

## **Town of North Smithfield Planning Board Meeting**

**Kendall Dean School, 83 Green Street**

**Thursday, September 15, 2011, 7:00 PM**

**The Chair called the meeting to order at 7:00 pm.**

### **1. Roll Call**

**Present: Chair Scott Gibbs, Alex Biliouris, Dean Naylor, Gene Simone, Art Bassett, Joe Cardello. Absent: Dr. Lucien Benoit. Also present were Town Planner Bob Ericson and Town Solicitor Rick Nadeau.**

### **2. Approval of Minutes: September 8, 2011**

**The Board had not yet received the minutes for review, so they did not vote to approve them.**

### **3. Major Subdivision Plan for Michael Bell**

**Report from Town Solicitor on related legal issues**

**Owner/Applicant: Michael R. Bell**

**Location: Green Street, Assessor's Plat 2, Lot 49, Zoning: RU-20  
Urban Residential**

**Mr. Nadeau addressed the Board to report on a request for information from the Board. The Board had asked whether Mr. Bell's application to subdivide a previously non-conforming lot into two**

**new non-conforming lots was prohibited by law. Mr. Nadeau stated that he had researched RIGL and spoken with other attorneys, and it is his opinion that there is no bar to what was requested. However, he stated that he feels that a better way to handle the request, in terms of planning and zoning practices, is to create a 2-unit condominium, rather than to compound the non-conformance.**

**The Chair agreed that this was a better idea to take the existing lot and create two land-unit condos. Mr. Nadeau also pointed out that handling it that way would mean that the zoning variances would not be needed. Mr. Bassett asked if the two lots could be sold individually. Mr. Nadeau said that they could. Mr. Ericson stated that it is a complex process, with not a lot of comparable situations in town. The Chair stated that it is not as complex as it sounds; it is still a legally defined lot that can be appraised in the market.**

**Mr. Nadeau stated that he would contact Norbert Therien, who has been working with the applicant, and will report back to the Board.**

**4. Zoning Ordinances: Review of proposed Stormwater Management, (SWPPP), Wetlands Setbacks, and MU1-MU2 ordinances with vote(s) on recommendations to the Town Council.**

**The Chair stated that although it has not been advertised as a joint meeting, a quorum of the Ordinance Development Committee is present (they did advertise their own meeting). The ODC called the roll. Present were Caroly Shumway, Jim Brennen, Bill Juhr, Paul**

**Soares, and Al Puccetti. The Planning Board had been provided with copies of all draft ordinances to review prior to this meeting.**

### **Stormwater Management (SWPPP)**

**Mr. Ericson informed the Board that the stormwater ordinance (SWPPP) is required by the state MS4 permit. This ordinance has been reviewed by a prior Planning Board a few years ago, but it was never passed by the Town Council, because the Town Planner decided to wait until the RIDEM published a model ordinance.**

**Ms. Shumway stated that the ordinance addresses soil erosion and water pollution and is required in the Town's Comprehensive Plan. This ordinance has been in the works for six years. It has been reviewed by a URI consultant and the consultants the Town hired to help draft the Comp Plan.**

**The Chair asked where this ordinance extends beyond state requirements. Ms. Shumway stated that nowhere does it require anything beyond what's stated in the state ordinance. Mr. Cardello suggested not trying to rewrite the state's ordinance. He said that if this ordinance follows the state's model, then to write, "See the state ordinance." Ms. Shumway stated that the language of the ordinance was carefully drafted and that the state's manual is 167 pages. The town does not need an ordinance of that length. The state's document is a design manual, not an ordinance. Much of the language is taken verbatim from the state manual, and that manual should be taken as**

**a guide to local action.**

**Mr. Nadeau explained to the Board that the Town Council constituted the ODC to prepare ordinances and send them directly to the Town Council, but if the ordinance has something to do with land use, it will be sent to the Planning Board for the purpose of the Board reviewing it for conformity with the Comp Plan. The ordinance will then be sent to the Town Council. It does not go back to the ODC. If the Board has strong feelings to express, it should bring them to the Town Council as part of their public hearing. The Board's role at this point is to say either yes or no with regard to the ordinance's consistency with the Comp Plan.**

**The Chair stated the he believed that the Planning Board could send a recommendation. Mr. Nadeau said that the Board can send its recommendation to the Town Council with commentary. He recommended that any members with concerns should bring them to the Town Council.**

**The Chair stated that the Board is not intending to be adversarial, but that he is confused as to why if there is a state regulation that the Town is duplicating. He added that the Planning Board does have the latitude to voice support or concerns. Mr. Nadeau stated that almost every ordinance conforms to one part of the Comp Plan but not to another. It is almost impossible to say that any ordinance conforms wholly. Ms. Shumway stated that this particular ordinance is directly**

listed in the Comp Plan. She added that the ordinance allows funding for proper enforcement to the Town.

Mr. Cardello asked at which point the requirements of the ordinance kick in, with regard to size of development. He stated that he believes it places a burden on a single-family home owner to have to hire an engineer on a small house. He added that it's excessive for a small business as well. Ms. Shumway stated that the requirements have not changed from what's in the existing ordinance. The Chair stated that the Board should focus on its primary charge, which is whether it conforms with the Comp Plan. Mr. Cardello said that in that case, it is in conflict with economic development.

Mr. Bassett asked if the existing ordinance is enforced. Mr. Ericson stated that the Building Inspector has the authority to enforce the current regulations. Ms. Shumway asked why the Board is discussing the existing regulations. Mr. Biliouris stated that he had just started reading the proposed ordinance, but he agreed with Mr. Cardello that having variations that don't mirror state regulations is counterproductive. He asked the ODC to identify where the ordinance deviates from the state regulations. Ms. Shumway stated that nothing deviates from the state plan. Mr. Cardello cited 18.12 which states that the SWPPP shall be prepared by an engineer. He asked at which point that requirement kicks in. Ms. Shumway stated that it's in the current ordinance. Mr. Nadeau stated that any house construction requires a SWPPP. Mr. Simone asked for clarification as to whether

it's required for a home construction. The Chair stated it is not germane to this discussion, as it's not an economic development question. Mr. Cardello disagreed, stating that the regulations extend to businesses, too. Ms. Shumway again pointed out that it's included in the current ordinance. Mr. Nadeau stated that the inspector is not defined in the ordinance. Mr. Ericson stated that he believes it's included in the Zoning definitions, but that he believes the inspections should be conducted by a professional engineer.

Mr. Ericson stated that the ordinance is required for the state MS4 permit, and that if the town were to be given notice of violation, the town could be deprived of its MS4 permit. Ms. Shumway stated that the EPA is moving toward more stringent stormwater regulations, and being proactive means that the Town is making things cheaper for both the Town and the developer.

Mr. Biliouris stated other concerns he had including requirements on excavation of rock, the broad determination of "fair fee", and no timeline for inspection. Mr. Naylor stated that he agreed with the Board's concern for the single home owner. The Chair stated that he did not want to negate the hard work of the ODC, but that the Board needs more clarification of where this ordinance conforms with state regulations and does not go beyond, and that there needs to be trip points to define which developments fall into these requirements and which ones do not. He believes this ordinance is onerous for single family homes and small businesses.

**Dr. Brennan stated that the ordinance purpose is to provide pure water. He stated that it does not matter how big the land area is if the water is being polluted. The Chair stated that the Board also wants to ensure protection of the water, but that there needs to be balance for all parties and that there are contradictions in the Comp Plan. Mr. Cardello stated that he is not opposed to a SWPPP, but it depends on the size of the property. Ms. Shumway stated that the existing regulations are not good enough, and that is why this ordinance is a requirement. Mr. Soares stated that the purpose of this ordinance is for environmental protection, not economic development. He also said that there is nothing onerous, it meets all criteria, and it mimics state regulations.**

**Mr. Naylor made a motion that the SWPPP ordinance conforms with the Town's Comprehensive Plan. Mr. Simone seconded the motion. Planning Board vote was as follows: NO: Mr. Gibbs, Mr. Biliouris, Mr. Cardello. YES: Mr. Naylor, Mr. Simone. Motion failed to pass, with a vote of 2-3.**

**Mr. Cardello suggested adding to the motion that the ordinance does not conform or is in conflict with several other sections of the Comp Plan. The Board suggested that they work with the ODC to get to a point where the ordinance has more of a balance. Mr. Nadeau said that the ODC has no authority to function on its own. The Town Council tells it what to do. He suggested that the Planning Board**

**make a separate motion to convey to the Town Council that it seeks the Town Council's authority to work with the ODC to refine the ordinance to consistency with the Comp Plan. Ms. Shumway asked the Board to state specifics of where the ordinance is not consistent with the Comp Plan. The Chair stated that the Board will not go into that right now. Mr. Soares asked if the Board had to back up their decision with reasons; Mr. Nadeau said that they do not.**

**Mr. Ericson suggested asking the Town Council to extend the review period to allow the ODC and the Planning Board to work together on this. Ms. Shumway asked the Board if they could say that the ordinance is consistent with the Comp Plan, but then make changes at the Town Council hearing, so that this issue can be moved along. The Chair replied that some members of the Board do not concur that it is consistent. The Board does not want to slam the door shut on the process, but they will not say that it is consistent due to the concerns raised.**

**Mr. Cardello said that he believes that it is consistent with some parts and inconsistent with other parts. He is concerned with the inconsistencies and does not wish to send it along to the Town Council. Mr. Biliouris stated that he agrees that it is important to protect the water resources in town, but that some areas need to be defined. He said that there should be uniformity throughout the state to eliminate ambiguity.**

**Mr. Nadeau said that the Board could ask the Town Council to add this to its agenda and then ask the ODC to work with the Planning Board through joint meetings to get an ordinance in place by the end of this year. The Chair stated that he would do that if the ODC agreed. Ms. Shumway stated that she did not wish to do further work on this ordinance. Dr. Brennan said that he will work with the Planning Board, as it seems to be some easily-resolved issues being discussed and he wants to serve the public. Mr. Bassett stated that he realizes it is frustrating for the members of the ODC, but that he would like to work with the ODC to get the ordinance in place.**

**Mr. Cardello made a motion to request that the Town Council ask the ODC to extend the deadline on this ordinance and allow the ODC and Planning Board to meet to work on this. Mr. Biliouris seconded the motion, with all in favor.**

### **Wetlands Setbacks**

**To begin the discussion on the Wetlands Setbacks ordinance, Mr. Biliouris asked if the ordinance applied to all lots. Ms. Shumway stated that small lots are exempt, as are lots in RS-20, non-conforming RS-40 lots (with area less than 20,000 square feet), and MU1 and MU2 zones. Mr. Biliouris asked how this ordinance could impact development of existing lots and whether anyone had looked at the overall topography of the town. Mr. Soares said that they did not look at every lot in town. Mr. Nadeau pointed out that any plan that has been filed before the adoption of this ordinance will not**

be affected. He also stated that this question does not have anything to do with the ordinance's consistency with the Comprehensive Plan. Mr. Ericson stated that this ordinance adds 50' to jurisdictional wetlands. Most existing lots would still have clearance. The state and town currently require 100' around streams. He stated that the Planning Department could probably assess a sample area, but he believes there will not be a significant impact on development.

The Chair asked how it would affect property owners who want to expand an existing structure. Ms. Shumway stated that there is the option to go before the Zoning Board for a variance.

Mr. Cardello stated that the DEM does not define a buffer, but rather a 50' perimeter wetland. He asked if this was considered in writing the ordinance and if it is required to stay 150' from the defined wetland edge, does it mean the actual edge of the water or the edge of the 50' perimeter wetland. He stated that this should be clearly defined.

Mr. Naylor made a motion that the Planning Board finds that the proposed Wetlands Setback Ordinance is consistent with the Town's Comprehensive Plan. Mr. Biliouris seconded the motion. Mr. Biliouris asked for a discussion on issues with the ordinance, other than its consistency with the Comprehensive Plan. The Chair stated that it would have to be done through a separate motion. Mr. Cardello stated that he believes the ordinance is consistent, but he is not comfortable with some of the distances. The Chair said he agrees, but that they

are two separate issues. The Planning Board vote was as follows:  
YES: Mr. Gibbs, Mr. Biliouris, Mr. Naylor, Mr. Simone, Mr. Cardello.  
Motion passed, with a vote of 5-0.

The Board discussed how to handle communicating their concerns to the Town Council. Mr. Nadeau said that the remedy is to go to the Town Council meeting or write a letter, copying the ODC on the letter. At this point, the ordinance goes straight to the Town Council, not back to the ODC for review.

Mr. Naylor made a motion that the Town Council considers rewording the ordinance consistent with state DEM terminology to clarify the definition of “wetland.” Mr. Cardello seconded the motion. Mr. Cardello stated that he would like the Town Council’s review or rewording not to be limited to that one issue. Ms. Shumway stated that the wetland definition is listed in RIGL and asked the Board to clarify what they’re asking. Mr. Cardello explained again that it’s not clear whether the setback is from the edge of the water or from the 50’ perimeter. Ms. Shumway stated that it’s from the edge of the water, but Mr. Cardello stated that that’s not what it says in the ordinance. The Planning Board vote was as follows: YES: Mr. Gibbs, Mr. Biliouris, Mr. Naylor, Mr. Simone, Mr. Cardello. Motion passed, with a vote of 5-0.

Mr. Cardello made a motion to urge the Town Council to review the ordinance with respect to the setback distances provided in the

**ordinance. Mr. Biliouris seconded the motion. The Planning Board vote was as follows: YES: Mr. Gibbs, Mr. Biliouris, Mr. Naylor, Mr. Simone, Mr. Cardello. Motion passed, with a vote of 5-0.**

### **Mixed Use District (MU1-MU2 Ordinances)**

**John Flaherty, who was to represent the North Smithfield Redevelopment Agency, was not able to attend the meeting. Mr. Ericson stated that the Board may wish to look at the draft but wait to vote on whether or not it is consistent with the Comprehensive Plan. He told the Board that a map has been prepared to illustrate how the Branch Village area will be split into MU1 and MU2 areas. There is a use table ready for submission to the Town. The Chair stated that he would like to know if the owner of Branch River Industrial Park, Sam Brickle, is in agreement with the draft ordinance. Mr. Ericson stated that the Board can address this question to Mr. Flaherty when he appears before the Board for the ordinance review.**

**The Chair stated that at this time, the Board is not in a position to rule on the draft ordinance. Mr. Cardello made a motion to table the review of the MU1-MU2 ordinance. Mr. Simone seconded the motion, with all in favor.**

**5. Planning Update: Review of current and upcoming events, including possible vote(s) on Planning Board meeting dates.**

**There were no discussions held.**

**Mr. Cardello made a motion to adjourn at 9:15 pm. Mr. Naylor seconded the motion, with all in favor.**

**Submitted by Angela Pugliese**