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Planning Director



CITY PLAN COMMISSION

Thomas Barbieri
Robert Coupe
David Exter
Steven Frias
Kathleen Lanphear
Lisa Mancini
Justin Mateus
Thomas Zidelis

Draft Meeting Minutes

Tuesday, June 6th, 2023 – 6:30 PM

3rd Floor - City Council Chamber, 869 Park Avenue, Cranston RI

CALL TO ORDER

Chairman Smith called the meeting to order at 6:37 p.m. in the Council Chamber, 869 Park Avenue.

The following Commissioners were in attendance for the meeting: Chairman Michael Smith, Robert Coupe, David Exter, Steven Frias, Kathleen Lanphear, Justin Mateus, Lisa Mancini (*arrived 6:39 p.m.*), and Thomas Zidelis. Commissioner Thomas Barbieri was absent.

The following Planning Department members were in attendance: Jason M. Pezzullo, AICP, Planning Director; Alexander Berardo, Planning Technician; and Amelia Lavallee, Planning Department Intern.

Also attending: Steve Marsella, Esq., Assistant City Solicitor.

APPROVAL OF MINUTES

(votes taken)

- 5/2/23 Regular City Plan Commission meeting

Chairman Smith asked if any Commissioners wished to propose edits to the draft minutes as submitted. Mr. Frias asked for two minor clarifications to be made on p.5 of the draft minutes.

Upon motion made by Ms. Lanphear, and seconded by Mr. Exter, the City Plan Commission voted unanimously (7-0) to **approve** the regular City Plan Commission meeting minutes of 5/2/23 as amended.

(*Ms. Mancini then joined the meeting.*)

ZONING BOARD OF REVIEW – RECOMMENDATIONS

(votes taken for all items)

- **RSR INVESTMENTS & CONSTRUCTION, LLC (OWN/APP)** has filed an application to grant relief on an existing single family dwelling encroaching into the side setback on an undersized lot merged by zoning at **64 Westwood Avenue**, A.P. 2, lot 1386; area 4,000 sf.; zoned A6. Applicants seek relief per Section 17.92.010- Variances; Sections 17.20.120- Schedule of Intensity Regulations, 17.88.010- Substandard lots of record.

Due to the findings that the application is generally consistent with the Comprehensive Plan and that does not alter the character of the neighborhood, upon motion made by Mr. Zidelis, and seconded by Ms. Mancini, the City Plan Commission voted 7-1 (Ms. Lanphear voted No) to forward a **positive recommendation** on the application to the Zoning Board of Review.

- **RSR INVESTMENTS & CONSTRUCTION, LLC (OWN/APP)** has applied to the Board to allow a new single-family dwelling to be constructed on an undersized lot merged by zoning at **0 Westwood Ave**, A.P. 2, lot 1387; area 4,000 sf.; zoned A6. Applicants seek relief per Section 17.92.010- Variances; Sections 17.20.120- Schedule of Intensity Regulations, 17.88.010 Substandard lots of record.

Due to the findings that the application is generally consistent with the Comprehensive Plan and that does not alter the character of the neighborhood, upon motion made by Mr. Zidelis, and seconded by Ms. Mancini, the City Plan Commission voted 7-1 (Ms. Lanphear voted No) to forward a **positive recommendation** on the application to the Zoning Board of Review.

- **RICA REALTY LLC (OWN) and CRANSTON MUNICIPAL EMPLOYEES CREDIT UNION (APP)** have applied to construct a financial institution with drive- thru with noncompliant driveway openings and proposed audio devices within the required setback from abutting residential properties at **1224 Oaklawn Avenue**, A.P. 15, lots 1012 and 1014; area 24,750 sf., zoned C4. Applicants seek relief per Sections 17.92.010 Variance; 17.28.010 (B) (4)- Driveway Openings, and 17.28.010 (B) (10)-Noise Abatement.

Due to the finding that the application is consistent with the Cranston Comprehensive Plan and is compatible with the surrounding neighborhood, upon motion made by Mr. Zidelis, and seconded by Ms. Mancini, the City Plan Commission voted 8-0 to forward a **positive recommendation** to the Zoning Board of Review.

- **LOUISE BOTTELLA (OWN) and MILTON KALASHIAN (APP)** have filed an application to change a business, professional office use previously approved by variance to a barber shop, beauty salon at **1030 Oaklawn Avenue**, A.P. 18, lot 1285, area 13,176 sf. Zoned A8. Applicants seek relief per Section 17.92.010- Variances; Sections 17.20.030 Schedule of Uses.

Due to the findings that the application is generally consistent with the Comprehensive Plan and that it does not alter the character of the neighborhood, upon motion made by Mr. Coupe, and seconded by Mr. Zidelis, the City Plan Commission voted 8-0 to forward a **positive recommendation** to the Zoning Board of Review.

- **COMMONWEALTH ASSOCIATES, LLC (OWN) and J&J GASBARRO OAKLAWN LIQUORS (APP)** have applied to the Board to install a new sign exceeding the allowable area and add a new LED message center at **985 Oaklawn Avenue**, A.P. 18, lot 1232, area 66, 646 sf. zoned C2. Applicants seek relief per Section 17.92.010- Variances; Section 17.72.010- Signs.

Due to the fact that the applicant has not provided explicit guidelines regarding the type of LED sign to be installed, both the existing freestanding signs and storefront signs violate the sign code, and due to the finding that some sign types would alter the character of the neighborhood as proposed while others would not, upon motion made by Mr. Frias, and seconded by Ms. Lanphear, the City Plan Commission voted 8-0 to forward a **negative recommendation** to the Zoning Board of Review.

LAND DEVELOPMENTS

- **“Sharpe Drive Solar”** **PUBLIC INFORMATIONAL** (vote taken)
 MASTER PLAN – Major Land Development
 .4 MW (400 KW) solar energy installation on a previously disturbed 2.4-acre footprint portion of a 50+/- acre site
 Sharpe Drive
 AP 13, Lot 47

Upon motion made Mr. Coupe, and seconded by Mr. Exter, the City Plan Commission voted unanimously (8-0) to **continue** the matter to the regular July City Plan Commission meeting.

- **“Natick Avenue Solar” PUBLIC INFORMATIONAL** (vote taken)
 MASTER PLAN - Major Land Development
 30 Acre / 8MW Solar Farm on 64-acre site
 Natick Avenue
 AP 22, Lots 108 and 119

****This meeting was initially continued from 4/19/23 to 5/17/23 for a Special Meeting. The hearing was subsequently rescheduled to the 6/6/23 Regular Meeting due to conflicts that arose after the parties initially agreed upon the 5/17/23 date. The applicant was required to re-advertise and re-notify abutters of the new meeting date.*

Chairman Smith recalled that the discussion left off with the opposition making some of its summary points and invited the applicant to respond if it so desired. Atty. Robert Murray began by confirming that the applicant sent out some 258 notices to interested parties to ensure the public had adequate knowledge of tonight’s hearing having been moved from its originally-scheduled date of May 17th. He then turned the discussion over to Atty. Nick Nybo, who said he wished to stress a few points beyond those that he raised in his May 30th letter (which he submitted for the record prior to the meeting) responding to points raised by the opposition and the public in previous hearings.

First, Atty. Nybo argued that his client should be allowed to use his private property as he saw fit – not as his neighbors preferred, for their own personal or sentimental reasons. He said he understood the Commission’s concern for not “overruling” the City Council’s recent restrictions on solar development, but urged the Commission to remember that the City enumerated solar as a by-right use in the A-80 zone at the time the application was submitted, so it should be hesitant to deny the project now and overrule the Council’s original objectives for solar. Atty. Nybo spent a few minutes arguing that the proposal was consistent with the Comprehensive Plan and allowed by-right, observing that the current and former Planning Directors, the Commission itself, and the Platting Board of Review have all been in agreement on that point, with disagreement primarily coming from Mr. Paige Bronk, the planning expert retained by the opposition.

Next, Atty. Nybo rejected the argument that the project would only benefit the developer, and not the public at large. He said the project would generate \$1 million in new tax revenue for the City without using City services, and beyond helping the State reach its renewable energy goals and providing jobs for union electricians and laborers, it would save the City a little over \$20 million in electricity costs over the life of the solar farm. He contended that Rhode Island has largely outsourced the social and environmental costs of its own energy consumption (largely natural gas, much of which is attained from fracking) to other communities in the United States and questioned whether the members of the public who appealed to environmental concerns as the reason to deny this project were more concerned with the quality of their own local environments.

Lastly, Atty. Nybo said that the opposition has been inconsistent in its line of argumentation with respect to the question of vesting. In a broader sense, he added that the opposition’s current claim (that the applicant is no longer vested under the 2017 ordinance because it has modified its plans since then) is not sensible. He said the version of the site plan which is now before the Commission reflects the input of consultants, peer-reviewers, and the ad hoc committee, and no applicant would voluntarily agree to modify its proposal if doing so put its vested rights at risk.

Mr. Frias then asked Atty. Nybo a series of questions about the material on the record to-date. He first asked for Atty. Nybo’s thoughts on Mr. Walter Lawrence’s comments regarding the risk of the gas pipeline rupturing during blasting. Atty. Nybo said that federal authorities (who had been prompted by abutters’ inquiries) reached out to (and deferred to) Kinder-Morgan on the matter, and that Kinder-Morgan in turn said that as long as the applicant follows the mutually agreed-upon blasting protocols, the company has no concerns. He added that Kinder-Morgan expressed a preference for a solar farm abutting their pipeline as opposed to a subdivision.

Next, Mr. Frias asked if Atty. Nybo wished to address Mr. Doug Doe's comments regarding the proliferation of iron bacteria and the loss of topsoil after blasting. Atty. Nybo said the Lippitt solar project was constructed under a different blasting regime (he believed using different chemicals) and said that although the iron bacteria development should not have occurred, the regulatory safety net that RIDEM has in place functioned correctly, and the applicant did resolve the issue. Atty. Nybo then brought Mr. Dave Russo back to the stand to discuss the technical aspects of the matter; Mr. Russo said oxidization occurred because the rip-rap protection that was used for blasting was touching the edge of a wetland, and once the rip-rap was moved away from the water's edge, the bacteria problem subsided. Regarding topsoil, Mr. Russo said the soil testing and stabilization were completed to RIDEM's satisfaction and in a manner which considered Landscape Architect Sara Bradford's comments in her report.

Mr. Frias then asked for Atty. Nybo's thoughts on Ms. Drake Patten's comments regarding the involvement (or lack thereof) of the RIHPHC. Atty. Nybo said he saw a note written on an early application checklist for the project which stated that RIHPHC would be contacted at a later step in the process. He said the applicant hasn't contacted that agency yet, but assumed the matter had at least been temporarily addressed given that note.

Mr. Frias then voiced his disagreement with Atty. Nybo's assertion that there was near-unanimous agreement on the question of Comp Plan consistency in the original round of hearings, as the City Plan Commission only voted 5-4 to approve, and one of the four dissenters was himself a planner. Atty. Nybo said he understood Mr. Frias' point and didn't mean to imply each individual Commissioner agreed, but he qualified that statement by observing that the four dissenters might not have voted against the project on Comp Plan consistency grounds, either.

Then Mr. Frias asked whether the statistics that the applicant cited for how many trees could be replaced with a solar development had been based on regional or national statistics and whether their source was a solar industry group. Atty. Nybo did not know the answer to either question. Mr. Frias said he believed New England was probably less reliant on fossil fuels than the national average; the two briefly discussed the percentage of electricity derived from natural gas vs. coal in RI and other parts of the country.

Lastly, on the matter of economic development, Mr. Frias asked if his calculation of the project generating \$56,000 per year in new tax revenue (assuming a fixed number for a 25-year period) was correct, which Mr. Nybo confirmed. Mr. Frias also asked about the new state law that prohibits cities and towns from changing the valuation of properties purely because of the addition of solar facilities on-site, and Atty. Nybo said in Cranston, solar developments are not assessed on real estate value, but rather megawatt hours.

Following that exchange, Chairman Smith invited the public to offer additional comments.

- Daniel Zevon, of 591 Natick Avenue, recounted his experience as an abutter throughout the permitting process as he previously discussed in his public comments during the April 19th Special Meeting.
- Walter Lawrence, of 745 Natick Avenue, again described his observations of the conditions of the material that was used to fill in the area immediately surrounding the pipeline when it was first laid as he did during the April 19th Special Meeting.
- Vincent Moses, of 826 Natick Avenue, advised the Commission not to put much stock into the contentions of the applicant's attorneys and stressed that objectors to the project are not against solar development in general, but rather solar development at this specific site.
- Doug Doe, of 178 Lippitt Avenue, gave a presentation which reviewed two of the major points he raised in his June 2nd letter (which was submitted for the record prior to the meeting), namely glare and topsoil management. He reiterated previous concerns about buffering and his disagreement with the notion that solar farms should be considered a form of land-banking, particularly in light of the amount of construction required to prepare the land to accommodate the solar arrays. He said that he believed the applicant should need to apply for a variance to explain why they aren't complying with the City's regulations regarding topsoil.
- Christy Moretti, of 595 Natick Avenue, said that she remains worried that her well and septic system will be adversely impacted by the blasting and stated that she and other neighbors of hers intend to sue Revity Energy if anything goes wrong during construction.

- Rachel Clark, of 41 Woodcrest Court, asked why the project had generated so much discussion if it was a use allowed by-right.

Atty. Patrick Dougherty, representing the opposition, then addressed the Commission. He asserted that he hadn't seen the note that Atty. Nybo was referencing (about working with the RIHPHC at a later date) and felt his comments regarding Judge Richard Licht's comments were misrepresented. On the latter point, he said that Judge Licht's comments that no evidence had been presented to the contrary of former Planning Director Peter Lapolla's testimony should be interpreted literally, and not as a way of saying that there is no case to be made in opposition to his testimony. Atty. Dougherty said that now, after this new round of hearings, the opposition has offered an abundance of evidence to suggest the proposal is not consistent with the Comp Plan. He repeated his previously voiced argument that the Commission should be looking at the entire lot of record as opposed to purely the leased area.

Solicitor Marsella asked the Commission if they'd like to hear from the Director prior to formally closing public comment; Director Pezzullo simply reported that the Staff recommendation remains unchanged from when it had originally been submitted. Mr. Coupe asked Director Pezzullo to briefly summarize the findings contained in his Staff Memo for the benefit of the newer Commissioners, which he did.

Solicitor Marsella then advised the Commission to remember that they were charged with making Findings of Fact by state law. In practice, they would either accept and/or enhance the Staff-provided findings or they would need to make their own, contrary findings. Ms. Lanphear asked if the Commission would vote on each Finding of Fact separately; Solicitor Marsella recommended that the Commissioner who makes the motion should specify whether they make positive or negative findings on each item, but with the actual vote representing an all-encompassing decision.

Upon motion made by Ms. Lanphear, and seconded by Ms. Mancini, the City Plan Commission voted unanimously (8-0) to close public comment.

Mr. Frias spoke first. He said he did not believe the applicant's proposal was consistent with the Comprehensive Plan. He believed the 2017 amendment was valid for the purposes of local decision-making but it did not trump all other goals and policies – instead, the questions of consistency and appropriateness should be considered holistically. Mr. Frias said the combination of natural (ledge) and man-made (gas pipeline) constraints on the site raise questions as to whether this particular site is appropriate for accommodating a solar use of the sort the applicants propose; he said in the absence of the sort of due diligence Mr. Lawrence called for (to excavate around the pipeline to ensure no rocks or other hazards are likely to damage the pipeline during blasting), he was not assured that this matter could be adequately handled.

Mr. Frias continued by saying that the general intent of the 2017 solar ordinance had been to prevent suburban development, but this property was never the subject of a subdivision proposal, presumably because of the environmental/topographical constraints that had been discussed by both sides. As such, he felt the ordinance didn't envision sites like the subject parcel for solar development. Mr. Frias did not believe the proposal adequately addressed competing goals and policies in the Comp Plan, such as Land Use Policy 4. He said the URI study was the most authoritative of the studies submitted for the Commission's review on whether solar projects impact property values, and the URI study showed that property values do decline once solar farms are built nearby, which makes solar developments a destabilizing force for neighborhoods (relating to Land Use Goal 9). He noted both the applicant's and the opposition's Landscaping experts agreed that the proposed buffer would not obscure views of the solar arrays from all directions in all seasons, which makes it difficult to satisfy Land Use Goal 13. Finally, Mr. Frias said he agreed with Atty. Dougherty's comments regarding how to interpret Judge Licht's words; the court did not have evidence to the contrary of the Commission's supportive position in the past, but it will have such evidence going forward.

Turning to Zoning, Mr. Frias found the proposal in conflict with the intent of Zoning. He said the opposition's argument regarding how to interpret lot coverage resonated with him: Mr. Frias interpreted solar panels to be structures, and insofar as the definition of Lot Coverage in the Zoning Code refers the reader to "Lot Building Coverage," which in turn is defined by "Buildings," the definition of which in turn refers the reader to the definition of "Structure," Mr. Frias felt that solar developments should be subject to the 10% lot coverage limit prescribed for the A-80 zone. He observed the applicant had not requested a

variance and did not agree that solar applications should be considered in a more nuanced manner with respect to that performance standard.

Mr. Coupe then asked Solicitor Marsella's opinion on some of the points Mr. Frias raised, specifically whether he agreed that the proposal is inconsistent with the Comp Plan for the reasons Mr. Frias offered and whether the Commission should weight the (applicant's) blasting experts' testimony more heavily than the testimony of Mr. Lawrence (a neighbor in opposition). Solicitor Marsella said he would defer to Director Pezzullo on the question of Comp Plan consistency as it was more a matter of planning than law. When Mr. Coupe clarified that he was specifically wondering about Mr. Bronk's assertion that the Comp Plan had not been accepted by Statewide Planning and therefore could not be used, Solicitor Marsella agreed that the Commission could make legally-binding decisions based on the 2010 Plan even if it was considered out of date. To Mr. Coupe's second question, regarding testimony on blasting, Solicitor Marsella agreed that standard practice would be that expert testimony should be given more weight than lay testimony.

Mr. Coupe then posed his question about Comp Plan consistency to Director Pezzullo, who replied that Staff's position remains unchanged since it was first written in 2018. He said the Staff Memo recounts a number of goals, policies, and objectives in its implementation program which suggest the Comp Plan was supportive of this type of solar development, and he also observed that the information Staff put on the record was previously accepted by the Commission, but is only now being challenged with competing goals and policies.

Chairman Smith said that the Comp Plan does, by nature, contain a wide variety of goals and policies that sometimes come into conflict with one another, and the Commission is charged with interpreting the language in each case. He then said he was finding it difficult to make a positive finding on Point #3 because he could not see how the solar development could be construed as preserving the rural character of Western Cranston.

Ms. Lanphear said she agreed with most of Mr. Frias' points, including that the site itself was not suitable to solar development due to the combination of topography and construction methods required to prepare the land as well as other factors, such as distance to the interconnection point with the power grid. She said it would be detrimental to the rural character of the area because it could not be adequately screened with vegetated buffering. She disagreed that solar farms should be considered a form of land-banking because it was neither a temporary nor passive land use when one considers the amount of regrading required and the fact that the lease contracts have extension options. She stated that she did not find Mr. Russo's testimony to be credible, but she did feel comfortable accepting Mr. Lawrence's testimony as authoritative because his were the only comments relating specifically to the laying of the gas pipeline. Lastly, Ms. Lanphear said she disagreed with Staff's finding that the project would not have significant negative environmental impacts – on that point, she said the clearing, grading, and blasting carried the potential for significant negative impacts, and those impacts could occur during construction, after RIDEM has issued its permits.

Chairman Smith and Solicitor Marsella then asked for a motion, a second, and a final discussion to refine whatever motion may be made. Mr. Zidelis asked if the Commission would conduct one vote for all findings; Solicitor Marsella said they would, but advised the Commission take a few moments before the vote to discuss their position on each individual finding so the record can clearly communicate the Commission's stance with respect to the overall vote.

Mr. Coupe moved to accept Staff's Findings of Fact as submitted and approve the Master Plan—Major Land Development application. Mr. Mateus seconded the motion, and the Commission voted 3 to 5 (Mr. Coupe, Mr. Mateus, and Mr. Zidelis voting Yes, all others present voting No). The motion therefore failed.

Solicitor Marsella then asked for a motion to deny the Master Plan application.

Ms. Lanphear moved to deny the Master Plan application for the reasons that she had discussed in her comments a few minutes earlier. Mr. Frias seconded the motion, asking to amend the motion to include that the proposed development was found not to comply with Zoning and could have significant, negative environmental impacts. Chairman Smith asked to add a negative finding with respect to rural character as

well. The Commission voted 5 to 3 on the motion, with all in favor except Mr. Coupe, Mr. Mateus, and Mr. Zidelis. The Master Plan—Major Land Development application was therefore denied.

PLANNING DIRECTOR'S REPORT

- Comprehensive Plan

Director Pezzullo announced that the RFP process is complete and that the City received news just prior to the start of the meeting that one potential bidder has expressed interest. Given that the news had only just arrived, the City will vet the bidder in the coming days and hopes to have a contract signed by early July. Solicitor Marsella asked if it was the same firm that wrote the City's current Comp Plan, but Director Pezzullo said it was not.

Ms. Lanphear asked if Commissioners could review the contract, explaining that she was unclear on the process in general and specifically wondered whether the winning bidder would be able to "farm out" portions of the project. Director Pezzullo said the RFP includes sections discussing the process; Mr. Zidelis offered to send Ms. Lanphear a copy after the meeting.

As for staffing, Director Pezzullo said that Principal Planner Doug McLean had left the City to take on a new role as Planning Director in the Town of Coventry; Senior Planner Greg Guertin was out on paternity leave and would be out of the office for a few weeks; and Planning Intern Amelia Lavallee, who originally intended to conclude her internship last month, agreed to stay on for a little while longer to help the Department while it is short-staffed.

Chairman Smith asked when applications for the now-vacant Principal Planner position would be due. Director Pezzullo said they would be due by June 19th but described the response so far as "anemic," to which Chairman Smith observed that the City tends to struggle in hiring for Planning positions because it has a relatively higher workload and pays relatively less than its peer communities.

UPCOMING MEETINGS / ADJOURNMENT

(vote taken)

- Tuesday, July 11th, 2023, 6:30PM – **Regular City Plan Commission Meeting** – City Hall Council Chambers, 869 Park Avenue

Upon motion made by Mr. Zidelis, and seconded by Mr. Exter, the City Plan Commission voted unanimously (8-0) to **adjourn** the meeting at 10:01 p.m.