

# **CITY OF EAST PROVIDENCE**

## **PLANNING BOARD**

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### **Minutes of May 9, 2011**

**Members Present: Burton Batty, Michael Robinson, Matthew Robinson, Octavio Cunha, Jeanne Boyle (staff), James Moran (staff), and Patrick Hanner, (staff).**

#### **1. SEATING OF ALTERNATE MEMBER**

**Matthew Robinson and Octavio Cunha were both seated as the alternates.**

#### **2. APPROVAL OF PLANNING BOARD MINUTES**

#### **3. APPROVAL OF PLANNING BOARD CORRESPONDENCE**

#### **4. NEW BUSINESS**

**A. Public Hearing – Appl. #2010-06, 15-17 Curtis Lane – Minor Subdivision, Preliminary Plan Approval, Map 309, Block 14, Parcels 93 and 94. Applicant: Tobias Freitas**

**At this time Mr. Batty recused himself because he said he and the**

applicant do business together. Ms. Boyle said a recusal form would be sent to him to complete.

At this time Attorney Martin P. Sleprow, attorney for the applicant, Mr. Tobias Freitas, 74 First Street, East Providence, RI were both sworn in by Director Boyle.

Mr. Sleprow explained that his client is proposing a lot line change between parcels 93 and 94 which would bring the parcels closer together in size. Curtis Lane runs off of Pawtucket Avenue, it is not a city street and there have always been two existing lots, 93 and 94. 93 was 38,000 sq. feet and 94 was 6,500. The applicant is proposing to enlarge the lot which would make them equal in size. There is a structure on the lot 94 and that will be removed. There will be an existing private well on the new parcel 94 along with a new Individual Sewage Disposal System (ISDS). It will not be connected with the City's sewer system.

Mr. Sleprow noted that the Planning Board gave approval of this subdivision many years ago but there were some issues about creating a new water line and getting permission from the Rose Estate to bring the waterline over the applicant's land. The Planning Board approved the plan, but the applicant never went through with it because of objections by a neighbor about the sewer line going through one of the abutters on Glendale Avenue. The new plan will have water through lot 95 by a well which has already been dug.

**Both lots have septic systems and we do not need any zoning variances. We are asking the Board to give preliminary approval to divide the parcels. They will both will have a septic system. Lot 93 has the right to cross 94 with the easements. They will be signed and recorded at the time of the final plan approval.**

**Chairman Robinson asks if there are any questions. There were none.**

**At this time Ms. Boyle presented the staff memorandum. She said that there are two lots that don't have any frontage on a city street. There is an existing condition where they have been provided access from Curtis Lane for many years.**

**Ms. Boyle went through the overview of the proposal. The applicant is proposing to move the lot line between parcels 93 and 94 to even out the acreage and so that both parcels will be in dimensional conformance with City Zoning. She noted that the Assistant City Solicitor Robert Craven has signed off on the language of the easement.**

**The plan has been reviewed by the Public Works Department, Zoning Officer, Fire and Law Departments and Assessor's Office with regard to drainage and noted that it is in conformance with the City's Land Development and Subdivision Regulations, Zoning Ordinance, and other applicable City Codes and Regulations.**

**The proposed subdivision is a low density residential which allows residential density of up to 5.8 dwelling units per acre. The proposal is well within the low-density requirement of the property.**

## **GENERAL PURPOSES & REQUIRED FINDINGS**

**In accordance with Section 5-4 of the Regulations: “Prior to approval of any application for subdivision and/or land development project, the Administrative Officer or Planning Board, as applicable, shall address each of the general purposes stated in Article 1 and shall make positive findings of fact on all of the applicable standards listed below, as part of the proposed project’s record. If a positive finding for any of these standards cannot be made, the Administrative Officer and/or Planning Board shall have grounds for denial of the project.”**

**Section 1-2. General Purposes. The general purposes of these Regulations is to establish**

**procedural and substantive provisions for the subdivision and development of land that will, consistent with the provisions of the East Providence Comprehensive Plan and the East Providence Zoning Ordinance, accomplish the following:**

**(a) Protect the public health, safety and welfare;**

**The subdivision as proposed would not negatively impact the health,**

**safety and welfare of the public.**

**(b) Provide for orderly, thorough and expeditious review and approval of land developments and subdivisions;**

**The regulations provide for an orderly, thorough and expeditious review of subdivisions and this application has been following that process.**

**(c) Promote high quality and appropriate design and construction of subdivisions and land development projects;**

**Planning is of the opinion that the proposal would represent a net improvement of the built condition of the property.**

**(d) Protect existing natural and built environments and mitigate all significant negative impacts of any proposed development on the existing environment;**

**The proposal includes what is expected to be an improved individual sewage disposal system permitted by DEM, to be constructed under DEM supervision. Erosion control during ISDS construction and drainage considerations appear to be adequately addressed. Planning is of the opinion that this aspect of the proposal will serve to mitigate any possible negative effects of the proposal as a whole.**

**(e) Promote design of land developments and subdivisions which are well-integrated with the surrounding neighborhoods with regard to natural and built features, and which concentrate development in areas which can best support intensive use by reason of natural characteristics and existing infrastructure;**

**The proposed improvements will enhance the appearance of the subdivision and should positively integrate with the surrounding neighborhood.**

**(f) Encourage design and improvements standards to reflect the intent of the East Providence Comprehensive Plan with regard to the physical character of the various neighborhoods, districts, and special and critical areas of the city;**

**The Regulations have been adopted with design and improvement standards in accordance with the Comprehensive Plan and with regard to the various neighborhoods, districts, special and critical areas of the City. It is the opinion of this Department that the proposed improvements will not negatively impact the character of the neighborhood.**

**(g) Promote thorough technical review of all proposed land developments and subdivisions by appropriate officials;**

**The proposed subdivision has been reviewed by appropriate officials,**

**including: Planning, Public Works, Zoning, Law, Assessment, and the Fire Department.**

**(h) Encourage dedications of public land and impact mitigation to be based on clear documentation of needs and to be fairly applied and administered, and;**

**There is no known need for any dedication of land for public purposes. There are no other known impacts requiring mitigation regarding this proposed subdivision.**

**(i) Provide for the establishment and consistent application of procedures for local record keeping on all matters of land development and subdivision review, approval and construction.**

**The proposed subdivision is being reviewed under the Regulations adopted by the East**

**Providence Planning Board and pertinent records are being kept.**

#### **Section 5-4. Required Findings.**

**Section 5-4 of the Regulations requires that, prior to the approval of any application for a**

**subdivision, the Planning Board shall address each of the general**

**purposes in Article 1 of the Regulations and shall make positive findings on all of the applicable standards, as listed below:**

**A) Subdivision and land development project proposals shall be consistent with the East**

**Providence Comprehensive Plan, including its goals, objectives, policy statements and Land Use 2010 Plan, and/or shall satisfactorily address the issues where there may be inconsistencies;**

**Based upon the submitted plan and required materials, Planning staff finds that the proposed subdivision is consistent with the East Providence Comprehensive Plan, including its goals, objectives, policy statements and Land Use 2010 Plan as noted above.**

**B) All lots in a subdivision and all land development projects shall conform to the standards and provisions of Chapter 19, Zoning.**

**Please see Zoning section above.**

**C) There will be no significant environmental impacts from the proposed development as shown on the Plan.**

**No negative environmental impacts are expected from the proposed improvements, as noted in the general purposes discussion above.**

**D) The Subdivision, as proposed, will not result in the creation of individual lots with such physical constraints to development that building on those lots according to pertinent regulations and buildings standards would be impracticable.**

**A positive finding can be made regarding this item.**

**E) All proposed land developments and all subdivisions shall have adequate and permanent physical access to a public street. Lots cannot be isolated by topographic, natural, or other features which prevent physical access from the street**

**Please see Zoning discussion above regarding this matter.**

**F) Each subdivision and land development project shall provide for safe circulation of pedestrian and vehicular traffic, for adequate surface water runoff, for suitable building sites, and shall provide for the preservation of natural, historical, or cultural features that contribute to the attractiveness of the community to the extent feasible; and**

**G) The design and location of streets, buildings, lots, utilities, drainage improvements and other improvements in each subdivision and land development shall minimize flooding and soil erosion.**

## **Recommendation**

**Based upon the analysis provided in the General Purposes A. through I. and Section 5-4 Required Findings A. Through G. the proposed subdivision is consistent with Section 1-2, General Purposes". It is the opinion of staff that the subdivision, as proposed, is fully consistent with the East Providence Comprehensive Plan. Therefore, staff recommends:**

**A. That the Planning board delegate final approval of the executed Access Easement and Water Line Easement to the Administrative Officer;**

**B. That the Board delegate final plan approval to the Administrative Officer;**

**C. That the Planning Board grant the requested waiver from the requirement for frontage on a public street, pending any determination of additional zoning review from the City Solicitor's office;**

**D. That the Planning Board grant Conditional Approval of the subdivision, as proposed subject to the following conditions:**

**1. That the new dwelling to be constructed on proposed Parcel 94 be**

**designated for single family use in perpetuity;**

**2. That there be no additional subdivision of these two properties in perpetuity;**

**3. That any and all required variances be obtained from the Zoning Board of Review and that notation is placed on the Final Plan, indicating which variances were granted, date of the Zoning Board of Review and the recorded book and page of the East Providence Land Evidence Record;**

**4. That the title block of the Preliminary Plan be revised to indicate Final Plan status;**

**5. That the Final Plans be based upon the approved Preliminary Plans, and further that the Final Plan and supporting documentation meet the requirements of the East Providence Land Development and Subdivision Review Regulations;**

**6. That the proposal shall meet a all applicable City, State, and/or Federal regulations and requirements; and**

**7. That upon project completion, final plans be submitted on Mylar, and electronic format in AutoCAD version 14. The “as-built” drawings shall include all roadway and utility information, including final inverts, rims, sewer later depths and locations (swing ties) to all**

**permanent structures.**

**Chairman Robinson ask about Section 5-4 E. where it states “all proposed land developments and all subdivision shall have adequate and permanent physical access to a public street”. Ms. Boyle explained that when this was approved by the Council back in 1991 were there specific findings because we did not have the subdivision regulations in place at that time. Mr. Slepko noted that there is adequate and permanent access. There are a lot of homes on Curtis Lane and they do have permanent access.**

#### **Public Comment**

**Ms. Boyle swore in Robert Carlins, 66 Merritt Road. He states he is within 200 feet of the proposed site and is very concerned about the pumping station at the end of his road and drainage problems such as wastewater that might accumulate in that area. Ms. Boyle answered that this plan was reviewed by the City Engineer who had no issues with drainage. Chairman Robinson stated that the Planning Department while reviewing all plans always takes into consideration the abutters of these properties and any concerns they may have. There is no tie into the City sewers. Also, DEM will also be on-site with the subdivision project.**

**Motion – Staff Memorandum and Attached Documentation**

**On a motion by Mr. Robinson, seconded by Mr. Cunha, the Board unanimously voted to accept the staff recommendation and accompanying documentation as part of the Board's official records.**

**At this time, Chairman Robinson asked Ms. Boyle if the Planning Department has ever asked the Planning Board to waiver one of the requirements in Section 5-4 (C) which states: "That the Planning Board grant the requested waiver from the requirement for frontage on a public street, pending any determination of additional zoning review from the City Solicitor's office". "Required Findings". Ms. Boyle said she does not recall. Chairman Robinson said for the record that he is not actually convinced that a "waiver" is necessarily allowable or needed here. He is concerned about going down a road where we are granting a waiver that might not be waiveable. He would like more clarification from the City Solicitor.**

**Motion – Requested Waiver of Section 5-4 C.**

**After further discussion on the Recommendation, letter "C" the Board decided to amend the wording which is noted in the motion below:**

**On a motion by Mr. Robinson, seconded by Mr. Cunha, the Board unanimously voted to amend item (C) in the staff memorandum under Section 5-4 "Required Findings" and amend to read: "that a pre-existing condition exists which creates permanent and adequate access to a public street via an established easement".**

**Chairman Robinson notes that there would be no action taken regarding the request for a waiver based on the motion above.**

**Roll Call Vote**

**Mr. Cunha Aye**

**Mr. Robinson Aye**

**Chairman Robinson Aye**

**Motion – Final approval of the access easement and water line easement**

**On a motion by Mr. Robinson, seconded by Mr. Cunha, the Board unanimously voted to delegate final approval of the executed access easement and the water line easement to the Administrative Officer and also that the Board delegate Final Plan Approval of the subdivision to the Administrative Officer. In addition to section D that the Board delegate conditional approval of the subdivision as proposed subject to the seven conditions noted in the staff memorandum**

**Roll Call Vote**

**Mr. Cunha Aye**

**Mr. Robinson Aye**

**Chairman Robinson Aye**

**Mr. Batty has resumed his spot on the Board at this time.**

**B. Purchase of City -owned land – Request by Paul Carvalho , Map 305, Block 6, Parcel 5.1**

**Mr. Hanner described the property as being 3,000 square feet. He said Mr. Carvalho wants to extend his backyard. There is frontage on the recently created Standish Avenue. The City owns the property, but there is a lien against it by Barry and Kenneth Cook. The City as of this day does not have marketable title. We would have to initiate a foreclosure process to remove the claim of Barry and Kenneth Cook before the City can sell it. Public Works has reviewed the request and they have no objection to selling the property. It is the opinion of the Planning Department that this parcel serves no use and it is such a small parcel staff does not feel that we need to advertise it. The immediate abutters would be notified to let them know the City wants to clear its title and sell the property.**

**Staff is recommending that the Planning Board advise the Law Department to draft a Purchase and Sales Agreement with Mr. Carvalho depending on the successful foreclosure. We are recommending that the property be sold at the assessed value of 5,600.00 plus the foreclosure amount of about \$1,500 to have clear title and any other miscellaneous fees that are associated with the**

**foreclosure costs.**

**Chairman Robinson states that the foreclosure should be done before the Purchase and Sales Agreement. He asks that the City Solicitor be notified and that he review the foreclosure. The Board agrees that the property be sold subject to the Law Department's review of the foreclosure.**

### **Motion**

**On a motion by Mr. Robinson, seconded by Mr. Cunha the Board unanimously voted to attempt to sell the property subject to due process through the Law Department.**

### **Roll Call Vote**

**Mr. Batty Aye**

**Mr. Cunha Aye**

**Mr. Robinson Aye**

**Chairman Robinson Aye**

### **Motion – Staff and Accompanying Documentation**

**On a motion by Mr. Robinson, seconded by Mr. Batty, the Board unanimously voted to accept the staff memorandum and attachments and make it part of the Board's official record.**

**C. Land Donation Proposal – PCD Realty LLC, 0 Almeida Avenue at J. Medeiros Way, Assessor’s May 506, Block 3, Parcel 11.2**

**Ms. Boyle explained that the owner of the property is J. Robert Pesce of Coast Realty, LLC. He is offering to donate the parcel at the above location. It is assessed at around \$70,000. The donation of land would possibly be used for a detention pond for the excess water that accumulates in the area. The watershed leads into the whole State Street area. It has been reviewed by the City Engineer, Erik Skadberg and Wayne Barnes of the Planning Department, who is also the certified flood plain manager.**

**After review by Mr. Barnes and Mr. Skadberg to the possible construction of a detention pond on this site Ms. Boyle said we found it would be problematic. RIDEM was contacted and they indicated it would be virtually impossible to put a retention or detention pond on a wetland because of the standing water on the site. Ms. Boyle said that staff came up with an alternative. She asks the Board to accept our recommendation and that the placement of a conservation easement instead would be a better alternative. The conservation easement could be drafted by the City’s Law Department and negotiated with the property owner subject to final approval of the City Council to keep it in its natural state and in perpetuity.**

**Ms. Boyle noted that there are some tax benefits to the City and by**

approving a conservation easement, the City would not have the burden of maintaining the property. Public Works said that that site has become of site for trash dumping. The City would have to install a fence around it.

Mr. Cunha asked if the City would own the easement. Ms. Boyle said no, the applicant would still own the land, but he could never sell it if there is a conservation easement placed on it. He could sell it, but there isn't much potential for development since it is a wetland.

**Motion – Land Donation Proposal – J. Medeiros Way, PCD Realty LLC, Map 506, Block 3, Parcel 11.2**

On a motion by Mr. Robinson , seconded by Batty, the Board voted unanimously to table the matter to see if the applicant is agreeable to the conservation easement and that more information is provided to the Board in regard to what the taxes would be.

Ms. Boyle states she will speak with the tax assessor and Mr. Pesce of Coast Realty and will provide that information at the October meeting.

**Roll Call Vote**

**Mr. Batty Aye**

**Mr. Cunha Aye**

**Mr. Robinson Aye**

**Chairman Robinson Aye**

**D. Forbes Street (Former Landfill) Solar Project – Proposed Zoning Ordinance Amendments**

**Ms. Boyle explained that the comments from the CME team and their comments were much more extensive than we had anticipated. We need more time to review their comments more thoroughly and then place it back on the next agenda. She did give the Board some of the specifics of the proposal. Ms. Boyle said that we are proposing that the City enter into a memorandum of agreement with a solar developer, CME to create a solar facility at the former Forbes Street landfill. At present, the Zoning ordinances are silent on the whole concept of a large solar facility. There are a number of smaller solar panels throughout the City that the Zoning Officer treats as appurtenances such as a dish antennas. To have such a large facility we felt that it should be incorporated into the City's Zoning Ordinance.**

**Ms. Boyle noted that Diane Feather worked on the regulations and has done a lot of research on solar ordinances. The approach that we decided to do this time was to allow a solar photovoltaic array at Forbes Street as a permitted use but to make it go through the City's Land Development project process. If the Council were to adopt these regulations, it would be treated as a major subdivision and go**

through the Land Development Plan process. As an LDP it would have to go before the Planning Board first for approval. A drainage plan will be submitted as part of the process and plans showing the location, access etc. of the site will also be submitted by the developer. There will be security in the area and a fence around the solar development. The Fire Department will also want access to the site.

Ms. Boyle informed the Board that on May 17th there will be a presentation before the City Council on hydro study that the City has commissioned.

Statewide Planning has also been working on some model ordinances for wind turbines which will be helpful as we proceed with the renewable energy initiatives.

We will review the changes and then place it on the next Board's agenda. She suggests that we have a meeting when Diane is here to discuss her thought process on the regulations that she has drafted.

**Motion – To defer this matter until the next meeting**

On a motion by Mr. Robinson, seconded by Mr. Cunha, the Board forgoes action on any documents submitted at this time by staff and to table this matter until staff can further review the comments by the developer and provide the Board with an updated recommendation

and documents.

## **Roll Call Vote**

**Mr. Batty Aye**

**Mr. Cunha Aye**

**Mr. Robinson Aye**

**Chairman Robinson Aye**

## **5. CONTINUED BUSINESS**

### **A. Staff Report.**

#### **1. West Subdivision – Supreme Court Case**

**Ms. Boyle informed the Board that the City received a decision by the Supreme Court on the Michael West case and the City prevailed. It was noted that the Comprehensive Plan does takes precedence over the Zoning. It affirmed the City's position and the actions that the Planning Board took on that West subdivision. Ms. Boyle congratulated Attorney Tim Chapman and the Planning Board.**

#### **2. Green Development Block Grant Disaster Application.**

**We are in the process of preparing a Green Development Block Grant Disaster Application to try to get funding for the State Street area.**

**One of the requirements is a consistency certification for the Comprehensive Plan from Planning Board as to what we are proposing. She said we need a emergency meeting of the Board. The Board agreed on Thursday at 5:00 p.m.**

## **6. COMMUNICATIONS**

**A. Letters dated 3/31/11 and 4/5/11 to Dennis Algieri, Re: DPR Washington Trust Bank, 575 Taunton Avenue, Appl. #11-2001**

### **Motion**

**On a motion by Mr. Robinson, seconded by Mr. Cunha, the Board voted unanimously to approve Communication A. above.**

## **8. ANNOUNCEMENT**

**1. Emergency Meeting – Thursday, May 12, 2011, 5:00 p.m.**

**2. Regular Meeting – June 13, 7:00 p.m., Room 306**

## **9. ADJOURNMENT**

### **Motion**

**On a motion by Mr. Robinson, seconded by Mr. Cunha, the meeting adjourned at 9:00 p.m.**

**Respectfully submitted,**

**Michael Robinson**

**Chairman**

**MR/JMB/sac**