

Approved As Amended 9-3-08  
PLANNING COMMISSION MINUTES  
August 20, 2008  
**7:30 PM**  
**Jamestown Town Hall**

The meeting was called to order at 7:34 p.m. and the following members were present:

Gary Girard	Michael Swistak
Jean Brown	Richard Ventrone
Barry Holland	Alexandra Nickol
Nancy Bennett	

Also present:

Lisa Bryer, AICP – Town Planner  
Cynthia Reppe – Planning Assistant  
Christopher Orton – Town Solicitor  
Peter Brockmann – Attorney  
Jerry McIntyre  
John Braga – John Braga and Associates Inc. - Civil Engineer  
Diana Brennan – Mason & Associates, Inc. - Environmental Scientist  
Susan Gorelick  
Charlotte Zarlengo  
Phil Zarlengo  
David Gorelick  
Jack Regan

#### **I. Approval of Minutes August 6, 2008**

A motion was made by Commissioner Swistak and seconded by Commissioner Brown to accept the minutes as written. So unanimously voted. Commissioner Holland abstains.

#### **II. Correspondence**

1. CRMC – Cease and Desist Order – Garret & Casey Roberts – 223 Hull Cove Farm Rd., Jamestown, RI; Mowing of a CRMC designated buffer zone within 200 ft of a coastal feature located at Plat 12, Lot 51. Received

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

Jerry McIntyre - 57 Newport St. – He was reading in the Jamestown Press regarding the proposed zoning changes. He thinks that the T4 - T5 issue needs clarification. What will be the ramifications with respect to density and use in each of the zones. It should be put in the paper what the Planning Commission will be discussing. Commissioner Girard stated that zoning will be discussed later in the evening if we get to it. He Jerry McIntyre is concerned about preserving the rural nature of the town, and thinks that an increase in density will not go over good.

#### IV. Reports

1. Town Planner's Report

At the first meeting in October there will be a comprehensive permit for affordable housing. We will discuss this since this is the first one to be presented to us at the September 17, 2008 meeting.

The Zoning update is getting great press I want to reassure the Planning Commission that the process of coding or writing an ordinance is not easy. It involves very specific language that must be consistent with the Comprehensive Plan and in this case the outcome of the Charrette. Getting 7 people to agree is not an easy task. So far we have been tremendously successful. I just wanted the Commission to know that this process is painful and that we are making progress. The goal is for everything to be reviewed by Oct and then schedule additional public input and town council workshops. The 2<sup>nd</sup> meeting of the month is for applications but just in case we can get to it you will see it on the every agenda, but it is not a guarantee that it will be discussed. In terms of public process we are at the beginning steps and there is plenty of time for public input both at the Planning Commission and at the Town Council. We are now reviewing a draft that was prepared primarily by a consultant and the drafts need to be reviewed by the Planning Commission section by section. There is no need for alarm at what is written at this point, it is all part of the process. This is the process, a changing process, when we have a draft that we are satisfied with then the Planning Commission will approve and forward it to the Town Council.

Commissioner Brown asked "when we are looking at this do we have the ability to determine head count for density?" The Planner stated that we do once we finalize the district boundaries and the proposed density. Commissioner Bennett said she is one of the more alarmed members of the Planning Commission and the public which are questioning the intensification. She is checking with other former members of the Planning Commission as to where the goals were in the fall and where are they now.

2. Chairpersons report

Commissioner Girard said the second meeting of the month is devoted to applicants and the Zoning Update will be on the agenda in case we have extra time. The 1<sup>st</sup> meeting of the month will be dedicated to zoning.

3. Town Committees

- a. Harbor
- b. Fort Getty
- c. Buildings and Facilities
- d. Others

Tree Committee - RI Tree Council is doing a **Tree Stewardship Course** classes Sept 9<sup>th</sup> at the library that look very interesting.

4. Sub Committees

Commissioner Girard recused himself on this next agenda item and left the table.

Commissioner Swistak the Vice Chair took over to chair this portion of the meeting.

#### V. Old Business

**1. John A. Hayes -- Zoning Ordinance Section 314 Sub District A Review High Groundwater Table and Impervious Layer Overlay District and Request for Variance to Section 308 – Setback to Freshwater Wetlands - Plat 16 Lot 15, Bark and Seaside Dr. – Recommendation to Zoning Board**

Vice Chair Swistak reminded the commission that the Hayes application is before them for 2 separate things, Section 314 and 308. The Findings of Fact will be done on 2 separate issues. Mr. Brockmann will give a review of this application and then the experts will testify.

Attorney Brockmann gave a brief update of the new items that were included in the packet.

Attorney Brockmann reviewed the application's history. The applicant Mr. Hayes first contacted the town in 2004, in June of 2005 DEM gave approval for a 2 bedroom home. The initial submission was in January 2007. Attorney Peter Brockmann had meetings with the Technical Review Committee and revisions to the application were made. July 2007 was the first Planning Commission meeting, further changes were asked for then. In April 2008 a second meeting with the Planning Commission occurred based on the previous meeting. In May 2008 they submitted more changes and have asked for continuances until now.

Commissioner Swistak asked Town Solicitor Chris Orton to give an opinion on what an expert is opposed to a lay witness. An expert either through their training or registration or licensing would constitute being an expert. Opinion evidence is given by experts. Engineer John Braga is accepted as an expert witness. All Planning Commissioners agreed.

Engineer John Braga, PE gave his synopsis of the major revisions to the plan. The house moved to the south about 3 feet to avoid variance. Commissioner Ventrone asked about the trenches on the north side if they are open; yes the first one is. The swale to the south was already there to mitigate any impact in terms of stormwater. Commissioner Holland asked about the garage area and he was answered that the garage is a carport that is open on 2 sides. It is designed with grates and crushed filling. The 2 bays will infiltrate to the ground underneath them 3 inches below slab grade. Commissioner Bennett asked, "How long after a storm do you anticipate water sitting?" The entire system is capable of infiltrating in his opinion within several hours, 4-6 once the rain stops. He could make an actual calculation.

Commissioner Ventrone asked about culverts.

Commissioner Swistak stated in July of 2007 Former Planning Commissioner Calabretta wanted to see the drainage leave the site through its natural state by surface flow.

Commissioner Swistak asked Mr. Braga why Mr. Calabretta would advocate such a requirement and Mr. Braga did not have a definitive response.

With this system over time what happens, does it need to be maintained asked Commissioner Swistak. Mr. Braga the Engineer cannot actually tell him since it is a hybrid, a new system but it would be easy to check to see if it is working or not. They could put some cleanouts in for inspection. Commissioner Swistak feels that may be necessary to assure the abutters that it will remain in working order. He asked the applicant if they are willing to record this with the town and be amenable for inspection by the Building Inspector and the Town Engineer, an inspection before the certificate of occupancy is given and would you be agreeable to yearly inspection? Town Planner Lisa Bryer said the responsibility should lie with the homeowner to inspect regularly and submit proof of such once a year to the town. Then if there are problems in the future, the Town can track the maintenance record. The drainage design is critical to the development therefore a maintenance plan could be developed by Mr.

Braga and presented to town for approval and recording. Attorney Brockmann said the applicant is agreeable.

There were no changes to ISDS. Michael Gray Town Engineer made a comment in his report about working with the architect so that the proposed design will not impact the architecture and maintenance of the home. Attorney Brockmann read through the elements of the ordinance and questioned Mr. Braga.

Commissioner Ventrone asked how many yards of fill are going into the lot. Engineer Braga did not know the number but the fill was related to the foundation and the ISDS.

Commissioner Bennett asked if the house had a smaller footprint would you need as much fill? Yes, he said because it is still a 2 bedroom system.

Mr. Brockmann brought up a RI Supreme Court case regarding runoff to a neighbors property; *Butler v. Bruno*. He noted that the court found that if certain standards (precautions) were met then the liability to the neighbor was eliminated. Mr. Brockmann also stated that he feels the Planning Commission is "bound" by this case as it is the "law of the land". Mr. Brockmann asked Mr. Braga, "without this drainage would the applicant be able to build this house under the ordinance?" no, Mr. Braga said. Mr. Brockmann asked is this a reasonable and feasible drainage system proposed. Yes Mr. Braga answered.

Commissioner Brown asked, "does this system make the water flow a better situation for the neighborhood or will it be the same or worse?" At worst Mr. Braga feels it will be a benefit, it is overkill in his opinion and will be an improvement. The system is designed to store water from a 10 year storm. It's an Improvement he said, not a detriment. Commissioner Holland wants clarification of the swale. The water that falls on the south side will be caught and then dispersed in sheet format? The contours show it is sheet flow. Attorney Brockmann stated that this is the standard for what the ordinance asks for, the measures that the applicant has taken not only is within law for the state but he thinks that they can still allow runoff to neighbors property without being liable as cited in the case *Butler vs. Bruno* in RI Supreme Court. Chris Orton asked for a copy of the case to read. Before Mr. Braga leaves Attorney Brockmann asked if the neighbors have any expert witnesses?

Commissioner Swistak asked if they are experts or lay witnesses.

Charlotte Zarlengo - Seaside Dr. – she said she has a degree in biology and environmental science, and her back ground and knowledge is in septic systems. She was asked if she is certified in the state of RI. She taught high school science and environmental science. Based on description of what an expert witness is what is she an expert in? He doesn't know that she is qualified to offer an expert opinion on and asked what does she want to give an opinion on? Wetlands she said. The Board agreed not to accept her as an expert but she is welcome to give her opinion as a resident.

Susan Gorelick – Bark Ave. – she has BS, MS, PBD in Chemistry and is teaching at CCRI. She is an expert in environmental issues and is teaching chemical engineering. She can discuss the calculation questions and if it needs to be testimony than it can be. Are you rebutting or just asking questions Commissioner Swistak asked. She has questions. She went to DEM a year ago. Do they have an alternate leaching field on the plan so that if it fails will it still satisfy the distance? Yes she was answered, they were required to show it on the plan and it does meet the requirement. She wants the exact calculation of the difference between developing the lot and the storing of the water, the engineer Mr. Braga says it was analyzed and is in the report in the calculations, she said it was underestimated.

Commissioner Bennett asked what the water will do at Mrs. Gorelicks property line. The engineer stated, there will be no impact to the property to the north. There has always been a berm, shown on the plan.

Attorney Brockmann asked the Planning Commission to acknowledge Ms. Brennan as an expert witness. She was accepted as an expert witness.

Mr. Brockmann introduced Diana Brennan from Mason and Associates who has a degree in Environmental Science from URI. She has worked as a Wetland Expert for Mason and Associates since 2002. She went to the site to observe it before she signed a report along with Mr. Mason dated July 28, 2008. Commissioners Brown asked for an 18 second synopsis of her report.

Commissioner Bennett asked Ms. Brennan a question, “do you think wetlands are important?” Yes, but that is a difficult question to answer Ms. Brennan said because they are based on each individual lot. You must look at the qualitative aspect which makes it difficult to give a quick answer.

Commissioner Bennett - The town thinks a buffer is the best way to protect the wetlands, you are saying engineering is a better buffer, this may have a negative impact for buffers all over town, is this a good thing to do all over town? They need to be looked at separately and she thinks with this case it is not a detriment to this particular lot, she recognizes the “he did it so can I” mentality. The information is specific to each individual lot. All wetlands are important and the nature of this wetland and this project shows little is done to affect this wetland. Commissioner Ventrone said and repeated the buffer should be 150 ft.

Commissioner Holland said it should be done case by case He interprets it as 150 ft setback before a variance is needed and if someone wants to go into that arbitrary number will this plan mitigate it. If the experts say that it will not affect it than it should be approved. Commissioner Holland said also depending on the situation a 330 ft setback proposal could have tremendous impact to a wetland.

John Regan – Seaside Dr. – he said in the engineer’s drainage calculations the runoff percentages seemed to be different than what is required in the ordinance. For example using runoff percentages of 20 % is under what the ordinance states as 60 % for the driveway. That could be a significant error. Mr. Regan thinks with the perforated pipe system it will overflow. Mr. Regan thinks some of the premises behind the stormwater runoff calculations need to be re examined. What is the system? Mr. Braga was very cavalier to the town engineers ending statement in his report about the stormwater system beneath the dwelling. Mr. Braga’s response is that they will talk about it with the architect. Wetlands issue is 150 feet. This is not just a 10-20 ft variance they are asking for it is 80 feet, read the 3 page letter from the Conservation Commission. The Conservation Commission helped develop the Section 308 ordinance. The coastal wetland helps to protect the beach. Ms. Brennan said there is no significant detriment. She did not elaborate, she said the engineering is such that it should be let go. Look at the magnitude of the variance requested. This could set a precedent. Precedents are used in this country by people all the time, be prepared for this. Lastly it is the applicants burden to show no minimal impact and Mr. Regan did not hear an unequivocal statement from the biologist.

Charlotte Zarlengo – Seaside Dr.- Mr. Regan covered a lot of areas. She is the President of The Shores Association and cumulative impact is something they have been working on for

several years. The wetland to the west is coastal and contiguous to the beach. Water recharge areas are there to protect our wells, as a biologist she finds it will create a major impact on Seaside Dr. She strongly urges this board to not give approval for this application.

David Gorelick – Bark Ave. - Structures built for Gorelick and Regan should not have been built but they were before we bought our houses and he has had to pay to retrofit it just to live in it. He has height questions, the house will be an eyesore to him, it looks like a motel and will take away his view.

David Gorelick – Bark Ave. - Are you an engineer Mr. Ventrone? He answered no but he knows an awful lot about engineering. Mr. Gorelick stated that “you should not make an opinion or direct applicants to make engineering changes since you are not an engineer.”

Leo Irrara - 83 Riptide – He has been on this Island for 46 years. Every morning they walk and he has not heard the brook babble in 10 years on his walk. “Due away with this variance and cancel it.”

Phil Zarlengo – Seaside Dr. - not a property abutter but lives in neighborhood, should not give a variance on a small lot in all of Jamestown.

Attorney Peter Brockmann stated they are not the experts that rebutted this, they are neighbors. They did have an engineer review and comment on the application but he was not licensed in the state of RI. The applicant has complied with Sec 308 every step of the way for the variance. No where does it say they have to show no impact in order for it to be granted. They have to meet those 8 elements. The height of the house has been reduced and it meets the ordinance.

Commissioner Swistak said there are 2 issues here and ultimately the findings of fact will be dealt with separately, he also reminded the Planning Commission that the vote by the Commissioners does not need to be unanimous. They are all entitled to their own findings that go to Zoning Board.

Commissioner Swistak asked if there were any unanswered significant questions on High Groundwater.

Commissioner Ventrone – the property not meeting minimal impact will that go under 314? yes. He also asked Town Planner Lisa Bryer, have you ever seen a worse lot or more difficult to build on. It is her recollection that this lot has the highest groundwater of any lot that has been reviewed by the Board. Commissioner Ventrone noted that it was the most difficult and critical lot that he has reviewed.

Commissioner Brown – Can you clarify the percentage of lot coverage? It is 11.5%. The old ordinance did not have a maximum percent impervious cover for Sub-District A lots, just minimum impact standards.

Commissioner Bennett – Is a smaller house footprint one of the things we can consider as minimizing the impact? She was answered by Attorney Orton that the application before you is the application you are responding to in terms of recommending approval or denial. You can always make an analogy but it is conjecture.

Commissioner Nickol – can each Commissioner make general comments that don't pertain to high groundwater. It was noted that there is a discrepancy in the engineers report. Do we have any confidence that he looked at numbers like Mr. Regan did. Commissioner Bennett

questioned this too. The Planner noted that they have the Engineers report and she will ask Town Engineer Mike Gray this.

Commissioner Nickol - Addressing the neighbors: at your own admission many of the lots you live in are not in compliance with our current laws, can you imagine if your lots were condemned or incurred very expensive water mitigation or if a neighbor didn't like the aesthetics of your house. We have asked the applicant to do this, this, this and this, we could go on and on and on with no empathy for the applicant and yet your all contributing to the situation and the burden of fixing this is shifting to the latecomer. How can we allow this person to do the best he can to design a house on a lot and be told no again; will this go on in perpetuity?

The chair asked the members to cite findings of fact

High Groundwater Section 314 and separate findings for Wetlands Section 308.

Findings of Fact Sec 314

1. the applicant has “ done their best” to address the issues of the neighbors and the board. (Nickol)
2. The property owner has the right to enjoy fullest potential without impacting the neighbors (Swistak)
3. The applicant has shown that he meets the standards of the ordinance for 314 approval. (Holland)
4. The applicant has addressed all input and accepted restrictions requested of Board. (Brown)
5. Runoff calculations need to be verified with the ordinance. (Bennett)
6. There has been significant testimony from the neighbors/public on the current serious drainage and flooding situation of the neighborhood and the critical nature of the lot. ( )
7. The drainage system is engineered and will require diligent maintenance to function properly in perpetuity – (Bennett)
8. Owner has agreed to record the drainage and maintenance plans, have a Certificate of Occupancy inspection, prepare and implement a yearly maintenance plan. ( )

Findings of Fact Sec 308

1. In a Memo from the Conservation Commission dated 5-29-08 they “recommended denial of the application due to the potential cumulative adverse impacts of the proposal on neighborhood drainage, groundwater and wetlands. Granting the requested variances may only exacerbate these problems.” (Ventrone)
2. The 150 foot setback variance request is significant and not consistent with the Comprehensive Community Plan (Bennett)
3. The applicant's wetland expert stated in their report that they met all the standards in the ordinance under Section 308 for a variance.
4. Troubled by amount of relief being sought for the variance; 67 ft.

5. The Board heard an unprecedented number of neighboring objectors against the application due to the existing neighborhood problems and the fear of worsening problems in the future if the application is granted. (Ventrone)

A motion was made by Commissioner Holland and seconded by Commissioner Swistak to close the public testimony for this application. So unanimously voted.

2. Jamestown Zoning Ordinance Update – Jamestown Village Special Development District – Discussion – Continued

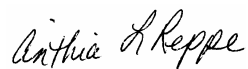
## **VI. New Business**

1. Valerie Tessier – Zoning Ordinance Section 314 Sub District A Review High Groundwater Table and Impervious Layer Overlay District – Plat 3 Lot 36, 529 Seaside Dr. – Recommendation to Zoning Board – Continued until September 3, 2008

A motion was made by Commissioner Holland and seconded by Commissioner Nickol to continue this application to the meeting on September 3, 2008. So unanimously voted.

A motion to adjourn at 10:35 p.m. was made by Commissioner Holland and seconded by Commissioner Nickol. So unanimously voted.

Attest:



Cynthia L Reppe  
Planning Assistant

This meeting was digitally recorded