

Approved As Amended  
PLANNING COMMISSION MINUTES  
April 18, 2012  
**7:30 PM**  
**Jamestown Town Hall**  
**93 Narragansett Ave.**

The meeting was called to order at 7:30 p.m. and the following members were present:

Michael Swistak – Chair	Duncan Pendlebury – Vice Chair
Mick Cochran	Rosemary Enright
Michael Jacquard	Richard Lynn
Michael Smith	

Also present:

Lisa Bryer, AICP – Town Planner  
Cinthia Reppe – Planning Assistant  
Michael Gray – Public Works Director/Town Engineer  
John Murphy – Attorney  
Seth Handy – Attorney  
Harley Lee – Consultant  
Jack & Mary Brittain  
Bill Munger  
Ellen Winsor, Town Council  
Paul Sprague  
Jonathan Nelson  
Bob Bowen, Town Council  
Michael Schnack, Town Council

**I. Approval of Minutes April 4, 2012**

A motion was made by Commissioner Pendlebury and seconded by Commissioner Enright to accept the minutes as written. So unanimously voted.

**II. Correspondence**

1. Letter from Ray Iannetta regarding Short Term rental activity in his neighborhood in Jamestown. Received

**III. Citizen's Non Agenda Item**

Attorney John Murphy asked to speak about the wind turbine and was told by Commissioner Swistak that he would have an opportunity to speak when that agenda item is discussed.

**IV. Reports**

1. Town Planner's Report
2. Chairpersons report
3. Town Committees

- a. Harbor
  - b. Buildings and Facilities – report complete within a few days and submitted to the Town Council for a joint work session on Monday April 30<sup>th</sup>.
  - c. Affordable Housing Committee
  - d. North Rd. Bike Path Committee
4. Sub Committees

## V. New Business

### 1. Eric Bell – Plat 5, Lot 263 – Spindrift St. - Zoning Ordinance Section 314 Sub District A Review, High Ground Water Table – Impervious Overlay District – Recommendation to the Zoning Board

Town Planner Lisa Bryer gave a brief description of the process that an applicant goes through for High Groundwater submissions. The staff meets with the applicant before it gets to the planning commission to determine completeness of application and compliance with ordinance. Mike Gray and Justin Jobin then review the application and meet with the applicant so they have all the information needed for the planning commission to make a determination. They also provide a report for the Planner/Planning Commission

Commissioner Swistak introduced Engineer Jeffrey Hanson that will make a short presentation. Commissioner Swistak asked Mr. Hanson to give a background on himself and his qualifications.

Jeffrey Hanson, president of Millstone Engineering in Warwick R.I., is a registered professional P.E with a Class 3 OWTS Designer License. Commissioner Pendlebury made a motion seconded by Commissioner Smith accepting Mr. Hanson as an expert witness. So unanimously voted.

Mr. Hanson gave a brief presentation for Mr. Bell's the application. This is a sub district A application, due to the Category 9 soils. The OWTS was approved by DEM in 2004 for a 3 bedroom septic system. Applicant is proposing an Advantex onsite wastewater treatment system and bottomless sand filter leachfield which provides advanced treatment and meets the requirements of this ordinance. The system is located on the lot and maintains the 100 feet from well to septic requirement. The dwelling is 34x20 approx 9.5% lot coverage, well below the allowed 13%. Runoff is increased but will be absorbed by the dry well system of crushed stone. Commissioner Swistak asked if any members of the board had questions.

Commissioner Lynn asked if this is the first time this lot has been submitted, no it was submitted previously by another applicant.

Commissioner Enright asked if the picture submitted with the application is the one proposes to build on the site. Yes it is.

Commissioner Swistak asked if the drywell proposed to capture excess water is stable for an infinite period of time he said yes it remains in place. Are there any other features on the property itself that we need to know about, no it is at the top of the hill on Beach St. it is a flat lot with very little grade changes.

A motion was made by Commissioner Swistak and seconded by Commissioner Smith to recommend to the Jamestown Zoning Board, approval of the application submitted by Eric Bell, related to development of Plat 5 Lot 278 Spindrift St; under Zoning Ordinance Section 314 – High Groundwater Table and Impervious Overlay District – Sub district A based on the following:

Findings of Fact:

1. Applicant proposes to construct a three bedroom dwelling on above reference 7200 sq ft vacant lot.
2. The soil evaluation reports provided indicate the seasonal high groundwater table is 24 “ and the depth to Category 9 soils is 34’.
3. Applicant is not proposing significant use of fill or grading, which is consistent with the ordinance.
4. The proposed Advantex onsite wastewater treatment system and bottomless filter leach field provides advanced treatment and meets the requirements of the ordinance.
5. In order to mitigate increased runoff from the proposed development and site improvements, the applicant will use a 371 cubic foot stone drywell located four inches below the gravel driveway, with a capacity to mitigate runoff from a 10 year storm event, which meets the requirements of the ordinance.
6. Town of Jamestown Memorandum to Lisa Bryer from Michael Gray P.E. – Town Engineer and Justin Jobin – Town Environmental Scientist; RE: Eric Bell; dtd 3/22/12 is attached to these findings for Zoning Board review.
7. Mr. Jeffrey Hansen P.E. of Millstone Engineering, Warwick RI; presented details of the application and proposed development on behalf of the applicant, and was acknowledged as an expert witness.

So unanimously voted.

**VI. Old Business**

**1. Town of Jamestown – Wind Turbine - Taylor Point – Development Plan Review – Continued - Decision**

This agenda item was continued until tonight from the April 4<sup>th</sup> meeting.

The Planning Chair introduced several key members in attendance tonight. Town Council members Bob Bowen, Mike Schnack and Ellen Winsor. Zoning Board members Joe Logan and Dick Allphin. The attorney representing the Town of Jamestown on this application Seth Handy and Harley Lee, the consultant. Maureen Coleman conservation commission liaison to the Planning Commission.

At the last meeting the Chair drafted some findings of fact and conditions of approval. They were reviewed by Town Planner Lisa Bryer and Wyatt Brochu, Town Solicitor. There were some legal

words added from the solicitor, the commission needs to look this list over and if needed make any necessary changes.

Commissioner Swistak said anyone wishing to speak regarding this matter will be given the opportunity to do so.

John Murphy representing several property owners of Bayview Dr. and Freebody Dr. said they are concerned about this turbine being approved by this commission and then sent to zoning. He also wants to point out that the speed in which this matter has been dealt with by the planning commission. His clients are urging that this be slowed down; it really needs a full review. He noted specific concerns as follows, 376 feet tall with three large blades within striking distance of public parking area, and bridge if blade flies. Another distraction while driving on the bridge, the noise. Currently the tax accessor has downgraded the value of some of the surrounding homes at the water tower. Loss of those tax revenues will or should be considered. The impact on Jamestown's beauty. An industrial component that will intrude massively this is a historic district that this town went to the trouble asking the state to create. The town does have special privileges, but you are in charge of the zoning ordinance. There is in our zoning ordinances Exceptions to height regulations the only thing addressed is windmills not generators.

Paul Sprague – 11 Mast St. – he concurs with Mr. Murphy and the Commission you needs more time to look at this and the financial impact is huge he does not think the numbers are solid that the consultant has been given but that is on the councils side, it should have come here first before the council and then move forward with financial review and then site plan. He thinks it is the wrong place especially in Jamestown it puts into risk the sewer treatment plant. Views will be destroyed.

Jack Brittain – 230 Conanicus Ave – he is against it, he sees a lot of them not working, waiting for parts. He feels it is not green. The flicker issue has not been addressed completely. The Wyndham owners have not been approached. He addressed the issue of what National Grid will pay us and said there is nothing in writing that says they are going to give you this amount of money. Newport bridge is such a beautiful view. No sense to build a 38 story structure if it doesn't work we are looking at several million dollars to dismantle it.

Ellen Winsor – 736 East Shore Rd. – 3 reports from the Falmouth board of selectmen and Dept of Health. There are 3 turbines in Falmouth 2 municipal at the sewage treatment facility and 1 private. They are seeking specific guidance for low frequency or amplitude they are asking for a study. The panel which included German and Danish experts said the nighttime sound 38-40 decibels is the highest it should be for nighttime. She also mentioned the turbine in Vinalhaven Maine which was constructed in 2009 and now the people that really wanted it are upset. She told the planning commission their purview is health and safety. She is concerned about global warming and there are other ways for green energy we can meet our goals within a community.

Bill Munger – abutters to the site – he wants to support everything else said tonight. He is green and appreciates it. He has great concerns on the industrial structure; this is a historic view. Site plan review etc. These are computerized equipment parts. They fail a lot. He pointed out that computer parts do go bad. Surrounding property values can be impacted and has the revenue loss

from reduced property values been taken into consideration. He asks that this board take a step back before we go too fast and look at is this in the best interest of the town?

Mary Brittain – 230 Conanicus Ave – she stated that recently there were 2 news reports about companies going bankrupt. She agrees with Murphy and everyone else, aesthetics and property values.

Jonathan Nelson – East Shore Rd. - He is not represented by Mr. Murphy. When he built his home in Jamestown he put in a geothermal system which does not pay for itself unless oil prices go up significantly? Different for a town he is not here to debate economics of a single turbine. He just visited a wind turbine farm in the Netherlands last week; it is miles from the nearest homes. Study the Vinalhaven report. He mentioned an acoustical engineer that has written extensively about the greenest American cities and the harmful effects. You should never build a turbine within 1.25 miles of a residence. A single turbine makes no economic sense.

The chair stated that he felt that there were things we did not talk about that the commission needs to go back and talk about; setbacks and zoning relief.

One draft finding that talks about the discussion of whether the turbine is consistent with the Comprehensive Plan and consistent with the rural character goal of the Comprehensive Plan. Although we discussed that at the last meeting, there was no vote.

Commissioner Cochran went to Portsmouth to see the turbine at the school. It is intimidating. Taller than you think it is. He went close to hear noise but didn't hear any.

Commissioner Lynn – It is a matter of opinion whether it is inappropriate or not. He is curious to see what the discussion was when the Verrazano Bridge went up. It does sound like it is the only place on the island left to put it.

Commissioner Pendlebury – he is sure that a lot of people were upset about the first overhead wires. He is concerned about the precedent that we will set with height in particular. It cannot function as efficiently at a lower height. If a private citizen were to present this with regards to height we could be opening gates and several have commented that this is going too quick and precedent is being set so we have to be very careful.

Commissioner Smith – it's either that height or nothing.

A question regarding setbacks was asked of Mike Gray or Lisa Bryer. Ms. Bryer stated it is located in a public zone and reviewed the required setbacks for that zone and also stated that he Zoning ordinance Section 305 - Exceptions to Height Regulations, that Windmills are addressed and provided an exception. She read to the section from the zoning regulations.

Mr. Murphy commented the other side of the street is open space. You should take into account both districts just like the Hammet Court Bridges application.

Commissioner Pendlebury said we have front yard setbacks and we measure them from the site they are located in.

Commissioner Smith says it should be taken into account the district it is in.

Town Councilor Bowen said the council has to put out a bid and then on the economic issue will be discussed after we have more concrete numbers.

Commissioner Smith based on what Bowen just said if the planning commission approves it goes to zoning and if zoning approves then it goes to council and gets built and he thinks based on 5 years ago and he then thinks it should go to an open meeting and a whole day vote for the town to approve and he wants the town to be able to vote on it and he wants to make it a condition of approval now.

Commissioner Lynn – Are there any other projects where we get involved with financial aspects? Town Planner Lisa Bryer answered with comprehensive permits for affordable housing, you are given a pro forma, there may be others but she cannot think of any other situation at this time.

Commissioner Smith is concerned with this whole process. He thinks the project is being reviewed piecemeal.

Bryer said it may seem confusing but everyone has a job in this process; the Zoning Board, The Planning Commission and the Town Council. You have an approval or denial in this process as does zoning. Sometimes it is only a recommendation but in this situation you have approval and denial. Then zoning gives their approval or denial, then the council. This is the process that we have. You may feel that there are things that you can and cannot look into but everyone has a job to do and it is set up for a reason by State Law and local regulations.

Mr. Murphy referenced a document published by the state with regards to Turbine siting and recommended that this be considered by this board.

Mike Gray, Public Works Director – there is a draft document in process currently statewide for municipalities to use, when he presented to commission at the last meeting he went through the suggestions and standards in the document.

The council was given this project by the community, it was voted on in 2010 then staff was given this property to make a presentation. The turbine is placed where it is on the site after careful consideration by consultants and staff. This is the only site they are looking at for the turbine. The staff are not appraisers with regards to real estate.

Regarding Noise Bryer responded to a question with; ASA Inc. did the Wind Feasibility Study and in the report it is stated that a Turbine at Taylor point would meet our ordinance **for noise at the property line.** ~~as the wind left the property.~~

Mr. Nelson stated that acoustical engineers would say we are mixing apples and oranges. The db limits are an outdated standard. It does not consider low frequency sound.

Harley Lee – Spanker St. -Town Consultant – commented about noise issue, Vinyl Haven has an older, much louder machine. Technology has improved. When they advertise an RFP it will be specific for a low noise machine. This is a serious issue but they are addressing this issue.

Commissioner Cochran - He was 100 feet away from the Portsmouth turbine and he could not imagine hearing it from inside a house since he could not hear it.

Commissioner Lynn – decibel level of highway is about 70

Commissioner Swistak – wants to revisit consistency with rural character of comp plan. He would like a consensus of the commission.

Commissioner Cochran – photos that were shot inside the fence of farm. He took a picture behind the power lines and photo-shopped in the turbine at Taylor Point and the power lines were taller than the turbine in the distance. He also feels color makes a difference. FAA will approve gray windmills and also blue ones we should explore that option. He felt better after photo-shopping in lines. The interconnect is 3 poles once it comes above ground. He is still concerned. Is it consistent with Comprehensive Plan, he said yes it is.

Commissioner Lynn –Is it consistent with Comprehensive Plan

Commissioner Pendlebury – we have to do our best density of commercial district and rural he has to say it is inconsistent with rural character

Commissioner Swistak – inconsistent absolutely with comp plan sited view sheds, maintaining the quality of life

Commissioner Enright – inconsistent with the “historical rural character” – turbines are usually in the middle of nowhere

Commissioner Smith - no opinion

Jacquard – inconsistent

4-2- 1 abstention. The Chair wants this added to conditions or findings.

Commissioner Smith thinks we should have windmills ~~and~~ on Dutch Island **and it should be a** joint effort by state and town, **it is an** ideal location for windmills.

Seth Handy — lawyer representing the town in this matter spoke. The process began with an affirmative vote from the voters of Jamestown. It was given to the town as a project which staff and consultants have done the best they could to site it at the voter-determined site. It is always hard to site energy projects. This was deemed the best application - solar not feasible at this scale; tidal technology is not adequately developed; other locations considered/rejected. Despite inevitability of local concerns, wind power is a relatively benign energy source especially considering the much greater health, safety and welfare impacts of its current alternatives (fossil fuels and nuclear). In response to concerns raised about whether these wind turbines work and are economical, Mr. Handy noted that Portsmouth gets about 75% of the power for its municipal and school buildings from its 1.5 megawatt turbine.

Commissioner Swistak – Is the price guaranteed? Is town undecided on size?

Mr. Handy responded that once National Grid accepts the project for a contract, the contract price is good for 15 years. As long as the project is under 1.5 megawatts, Jamestown is guaranteed the

ceiling price. If the project is larger, Jamestown will submit a competitive bid (that can be no higher than the ceiling price). Wind is significantly cheaper than solar and National Grid is looking for the lowest cost power so a large wind project will be highly competitive. If Jamestown is not successful at getting selected for a fifteen year contract, the project would likely have to be restructured and reevaluated.

Jack Brittain asked if the town has received a hard price for the tie in. The Town has not gone through that process yet and won't until they select a turbine to go forward with Harley Lee said.

Attorney Murphy asked are prices adjusted for inflation? Seth Handy responded that the price is set and stable for 15 years, without any inflation adjustment. Although the ceiling pricing used for the program is reevaluated every year, once you contract at a price, that contract price is stable for 15 years (ie, price adjustments are only effective for subsequent contracts).

A motion was made to go beyond 10:00 p.m until 10:15 by Commissioner Smith and seconded by Commissioner Lynn. So unanimously voted.

Findings of Fact will be discussed now.

The following have been adjusted from the memo provided to the commission based on the findings prepared by the Chair and reviewed by the Planning Commission at the last meeting regarding Findings and Conditions of Approval.

4. The Project **does pose risk to the** ~~is not detrimental~~ to the health, safety and welfare of **residents** of Town of Jamestown ~~residents~~ **and those risks include:**
  - a. Catastrophic impact to the Waste Water Treatment Plant and Highway Garage
  - b. Catastrophic impact to the structure itself
  - c. Catastrophic impact to other residential and commercial properties and the Pell Bridge
5. Applicant has indicated no impact on property values due to construction of the turbine however no professional testimony or data was provided.
6. The applicant ~~Planning Commission~~ found ~~no~~ **minimal** evidence of shadow flicker effects on nearby residents or drivers of vehicles, and the planned orientation of the turbine is determined to minimize these effects.
11. The proposed placement of the Project on the Property minimizes impact/disturbance of natural features, and adjacent **open space** ~~undeveloped land~~.

A motion was made by Commissioner Enright and seconded by Commissioner Smith to extend the meeting to 10:30 p.m. So unanimously voted.

The Chair, with the approval of the Commission added two more Findings of Fact:



16. A majority of Commissioners were of the opinion that development of a Wind Turbine at Taylor Point is inconsistent with the Comprehensive Community Plans goal of maintaining rural character of the Island. Approval – 4, Denial – 2, Abstention -1.

17. The Planning Commissions determination of compliance with setback requirements requires additional review by the Zoning Board based on the following:

- Front yard setback requirement is unclear
- Need to consider horizontal bade orientation which extends over Freebody Dr.
- Consideration of Adjacent open space zone

Commissioner Smith wants as a condition of approval that the Town Council to resubmit the project to the electorate after they make their determination.

A motion was made by Commissioner Lynn and seconded by Commissioner Pendlebury to extend the meeting to 10:45. So unanimously voted.

Commissioner Pendlebury does not think the planning commission can make any vote today since the conditions of approval list issues indicate that we need additional specific data. The Windmill Hill Historic District is one item. Commissioner Enright said siting is not the only problem, how will we get the wires there and where will they be she wants to see it first. The consensus is to send this back to the applicant for additional clarification.

Do we want to take some more time at this meeting or the next meeting and put together a list of information needed?

A motion was made by Commissioner Smith and seconded by Commissioner Enright to continue the Development Plan Review of this issue until the next meeting. So unanimously voted.

A motion to adjourn at 10:45 p.m. was made by Commissioner Smith and seconded by Commissioner Enright. So unanimously voted.

Attest:



Cynthia L Reppe  
Planning Assistant

This meeting was digitally recorded