

Planning Board Minutes  
April 2, 2014 - 7:00 P.M.  
Town Council Chambers  
125 Main Street  
East Greenwich, RI

Members Present: Stephen Brusini, Chair; Bill Stone; Michael Donegan;  
Jason Gomez; John Ayotte; and Chris Russo.

Members Absent: Chuck Newton, Vice-Chair.

Staff Present: Lisa Bourbonnais, Planning Director; Juliana M. (Berry)  
King, Planning Technician; and Sarah Jette, Legal Counsel  
(arrived at 7:14 p.m.).

Mr. Brusini called the meeting to order at 7:09 p.m. and introduced the members and staff present. Mr. Brusini noted no opposition to starting with agenda item #2 and that he had filed a recusal for the Wind Ordinance. Mr. Brusini left the room and Mr. Stone volunteered to chair this portion.

## **2. For Discussion and Recommendation: Draft Wind Ordinance**

Ms. Bourbonnais stated that she tried to incorporate at least the major comments from the last time, and summarized them. Mr. Stone was happy with the more consistent and clearer definitions and appreciated the changes, especially those allowing for more Zoning Board discretion. Discretion for noise level might be prudent as well; for example, smaller installations might not need a qualified acoustics professional. Ms. Bourbonnais remarked that the Town has decibel meters and staff could conceivably measure levels, and expounded that variables such as size, manufacturer, and surroundings to absorb the sound all contributed to the written necessity of “pre” and “post” tests.

Mr. Gomez inquired what the consequence would be if the “post” test results were over the limit, and Ms. Bourbonnais used other ordinances as examples of how conditions could be imposed to work with the owner or operator and still ensure compliance. Ms. Bourbonnais and Mr. Gomez talked about how

an installation would gain approval by first estimating how much it would add to ambient noise and then consent not to exceed a comparable level. Mr. Donegan queried whether turbine developers would be held to the same noise level standard as the one currently measured at the property line, and Ms. Bourbonnais responded that it will be a higher standard. Mr. Donegan described a scenario where the “pre” test shows a level already in excess of the noise ordinance, and Ms. Bourbonnais proposed a provision that the noise cap by zone not be exceeded.

Mr. Donegan made a minor suggestion to the security instrument addition and commented that financial assurances if the owner/operator goes bankrupt should be to the Town.

Mr. Ayotte requested and received confirmation that the tip height is indeed the overall height of the facility and that the setback is for the fall zone. Mr. Gomez clarified that how far the turbine could fall is dependent not only on its height but also on how fast it is moving and how heavy the piece is that shears off. Mr. Donegan voiced his concern that more physics should be drilled down into, and Ms. Bourbonnais said that there are formulas out there depending on the turbine size and manufacturer. Mr. Gomez and Mr. Ayotte talked about “maximum credible failure” plus the minimum standard found in other ordinances. Mr. Gomez offered to work with Ms. Bourbonnais to refine the language.

Mr. Donegan suggested an edit to the section on proof of insurance, and Mr. Russo added that the proof should be filed with the Town on an annual basis.

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

Ms. Bourbonnais will tweak the draft accordingly and come back to the Board with another version before advancing it to the Town Council.

Mr. Brusini returned to the room at 7:32 p.m..

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

Ms. Bourbonnais reminded the Board of the main points of contention from last time- for instance, de novo hearings versus review of the record, Board decisions versus administrative, etc; the version sent today reflects resulting changes and attempts to mirror state enabling clauses. Mr. Stone inquired about the phrase “prejudicial error”, and Mr. Donegan was also wary of the Zoning Board having to decide an error of law. Mr. Brusini agreed with Mr. Stone and thought that they should go with the Administrative Procedure Act language because it is more familiar and eliminates the possibility of every error being viewed as a “prejudicial” one. After some consideration, Ms. Bourbonnais, Mr. Donegan, and Ms. Jette were on the same page to substitute in a variant of “arbitrary and capricious” wording.

Mr. Ayotte noted a timeframe notification discrepancy between section C) and state law. Mr. Stone expressed his view that D) is awkwardly written and seems to indicate that any participant will be safe from liability. Mr. Brusini replied that there is a statute that already protects members of Boards. Ms. Jette and Mr. Stone preferred that the section just be taken out, and Mr. Donegan concurred that it should be everywhere or nowhere. There was Board consensus to remove D), though Mr. Donegan cautioned that making sure anti-SLAPP suit language is not required by state enabling is important first.

Mr. Brusini wrapped up by mentioning minor edits to A) and F), and although he opened the discussion to public comment there was no one present to speak.

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

Regarding the October 16, 2013 minutes:

VOTE: 6 – 0 – 0 to approve the minutes of the October 16, 2013 meeting as written.

Regarding the November 6, 2013 minutes:

VOTE: 5 – 0 – 0 to approve the minutes of the November 6, 2013 meeting as written, with a minor typo correction to page 8 as noticed by Mr. Brusini.

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

Mr. Brusini applauded the state's approval of the Comp Plan, and the Board celebrated. Ms. Bourbonnais pointed out that this is the first 10-year approval in Rhode Island. Mr. Ayotte wondered what the Board's responsibility is with respect to Implementation, and Ms. Bourbonnais explained the short/medium/long range timelines and that zoning revisions will need to be done right away. Sam Shamoon, Comp Plan contractor, is also under contract to undertake those imminent amendments and the Board should expect to start to see them within the next few months.

Mr. Brusini brought up the spring meeting last week of the Planning Board Chair peer group; the topic was SHAB and the SHAB representative generalized that they are looking for Planning Board decisions consistent with a well-written Comp Plan and Affordable Housing Plan and internally with prior decisions. Ms. Bourbonnais noted that not all towns have identical Comp Permit processes, and the resulting decisions are often appealed where regulations aren't clear on what grounds must be used to deny an application. Mr. Brusini questioned whether there are guidelines or restrictions on density bonuses, and Ms. Bourbonnais answered that they are in the regulations by zone. Mr. Brusini recalled that North Kingstown recently amended their regulations to restrict density bonuses from the watershed area and that South Kingstown is contemplating a similar change. Ms. Bourbonnais said that NK has some really sensitive well areas, and EG can think about it as we move forward.

Mr. Brusini revealed that Planning Boards in other municipalities don't have term limits, and found it interesting because those Boards can remember previous processes even if it was 10 or more years ago.

With no further business, there was a motion by Mr. Russo, second by Mr. Ayotte, to adjourn at 7:56 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.