

Kenneth J. Hopkins
Mayor

Michael E. Smith
President

Jason M. Pezzullo, AICP
Planning Director



CITY PLAN COMMISSION
Cranston City Hall
869 Park Avenue, Cranston, RI 02910

Richard Bernardo, P.E.
Michael Igoe
Kathleen Lanphear
Frank Ritz
Ann Marie Maccarone
James Donahue
Robert Coupe
Steven Frias

DRAFT Meeting Minutes

Tuesday, September 6th, 2022 – 6:30PM

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

CALL TO ORDER

Chairman Smith called the meeting to order at 6:34 p.m. in the Council Chamber, 869 Park Avenue.

The following Commissioners were in attendance for the meeting: Chairman Mike Smith, Richard Bernardo, James Donahue, Steven Frias, Michael Igoe, Kathleen Lanphear, Ann Marie Maccarone, and Frank Ritz. Commissioner Robert Coupe was absent.

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

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

APPROVAL OF MINUTES

- 8/2/22 Joint Workshop & City Plan Commission Meeting (vote taken)

Chairman Smith asked if the Commissioners wished to recommend any edits prior to voting on the minutes.

Mr. Frias asked that a W be added to "North Kingston" on p. 2 for the proper spelling of the town's name and asked to eliminate the following language in the second paragraph of the Natick Ave Solar section for the sake of clarity: "Atty. Dougherty then briefly addressed the Commission to explain the situation. After noting he had a conflict due to being involved since 2018."

Ms. Lanphear asked that "Vogul" be changed to "Vogel" to reflect the proper spelling of the Judge's last name in both instances the incorrect spelling appeared on p. 5.

Chairman Smith asked for a motion to accept the Commissioners' proposed edits and to approve the amended minutes.

Upon motion by Mr. Frias, and seconded by Mr. Donahue, the City Plan Commission voted unanimously (8-0) to accept Mr. Frias' and Ms. Lanphear's recommended edits to the combined minutes for the Special Joint Public Workshop and regular City Plan Commission meetings of 8/2/22.

Upon motion by Ms. Lanphear, and seconded by Mr. Donahue, the City Plan Commission unanimously voted (8-0) to accept the combined minutes for the Special Joint Public Workshop and regular City Plan Commission meetings of 8/2/22 as amended.

SUBDIVISIONS AND MAJOR LAND DEVELOPMENTS

- **“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

Per RIGL § 45-23-39 (c), the applicant has requested the City Plan Commission to combine the Master Plan and Preliminary Plan stages of review

(Item was continued from the 8/2/22 regular City Plan Commission agenda)

*****PREVIOUS MASTER PLAN APPROVAL VACATED AND REMANDED BACK TO THE CITY PLAN COMMISSION FOR FURTHER PROCEEDINGS *****

Chairman Smith invited Planning Director Jason Pezzullo to provide recent context on the matter. Director Pezzullo recalled that the Commissioners had expressed interest in continuing the discussion surrounding the Natick Ave Solar remand at a Special Meeting, but since that did not come to fruition, the Commission was taking up the matter again during a normal monthly meeting. He added that tonight's discussion should specifically focus on the applicant's request to combine the Master and Preliminary Plan applications. Chairman Smith then invited the applicant to make its case.

Atty. Nick Nybo, representing the applicant (Revyty Energy, LLC), addressed the Commission. He said that Judge Netti Vogel's decision to remand the Master Plan approval, as well as her comment that Preliminary Plan approval would need to be re-reviewed because of the decision, has raised questions as to how to proceed. He said the Commission has the statutory authority to combine the Master and Preliminary Plan phases, and although that is not the Commission's standard practice, the applicant felt it was the best course of action under the unique circumstances of the remand. Atty. Nybo stated that the purpose of the Master Plan review is to give feedback on the concept of a plan prior to the Preliminary Plan phase.

Since the Natick Ave Solar proposal went as far as receiving Final Plan approval, and since the applicant intends to resubmit the same plan, Atty. Nybo argued it didn't make sense to hold a separate discussion solely on a conceptual (Master Plan) level as if the Commission had not already reviewed and commented on the proposal in greater detail. He added that given the likelihood that any subsequent approval will be appealed, the applicant preferred to deal with only one appeal for a combined Master-Preliminary Plan application instead of two separate appeals. Mr. Frias asked if the Commission would conduct a de novo review of a combined application; Atty. Nygo said yes.

Chairman Smith then invited Atty. Patrick Dougherty, representing the neighborhood opposition group, to comment on the applicant's request. Atty. Dougherty said he preferred the matter be handled in separate Master and Preliminary Plan reviews. He said that certain issues contained in the appeal pertained specifically to the Preliminary Plan, such as a disagreement over whether the Commission should have included the entirety of the parcel in its review instead of simply the area leased for the solar farm use. He questioned whether the Commission could approve a combined Master/Preliminary Plan review, as he

felt that the Staff Memo was insufficient for the Commission to confirm Revity's application met "all necessary requirements" as discussed in RIGL 45-23-39.

In response, Atty. Nybo said that combining the two steps into one review would not prevent Atty. Dougherty from raising the issues he described during the new process. He reiterated that the applicant would submit the same vested Master Plan application that had been approved in 2019, so the request to combine is intended to limit the amount of time spent on an unnecessary conceptual discussion and simply proceed to a more detailed review.

Chairman Smith asked City Solicitor Stephen Marsella what the range of options available to the Commission would be. Solicitor Marsella said the Commission could either deny the request to combine, in which case the matter would be docketed for a Master Plan hearing, or it could approve the request, at which point the Commission would hear testimony regarding every aspect of fact and law necessary to make findings based on statutory requirements.

Chairman Smith asked for confirmation that the Preliminary Plan review would encompass all the information in the Master Plan application as well as additional information. Solicitor Marsella said yes and noted that the Master Plan review is only conceptual in nature, so details on landscaping and state approvals would not enter into that level of review. Solicitor Marsella said he personally felt it made practical legal sense to combine the steps, since the legal issues that will be heard at the Master and Preliminary phases are duplicative. A combined review would allow the Commission to see a greater degree of detail sooner, thereby saving time in a Master Plan Review that would be spent effectively behaving as if the Commission didn't already know the greater degree of detail that will come at the Preliminary Plan resubmittal. This being said, he added that the Commission is under no obligation to combine and has the right to hear the application solely at the Master Plan level if it deems that course of action necessary. He also said he did not believe the Commission's decision could be appealed if it opts to deny the request to combine and return to the Master Plan review.

Ms. Lanphear agreed that a combined Master-Preliminary hearing would save the Commission time, but she was worried that proceeding in that direction (a de novo review) might mean that materials previously entered into the record during separate Master and Preliminary Plan reviews – for example, the work of the ad hoc committee in addressing issues that had been raised – would be left out of the record going forward. She said she would feel comfortable combining the phases of review if the entire certified record of the Master Plan review would be entered into the record in the potential combined, de novo review.

Atty. Nybo said the initial plan was to submit the certified record of the last three years for the Commissioners to confirm that they had read it in full; in that way, it would be incorporated into the record for the de novo review. Atty. Dougherty argued that the prior record could not simply be read, citing precedent suggesting that Commissioners had to have information adduced, which would entail calling experts back in to speak briefly to the testimony they provided before. He further argued that the prior record has been vacated by Judge Vogel's decision and said that the Commission cannot determine that all necessary requirements have been met based solely on the Staff Memo, and not on a site plan.

Mr. Frias said he understands the efficiency of approving the request to combine, but since Atty. Dougherty is making a case that would serve as grounds for an appeal of the Commission's decision to combine, he preferred to see any future appeals occur on substance instead of process. Mr. Frias observed that the remand was the result of a due process issue, so he felt taking a slower approach and hearing the Master and Preliminary Plan phases separately was safer. He added that new issues would arise in a de novo review, including which Comprehensive Plan the Commission should use as a benchmark for consistency when reviewing the proposal post-remand.

Mr. Bernardo asked Solicitor Marsella to speak to whether the decision to combine the phases of review would constitute a due process issue. Solicitor Marsella said he wasn't sure that he would describe it as a due process issue, but he agreed with Mr. Frias' basic point that the simpler the process is kept, the more the conversation (and potential appeals) can be focused on the substance.

added that a parcel like this illustrates why the RPD regulation exists in the first place: it allows the applicant to work around natural constraints like wetlands as well as the challenges inherent to the parcel's unique shape, resulting in a combination of more compact development and more preserved open space. These outcomes are consistent with various Comprehensive Plan goals related to the protection of open space and natural resources.

Mr. McLean then reviewed the Findings of Fact, the Recommendation, and the Conditions, which included 1) providing a Physical Alteration Permit from RIDOT, 2) Paying impact fees in the amount of \$11,116.00 (8 new units in Western Cranston at a rate of \$1,389.50 per unit), and 3) receiving City approval on a draft bond for \$600,000 prior to Final Plan, along with payment of the standard 2% administrative fee to the City.

Atty. Robert Murray, representing the applicant, noted that Eric Prive, Registered P.E. with DiPrete Engineering, was available to answer any technical questions the Commission might have. He then reviewed the project's background. He said that in the time since Master Plan approval was granted in July 2021, not only had his client purchased the property from its previous owner, but he had also secured all outside approvals include a RIDEM Wetlands Permit, letters from Providence Water (water) and Veolia (sewer), and an RIHPHC review confirming no significant artifacts were present on site. Atty. Murray said the significance of the application was the amount of open space it proposed to set aside through the RPD process, which he felt struck a good balance between development and conservation.

Chairman Smith asked for public comment, but seeing none, he asked for a motion to close the comment period. Upon motion made by Mr. Donahue, and seconded by Mr. Bernardo, the Plan Commission voted unanimously (8-0) to close the public comment period.

Ms. Lanphear spoke in favor of the proposal and praised the preservation of open space as making the project particularly consistent with the character of Western Cranston.

Upon motion made by Ms. Lanphear, and seconded by Mr. Bernardo, the City Plan Commission voted unanimously (8-0) to adopt the findings of fact and approve the Preliminary Plan – Residential Planned District subject to the conditions contained in the Staff Memo.

- **“Ridgewood Section 9 Replat”** **PUBLIC INFORMATIONAL** (no vote taken)
 PRE-APPLICATION – Major Subdivision w/ Street Extension
 Eight (8) conforming house lots for seven (7) additional new single-family homes
 Zoned A-80
 Crest Drive and 341 Laten Knight Road - AP 29, Lot 5

Richard Byzdyra, President of Ocean State Planners, Inc., presented the development concept to the Commission. He said it would be a major subdivision, creating seven new buildable lots for single-family houses from a 23-acre parcel at the southern end of Crest Drive that also fronts on Laten Knight Rd. He said part of the property had been a horse farm at one time, but it currently includes some wooded areas, wetlands on the eastern and western sides, and an open field in the middle.

Mr. Byzdyra said that each of the lots that would result from this parcel – the seven new lots as well as the eighth lot, which would host an existing house – meet or exceed the minimum dimensional requirements for the A-80 zone. Mr. McLean added that the way in which the proposed road traverses the parcel was specifically intended to ensure all lots would conform to A-80 standards and avoid the need to request variances.

Mr. Bernardo said the 40-foot right-of-way width and the length of the cul-de-sac would require exceptions from the City's usual standards, but he believed those exceptions were warranted.

Chairman Smith invited the public to comment, but no members of the public did. As the matter was purely a Public Informational meeting, there was no need to vote to close public comment.

ZONING BOARD OF REVIEW - RECOMMENDATIONS(votes taken for all ZBR items)

- **JOCKS HORSE FARM, LLC (OWN) and ANGELA BAXTER(APP)** have applied to the Board to allow a kennel to operate within an existing barn at 504 Laten Knight Road, A.P. 29, lot 11, area 53 ac.; zoned A80. Applicant seeks permission to operate per 17.92.020- Special Use Permit in accordance with 17.20.030- Schedule of Uses.

Due to the finding that the application is consistent with the Comprehensive Plan, and considering that granting of the special use permit will not have a negative impact to the neighborhood, upon motion made by Mr. Frias, and seconded by Ms. Lanphear, the City Plan Commission voted 4-3 (Mr. Donahue, Ms. Maccarone, and Mr. Ritz voted No) to forward a **positive recommendation** to the Zoning Board of Review, subject to the condition that the applicant shall obtain DPR approval or obtain a consensus from the DPRC of non-jurisdiction.

- **16 WINDSOR ROAD, LLC (OWN/APP)** has filed an application to allow a garage to be constructed in a front corner yard(s) within the required front yard setback(s) at 16 Windsor Road, A.P. 2, lot 3434; area 9,117 s.f. zoned B1. Applicant seeks relief per sections 17.92.010- Variance; Section 17.20.120- Schedule of Intensity Regulations.

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. Ritz, and seconded by Mr. Igoe, the City Plan Commission voted 7-0 to forward a **positive recommendation** on the application to the Zoning Board of Review.

- **LUC REALTY HOLDINGS, LLC(OWN/APP)** has applied to the Board to convert a professional office into a dwelling unit in a mixed-use building converting it to a multi-family four unit use at 1732 Broad Street, A.P. 2, lot 2524; area 8978 s.f.; zoned C-1. Applicant seeks relief per sections 17.92.010- Variance; Section 17.20.090(A)- Specific Requirements.

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. Donahue, and seconded by Mr. Igoe, the City Plan Commission voted 7-0 to forward a **positive recommendation** on the application to the Zoning Board of Review.

- **DAVID C. & LIANNE DiMAIO and DAVID DiMAIO (APP)** have filed an application to construct a single-family dwelling on an under-sized lot at 0 Woodland Avenue, A.P. 37, lot 20; area 3,223 s.f.; zoned A8. Applicant seeks relief per sections 17.92.010- Variance; Section 17.20.120- Schedule of Intensity Regulations.

Due to the findings that the application is generally inconsistent with the Comprehensive Plan and that it does alter the character of the neighborhood, upon motion made by Mr. Frias, and seconded by Ms. Lanphear, the City Plan Commission voted 5-2 (Mr. Donahue and Ms. Maccarone voted No) to forward a **negative recommendation** on the application to the Zoning Board of Review.

- **PARK AVENUE PLAZA, LLC (OWN) and FIVE RIVERS, LLC (APP)** has applied to the Board to allow a drive-up window to be installed for a pharmacy use in an attached unit of a shopping plaza at 1375 Park Avenue, A.P. 11, lots 749,3599, 3600; area 67,001s.f.; zoned C3. Applicant seeks relief per sections 17.92.010- Variance; Section 17.28.010 (B), (1)- Drive-In Uses.

Due to the findings that the application is generally consistent with the Comprehensive Plan and that it supports neighborhood business centers, upon motion made by Ms. Lanphear, and seconded by Mr. Donahue, the City Plan Commission voted 7-0 to forward a **positive recommendation** on the application to the Zoning Board of Review.

PLANNING DIRECTOR'S REPORT

(no vote taken)

- Senior Planner – open position / outreach / expected timeframe
- Comprehensive Plan - RFP

Director Pezzullo said that former Senior Planner Joshua Berry's last day in Cranston was the previous Friday and wished him good luck in his new position as Town Planner in Lincoln. He then said he put out a job listing to fill the now-vacant Senior Planner position, and that although there had not been many applicants so far, the deadline to apply was still a week away. Director Pezzullo also informed the Commission that the Planning Department had begun working with Amelia Lavallo, an intern pursuing a master's degree at URI, during the fall semester.

With regard to the Comprehensive Plan update, Director Pezzullo said the RFP process would probably be slightly delayed due to the department being short-staffed. Mr. Frias asked if the Commission could see the draft RFP when it's fully written, to which Director Pezzullo agreed.

ADJOURNMENT / NEXT REGULAR MEETING

(vote taken)

- Tuesday, October 4th, 2022 — City Hall Council Chambers, 869 Park Avenue

Upon motion made by Mr. Frias, and seconded by Mr. Donahue, the City Plan Commission unanimously voted to adjourn the meeting at 8:46 p.m.