and engineer Todd Chaplin of Mt. Hope Engineering were present on behalf of the petition. Mr. Chaplin described the petition which would create one lot with an existing single-family dwelling fronting on Fish Road and another lot with 99.8 feet of frontage on Richard Drive. He stated that the petition sought to extend the paved surface of Richard Drive to the applicant's property line. A gravel driveway would be installed on the property with a Fire Department approved turnaround area. Mr. Chaplin stated that the Town's interim Building / Zoning Official Rhett Bishop had agreed to allow the barn to stay on the otherwise vacant lot with conditions regarding the timeframe of new construction. (A building permit for a new single-family dwelling would be taken out no more than 120-days from the date of approval or the barn would need to be demolished or an application filed with the Zoning Board.) Mr. Chaplin stated that a septic application had been filed with RIDEM (Rhode Island Department of Environmental Management) and that the soil test results were very good. Public water was proposed to the new lot.

The Chairman reviewed the corrections noted on the Certificate of Completeness. Ms. Eva noted that the plan was not prepared by a PLS (Professional Land Surveyor) as required by the check list and that some dimensions and bounds were missing. She stated that the existing driveway should be depicted. She inquired about the cemetery abutting the property at the northwest corner and if it had a historical cemetery sign. Mr. Rocha replied that he had cleaned it and that it had a sign.

Ms. Michaud asked if the improvements would be done before or after the approval. Mr. Chaplin stated that he would prefer to do it after approval. Mr. Berlucci asked what type of drainage pipe was within the Richard Drive right of way. Mr. Rocha replied that it appeared to be concrete. Mr. Chaplin added that it would be replaced with concrete pipe.

Ms. Eva asked how snow plows would turnaround. Mr. Berlucci replied that they would back out of Richard Drive, as they were currently doing. Mr. Chaplin stated that a turnaround would be provided for the Fire Department and that it was only a short distance from Richard Drive to DeCosta Drive. Mr. Berlucci noted

that the Town would not be plowing Mr. Rocha's driveway. Mr. Corr asked if there could be a bulbous end to the road for snow storage. Mr. Chaplin stated that the applicant had been told to extend the roadway to match the existing pavement width. He stated that plantings were proposed to shield the neighbor. He added that they would like to construct a 12'-15' road instead. Mr. Corr inquired about the distance to DeCosta Drive. Mr. Chaplin estimated the distance to be 180 feet noting that there would be a 15 foot shoulder off the edge of the pavement. The Chairman asked if Mr. Berlucchi had an issue with pushing snow to the side. Mr. Berlucchi replied in the negative, stating that 15 feet should be sufficient. He stated that this extension only added 80 feet to the existing road and that there was no room within the right of way for a big cul de sac.

Ms. Eva asked if zoning relief would be needed for the accessory structure (barn) on the proposed lot. Mr. Ruggiero replied that it would not necessarily be needed and that it should be settled prior to recording.

Mr. Hughes made a motion to continue this item to the August 5th meeting pending corrections to the plans. Mr. Hardy seconded the motion. The motion passed unanimously. Mr. Hughes, Mr. Hardy, Ms. Cote, Ms. Eva, Ms. Gill, Ms. Guimond, Mr. Campbell, Mr. Corr and Mr. Saurette voted in favor of the motion.

3. Tiverton Planning Board

A. Advertised Public Hearing: Amendments to the Land Development and Subdivision Regulations – Construction Appendix – Proposed to Move to New Article XV – Construction Specifications – Copies Available Online, Town Clerk's Office and Essex Library The Chairman noted that several meetings had been held to review and edit the draft that was put together by Ms. Paiva and Mr. Berlucchi. He invited questions or comments from the audience. Hearing none, he asked the Board for any further comments.

Ms. Eva stated that the word "soil" should be added to Section 6.b. on page 3. On page 4, reference is made to Chapter 65. Ms. Eva suggested that this should be clarified to state that Chapter 65 is within the Tiverton Code of Ordinances and "Part III" should be referenced instead of Article II. On page 15, the label "Water service." should be removed. A period was needed at the end of the first sentence on page 5. A brief discussion ensued regarding the seasonal limits for paving listed on page 9. Hearing no more questions or comments, the Chairman closed the public hearing.

Mr. Hardy made a motion to adopt the amended specifications, to be included in the Subdivision Regulations, with the corrections as noted. Mr. Corr seconded the motion. The motion passed unanimously. Mr. Hughes, Mr. Hardy, Ms. Cote, Ms. Eva, Ms. Gill, Ms. Guimond, Mr. Campbell, Mr. Corr and Mr. Saurette voted in favor of the motion.

4. Town Planner & Administrative Officer

A. Administrative Officer's Report The June AO Report was distributed.

- 1. TRC Report: 07/09/2014 Meeting** – Written notes from the ad-hoc TRC meeting were distributed.
- 2. Request Permission to Draft Updates to the Planning Board Handbook for Future Consideration by the Planning Board** Ms. Michaud stated that she would like permission to update the handbook, which had not been updated in many years.

Mr. Hughes made a motion to allow Ms. Michaud to draft amendments for the Board's consideration. Mr. Saurette seconded the motion. The motion passed unanimously. Mr. Hughes, Mr. Hardy, Ms. Cote, Ms. Eva, Ms. Gill, Ms. Guimond, Mr. Campbell, Mr. Corr and Mr. Saurette voted in favor of the motion.

B. Construction Update: Ms. Paiva and Mr. Berlucchi stated that they both had been performing inspections.

- 1. Stafford View Farm** Ms. Paiva stated that work was proceeding as required.

2. **Tiverton Public Library** Ms. Paiva stated that she had encountered some difficulty with notification prior to drainage installation. Ms. Michaud noted that if a meeting was needed, she would be glad to arrange it.

C. Town Planner Items

1. Update: Stone Bridge Abutment Repairs

The Stone Bridge plan was still under review by RIDOT. Some comments from RIDOT had been received, but a response would not be formed until all comments were received.

2. **Seaside Gas Update / RWU Community Partnership Center** Ms. Michaud noted that charettes were scheduled for July 18th and July 19th. Flyers were distributed.

D. Miscellaneous

1. Update from S. Berlucchi on Streets

a. Shore Road Ms. Eva recused herself from the discussion of this item and left the table. Mr. Berlucchi reviewed the site, stating that the constructed portion of Shore Road was not within the right of way and that there were homes built within the right of way. He stated that this had occurred due to a survey error many years ago. He stated that an abutter had been placing private road signs in the area causing people to back out and causing a safety hazard. He stated that he would be applying to the Town Council to declare the constructed road a Highway by Use. Mr. Ruggiero noted that if authorized by the Town Council to proceed, the process would take 2 to 3 months to come to a Public Hearing. The discussion ended and Ms. Eva returned to the table.

b. Beech Tree Hill Mr. Berlucchi stated that the Homeowner's Association had been registered with the State. The Homeowner's had been asked to also record the documents in Town Hall.

c. Daniel T. Church Estates Mr. Berlucchi stated that certified letters had been sent to the residents regarding the requirements for acceptance and notifying them that the Town Council could cut off services. Ms. Eva, a member of the Street Committee stated that she had been informed that their Homeowner's Association had also been formed.

d. Winterberry Woods Mr. Berlucchi stated that a resident of the development had volunteered to assist with the formation of the required Homeowner's Association and was reporting monthly to the Street Committee. Progress was being made.

5. Tiverton Planning Board Continued

B. Solicitor's Report There was no report.

- C. **Earth Removal – Draft Revisions to Town Code Chapter 38 – Town Council Public Hearing Scheduled for July 14th** Ms. Michaud stated that the Town Council had continued the Public Hearing to September 8th after hearing many concerns from Lynch Corporation, the new owner / operator of the former Douglass quarry on Fish Road. Many concerns were also expressed by area residents. Ms. Michaud stated that Town Solicitor Andrew Teitz had indicated that revision would need to be made to the draft ordinance and that it may need to be re-advertised, if the amendments were extensive.

D. Zoning Amendments:

1. Tiverton Four Corners / Village Commercial – Discussion Regarding Notice to Town Council – Postpone Rezoning Pending Receipt of Completed Source Water Protection Plan Ms. Michaud noted that the Atlantic States Rural Water and Wastewater Association was working on a Source Water Protection Plan for Nonquit Pond (and Stafford Pond), which was expected to be complete in February or March 2015. Mr. Hardy suggested that it would be best to wait for this report before amending zoning within this watershed area. The Board agreed by consensus. A memorandum would be sent to the Town Council advising them of the Planning Board's intentions.

2. Waterfront Area Rezoning: General Discussion The Chairman stated that some work had been done on the waterfront area from roughly the Sakonnet Bridge to the Nanaquaket Bridge, including parcel inventories and mapping of breaks in the existing use patterns. Stone Bridge area property owner Chee Lauareanno spoke from the audience, stating that stakeholders in the area want to be involved in

the process. The Chairman assured her that everything would be done in a public forum and that public input would be sought as it was with the Main Road / Bliss Four Corners zoning project.

E. Correspondence A letter to the Town Council from the LB Corporation (Lynch – see Earth Removal discussion (5. C) above) was distributed for the Board’s information.

F. Miscellaneous

1. Comprehensive Community Plan Update – Ms. Michaud stated that the open houses had been very successful and that a CPAC (Comprehensive Plan Advisory Committee) meeting had been scheduled for this coming Thursday evening to review the results and plan for moving ahead.

2. Wind Energy Generation Facilities – Update from Subcommittee There was no update.

3. Watershed Protection Overlay District Update: Conservation Commission Subcommittee/ Source Water Protection Work is continuing on watershed issues.

G. Approval of Minutes:

May 6, 2014 Mr. Hardy made a motion to approve the minutes. Mr. Saurette seconded the motion. The motion passed unanimously. Mr. Hughes, Mr. Hardy, Ms. Cote, Ms. Eva, Ms. Gill, Ms. Guimond, Mr. Campbell and Mr. Saurette voted in favor of the motion. Mr. Corr abstained, since he was not present.

June 3, 2014 These minutes were not ready.

H. Adjournment: Mr. Hardy made a motion to adjourn. The motion was seconded by Mr. Corr. The motion passed unanimously. Mr. Hughes, Mr. Hardy, Ms. Cote, Ms. Eva, Ms. Gill, Ms. Guimond, Mr. Campbell, Mr. Corr and Mr. Saurette voted in favor of the motion. The meeting adjourned at 9:40 P.M.

(Italicized words represent corrections made on the approved date.)

Submitted by: _____
Kate Michaud, Clerk

Approval Date: draft