

Planning Board Minutes
March 5, 2014 - 7:00 P.M.
Town Council Chambers
125 Main Street
East Greenwich, RI

Members Present: Stephen Brusini, Chair; Chuck Newton, Vice-Chair; Bill Stone; Michael Donegan; Jason Gomez; and John Ayotte.

Members Absent: Chris Russo.

Staff Present: Lisa Bourbonnais, Planning Director and Sarah Jette, Legal Counsel.

Mr. Brusini called the meeting to order at 7:00 p.m. and introduced the members and staff present.

1. For Discussion and Recommendation: Signs Ordinance Amendments

Ms. Bourbonnais explained that sign proliferation is a real concern, and a solution is to distinguish between commercial signs and political ones in the Zoning Ordinance. Criteria for review have to be established, including clarity of design and message content; the design or font of a sign, however, should not be regulated. Caution must also be paid to not opening all signs up to be defined as temporary off-premises.

Mr. Brusini summarized the legitimate distinctions to be considered as: signs on public versus private property, the use of the property (e.g. commercial versus non-commercial), temporary versus permanent signs, and sign size, especially as it relates to health/safety and federal guidelines.

Considerable discussion ensued, with the point made that any sign message other than commercial really needs a separate category. For instance, "Impeach Obama" is a political message, whereas a sign for a non-profit is another type altogether. A sign for sports, on the other hand, is really commercial at its core. Mr. Gomez opined that any sign that is not specifically

commercial is fair game, and that non-profit doesn't mean it's not for commerce. The Supreme Court has consistently ruled that political speech should be the most protected form of free speech. Political signs as an independent category seems necessary and a valid exercise of police power. There was some talk about a sign committee to assist in drafting the finer points of the ordinance.

The Board reiterated that the type of sign seems to fall under three main groups: commercial versus non-commercial, public versus private, and temporary versus permanent. The current Ordinance was deemed not constitutional because political signs are required to be temporary and because of the definition of free speech. Mr. Donegan expressed his desire to synopsize these deliberations as part of any recommendation to the Town Council.

Effort has been undertaken to contact the ACLU representative and request that they name a community with a good template ordinance, but with no movement on that front so far, part of the recommendation could be that the Planning Board assist in writing the new regulations instead.

Mr. Brusini opened the topic to the public but no one was present to speak.

Motion by Mr. Stone to not recommend the proposed amended Ordinance to the Town Council, but rather to continue working on it as a Sub-Committee or otherwise in partnership with the Town to draft a version that passes constitutional muster and meets the needs of the Town. Second by Mr. Newton. Approved 6 – 0 – 0.

2. For Discussion and Recommendation: Zoning Ordinance Amendments relating to Appeals

Ms. Bourbonnais and Mr. Donegan provided background on the issue with respect to being governed by the Administrative Procedure Act (APA) and appeals hearings. The fundamental issue seemed to be that local ordinances don't take into consideration the fact that a Board hearing would produce a very different type of record than a decision issued by the Zoning or Administrative Officer. The Town had been criticized, when a sufficient

written record didn't exist, for not allowing adequate opportunity for an appellant to testify, possibly rendering the appeals hearing invalid. There is a due process requirement even without a "de novo" hearing.

Mr. Donegan felt strongly that the amendment as proposed opens the door to eliminate the Planning Board's role if the Zoning Board so chooses. An example might be that an applicant appeals on the grounds of a contested drainage condition but then uses the subsequent hearing to distribute new parking information, leading essentially to the whole development plan being re-heard. There should be a standard for the type of evidence that gets introduced and considered. If there is significant new information, an applicant can apply for Planning Board reconsideration through an already-established process built into the Subdivision and Land Development regulations.

The Board conferred on three main points: trial de novo, whether or not the Zoning Board retains the prerogative to decide or remand, and the question of whether or not the original hearing was sufficient.

Mr. Brusini opened the floor to the public but no one was present to speak.

There was general consensus that the concept of "de novo" flies in the face of the appellate process and marginalizes all Boards. It also allows an applicant to basically ask for a re-do if they receive a Decision that they don't like.

Motion by Mr. Donegan to not recommend the proposed amended Ordinance to the Town Council. Official comment on the motion noted that the changes fail to adhere to the principles of the APA and have procedural defects that render the Boards and Administrative Officers powerless to exercise their authority. The Planning Board is willing to work with the Town to come up with a better option. Second by Mr. Ayotte. Approved 6 – 0 – 0.

3. For Discussion: Draft Wind Ordinance

Mr. Brusini stated that he had filed a recusal form and left the room. Mr. Newton chaired the agenda item.

Mr. Newton worried about the cost of compliance with all of the standards and requirements in the proposed Ordinance; all that specificity takes the Boards out of the equation to judge on a case-by-case basis. For example, small-scale applications shouldn't have to meet every burden. Mr. Newton further mentioned the emphasis on aesthetics, flicker, and noise, and wondered if wildlife impacts and property values are secondary.

The Board debated the wisdom of having wind projects fall under land development review as opposed to simply requiring a zoning hearing. There may be cases that they want to chime in on and ask for more information. Other concerns included exempting up to a certain height of turbine and setting a general lot size requirement. The Board agreed that only one turbine should be allowed on a strictly residential parcel.

Leaving such applications under the purview of the Zoning Board means that they can choose to require all information up front, and either use a checklist or findings of fact to ensure compliance with environmental and safety standards.

There was some concern that defining wind facilities by the percentage of produced electricity consumed on-site versus sold to the grid is too difficult for the operator to prove, although normal power usage could be analyzed as a baseline. Although specifying usage as contractual to a third-party (and therefore no longer on-site) could solve that problem, the Board was eventually unanimous that those definitions should be removed and capacity rating substituted.

Motion by Mr. Donegan to incorporate the discussed changes and bring back to the Board. Second by Mr. Stone. Approved 5 – 0 – 0, with Mr. Brusini recused.

Mr. Brusini returned to the room.

4. Comprehensive Community Plan Update

Ms. Bourbonnais stated that the final draft, complete with requested amendments and certified by the Town Council as not being substantially different than the version adopted in August, has been sent to and received by the state.

5. Minutes of Meetings: October 16, 2013 and November 6, 2013

Continued to the next meeting.

6. Planning Board Member Comments: For items not on the agenda and not relating to specific applications.

Ms. Bourbonnais briefly went over the upcoming renewal of Board member terms. The Board was comfortable with the Chair and Vice-Chair positions remaining as-is.

With no further business, there was a motion by Mr. Newton to adjourn at 9:19 p.m.. Motion unanimously supported.

Minutes respectfully submitted by:

Juliana M. (Berry) King,
Planning Technician

For more information, please refer to the recording available in the Planning Department.