

Planning Board Minutes
September 16, 2015– 7:00 P.M.
Town Council Chambers
125 Main Street
East Greenwich, R.I

Members Present: Steve Brusini, Chair; Michael Donegan, Vice Chair; Chris Russo; John Ayotte; Dan Tagliatela; Jason Gomez

Members Absent: Brad Turchetta; David Eaton

Staff present: Lisa Bourbonnais, Planning Director; Lea Anthony-Hitchen; Assistant Planning Director; Aaron Lindo, Planning Assistant; Sarah Jette, Legal Counsel; Tom Coyle, Town Manager

Mr. Brusini called the meeting to order at 7:04 PM and introduced members and staff present. Before discussing the items on the agenda, he suggested that item #2 be heard first as item #1 would take more time. With no objections, he introduced item #2 on the agenda:

2. Public Hearing on the Town’s Community Development Block Grant (CDBG) application (Plan Year 2015). Review of the application for consistency with the Comprehensive Community Plan (Certification required)

Mr. Brusini stated that in the past, the Board has included a recommendation as to the priority order the Town Council may want to advance the applicants.

Mrs. Bourbonnais gave an introduction for the CDBG, noting that the annual application process had begun. The State opens a funding cycle for community development block grants annually. This is pass-through money from HUD (Housing and Urban Development) at the federal level which gets distributed to the States to make available locally. In the past, the Town has been eligible for about \$250,000 per year but doesn’t usually get the maximum amount due to the small allocation of money available to the 39 cities and towns in the State. In the past, the awards have been in the \$80,000 to \$100,000 range. This year is slightly different in that housing rehabilitation projects come from a separate reserve of money. The Planning Board’s role is very confined, only having to certify that the activities proposed are consistent with the Comprehensive Plan. There is also an opportunity to prioritize the activities.

Mr. Brusini asked if there are any activities that the staff believes are not consistent with the Comprehensive Plan. Mrs. Bourbonnais replied that all the activities are consistent. Not all of the activities are housed in East Greenwich but all serve an East Greenwich population.

Mr. Brusini asked if any member of the Board had any questions. Mr. Gomez expressed that he believes all of the activities are consistent with the Comprehensive Plan. He asked how the funds were allocated to each activity. Mrs. Bourbonnais stated that in the recent past, the sub-recipients have received some portion of what they have requested but there have been years where recipients have been denied any

funding. The State has their own multi-tiered ranking system for allocating funds to the recipients. The Town gets assigned a base score based on socio-economic and demographic data, such as poverty rate, number of low-mod households, employment rate, etc. This determines how much money the Town is going to receive. The Town competes with the other towns and cities in the State and the State allocates the money where it is needed. East Greenwich is a fairly affluent community with some small pockets of need so the Town generally gets a low base score but the State still tries to fund worthy local activities.

Mr. Brusini asked a specific question about an activity entitled "Administration: \$10,000 for support staffing and grant management through the regional Community Development Consortium" and asked for further explanation. Mrs. Bourbonnais explained that Geoff Marchant, the Director of the Community Development Consortium, is housed in East Greenwich but serves several towns in Rhode Island. He is the project manager for the CDBG funds, conducting draw downs, audits, dealing with the sub-recipients, etc. Each community delegates a portion of its block grant award in order to pay his salary.

Mr. Brusini asked if there was any person from the public who would like to speak regarding their application. Marsha Sullivan identified herself as the director of the Housing Authority in East Greenwich and was sworn in. Ms. Sullivan explained that the Housing Authority is seeking a third year of funding. The area that the Housing Authority is consistent with the Comprehensive Plan is by preserving the supply of affordable housing in East Greenwich. The CDBG award will be spent by replacing boilers in the 28 conventional public housing units. The existing heating systems are 20 years old or older and will be replaced with highly energy efficient combination gas/ on-demand hot water systems, saving utility costs and insurance costs. Mr. Brusini affirmed that the benefits are in the form of improving the quality of life for the residents as well as financial and environmental benefits.

With no other member of the public wanting to be heard, Mr. Brusini closed public comment and asked the Board to make a motion to certify the applications as being consistent with the Comprehensive Plan. Mr. Donegan made a motion, second by Mr. Russo. With no further discussion, the motion passed unanimously.

Mr. Brusini asked if any member of the Board wanted to give a recommendation on how the applications should be ranked in order of importance. Mr. Gomez opined that the applications should be ranked in accordance to how much they are directly related to the Town of East Greenwich. Mr. Brusini asked Mr. Gomez to rank the applications: 1-Housing Authority, 2-Administration, 3-London Bridge, 4-Revitalization of East Greenwich, 5-Cornerstone, 6- Kingstown Crossing, 7-Welcome House. Mrs. Bourbonnais explained that Welcome House is a regional service and it serves the entire state and fills a role no other service in East Greenwich provides. She continued to say that she would recommend the Town's Revitalization Activity be ranked #1 because it will have the most wide-spread positive impact.

Mr. Brusini asked Mr. Gomez to re-rank the priority order based on Mrs. Bourbonnais recommendation: 1- Revitalization of East Greenwich, 2-Housing Authority, 3-Administration, 4-London Bridge, 5-Cornerstone, 6- Kingstown Crossing, and 7-Welcome House.

Mr. Brusini asked if any other member of the Board had a different recommendation than what was suggested. Mr. Donegan asked what the reasoning was for having the revitalization of East Greenwich ranked first. Mrs. Bourbonnais replied that if more than 50% of the population in a block group qualifies as low/moderate income, an "area benefit" project can be applied for. These are physical improvements that would benefit the entire downtown area (Census tract 209.01, block group 1) is eligible for the

block grant money. Sidewalks, public signage, benches, lighting and other improvements can be made with the use of the money. It would serve the ~350 residents of the block group and would also be of benefit to everyone in Town.

After hearing no further public comment, Mr. Brusini called for a motion from the Board regarding a recommendation of ranking the applications for the Town Council. Mr. Gomez made a motion consistent with the discussion which was seconded by Mr. Tagliatela. The motion passed unanimously.

Vote: 6 – 0 – 0 for the motion of the recommended ranking of the applications to the Town Council.

1. Recommendation: Zoning Board of Review application of **William J. Ross** for property owned by Thomas P. Hegburg & Linda Keehan for “William J. Ross Inc. Headquarters,” located on a land-locked vacant parcel adjacent to New London Turnpike; being Map 67 A.P. 13 Lot 34 (Zoned MUPD, Mixed Use Planned Development). The Applicant seeks 13 separate Use and Dimensional Variances from Chapter 260 of the Town Code; Zoning Ordinance. The Applicant proposes to construct a commercial office and warehouse building with 6,000 square feet of gross floor area and storage of construction equipment and landscape material. The Planning Board reviewed the project at the Master Plan stage and granted a conditional approval on September 18, 2014. As part of that approval, however, the Planning Board did not make a specific recommendation to the Zoning Board of Review and has now been asked to do so. Continued from September 2, 2015.

Mr. Brusini explained what a recommendation entails. When a matter comes before the Zoning Board of Review regarding a use variance, i.e. a use that is not permitted in a zone, the Zoning Board first seeks a recommendation from the Planning Board on whether or not there is compliance with the Comprehensive Plan. From the Rhode Island General Laws § 45-23-60 Procedure – Required findings: [...] (1) The proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies. The question of Comprehensive Plan compliance had already come up at the Master Plan stage. Historically, the Town has answered the question at Master Plan under the theory that if a proposed land development project is not consistent with the Plan, it is best called out at that stage because the problem is not going to get better with time. An applicant should not be spending time and devoting resources to a project if it is not compliant with the Plan since it is thus unlikely it can gain ultimate approval.

When the issue came before the Board last year, the applicant suggested that the Planning Board had the ability to defer the finding of consistency with the Plan until the Preliminary Plan hearing. As this was an unprecedented issue, the Board accommodated the applicant and decided to defer making a finding until the Preliminary Plan hearing. Now that the Zoning Board is seeking a recommendation on the same issue, the question is being raised before the Planning Board for a second time.

After Mrs. Bourbonnais and the applicant affirmed the correctness of the procedural explanation, Mr. Brusini continued, stating that the Zoning Board does not have to accept the Planning Board’s recommendation on the issue.

Mr. Brusini asked if there was anyone present on behalf of the applicant who would like to speak in regard to the matter. K. Joseph Shekarchi, the attorney representing William J. Ross, Inc., introduced himself. With him was applicant William Ross and project development coordinator David Gardner. Mr. Shekarchi apologized to the Board for his absence at the previous meeting as he did not know his

presence was required. Mr. Brusini asked if Mr. Shekarchi or the applicant received the staff report. Mr. Shekarchi stated that he did not receive a staff report and was asked if he would like the opportunity to take a 5 minute break to review it before continuing. He declined and said he would like to continue and give a history of the project as well as what has happened since the Master Plan hearing.

Mr. Shekarchi stated that approximately a year ago, he came before the Board with a unique application on behalf of Mr. Ross and his business which was a project they thought was a good business for the Town and a good location in the Town. Because of the proximity to the highway and the surrounding area, they felt the business would be a good use of the land as well as provide strong benefits to the Town in terms of tax revenue and minimal public services required. The application is the same application that was presented in the first Master Plan hearing with the same size building, location and use. The applicant has been heard before the Town Council resulting in a unanimous vote of approval of the project. They have also worked out an agreement in writing with the Town of West Greenwich, who had concerns regarding access and drainage. There have been no residents in opposition to the project.

He continued with a further explanation. The project is on a small 6-acre parcel out of the 90 acres the Town has designated as "affordable housing." If the remaining 84 acres get developed, there is still plenty of room for affordable housing to meet the requirement. Whatever was planned with the 90 acres can certainly be done with 84 acres in his view.

Mr. Brusini asked if Mr. Shekarchi intended to make presentations or just answer any questions that might come up. The response was to answer any questions the Board may have. Mr. Brusini then asked members of the Board if they had any questions for the applicant, his team, or staff.

Mr. Russo asked what issue was heard before the Town Council. Mr. Shekarchi said it was a zone change. There were 2 votes. The first was a 3-2 vote in favor, with the two voting against asking for a delay until an agreement was reached with West Greenwich. After the agreement was reached, it was presented to the Town Council and there was a 5-0 vote in favor of a zone change for the 6 acre parcel.

Mr. Gomez asked what the zone change entailed. The answer was that it was from a Farming Zone to MUPD Zone.

Mr. Donegan affirmed that a zone change required 3 readings and asked when the third reading happened. Mrs. Bourbonnais explained that presentations and discussion happen at the public hearing. The Town of West Greenwich showed up at the zone change public hearing in East Greenwich and had concerns. West Greenwich wanted to make sure that the land in their town was developed properly. The applicant and West Greenwich made an agreement to make sure that the land was inspected and designed to their specifications. The third reading was when the agreement was taken into account and was voted on. The ordinance was approved and recorded for the zone change.

Mr. Donegan followed up by asking if the needed variances were asked from the Town Council. Mr. Shekarchi said that the issue was disclosed to them but was not discussed with them because it is the Zoning Board that grants the variances. Mr. Donegan interjected that the Council can grant the right to a zone that does not need variances. The zone would include the requested variances. Mr. Shekarichi responded that the engineering for the plans were not that far along. He stated that the applicant had never wanted exemptions from the Town Council and always intended on relying on the Zoning Board to grant the variances.

Mr. Brusini wanted clarification and asked if it would be a request for exemption or if the Town Council redefines the zone to permit things the applicant might seek a variance for. Mr. Shekarichi gave his interpretation of specific case law which gives a Town Council the authority to act as a Zoning Board. The applicant must specifically ask for this and it must be advertised. It is at the discretion of the Town Council to grant the exemptions. For this project, the applicant did not ask for it and it was not in the submitted application for a zone change. It was never discussed at the Town Council meeting.

Mr. Brusini asked if the exemption previously discussed would be different than the Town creating a zone where the regulations were different. Mr. Shekarchi responded that it would be different because if the Council created a zone with specific regulations, it would be applicable for any future applicant which might not be the intent of the Town. This is in contrast to exemptions that are unique to the applicant or site specific.

Mrs. Bourbonnais agreed with the distinction of the two exemptions. Continuing the discussion, Mr. Donegan stated that if the applicant applied for just the specific property to be a zone that included all the specific dimensional requirements and variance, it might have been a better option than going through the Zoning Board.

When the issue of consistency with the Comprehensive Plan was deferred at Master Plan, it was thought to be heard and decided upon at the Preliminary Plan hearing. Now that the Zoning Board has asked the Planning Board for a recommendation of consistency, it can be seen as the same thing. Mr. Donegan asked if the applicant agreed. Mr. Shekarchi replied that it is a little different. When a decision is made at the Preliminary hearing, it carries weight and is appealable. It has approval or it does not. Although it is an important recommendation in which the applicant would want a favorable outcome, what is decided for a recommendation is not as important as a plan approval decision with multiple findings. It is in the opinion of the applicant that because of the zone change, the project is more consistent with the Comp Plan.

Another point Mr. Shekarchi brought up was that Planning Boards do not set precedence. Precedent is only set by a court and not by an administrative agency. Because of this unique situation, no future applicant can use the decision against the Planning Board. Each application must stand and fall on its own merits.

Mr. Donegan explained that the Town is concerned about the sensitive issue of how to deal with affordable housing. The previously mentioned 90 acre area was accepted by the State in the Comp Plan as a means to utilize space for affordable housing. It is a challenging prospect to decide to grant some of the calculated land to a different use other than what was intended. The reasons that have been presented are valid arguments for a Comp Plan amendment. It is an understandable process issue but the concern is the precedential value of making changes that might be inconsistent with the Comp Plan because the Planning Board decides it is "good" for the Town.

Mr. Shekarchi replied that the same amount of affordable housing units could be supported on the remaining 84 acres that would be supported on the 90 acres. State law allows the Comprehensive Plan to be a "living, breathing" document that changes. A Plan is submitted once every ten years and during those ten years, economics change and developments happen. State law specifically allows towns the ability to make changes to the adopted Plan. It is the Town Council that makes the zone change as the highest elected authority. They have already made the decision to allow the zone change to proceed because they believed it was in the best interest of the Town. Though the Planning Board

recommendation is important, it is something that cannot be appealed. In his opinion, it does not have a lot of legal significance and has zero precedential authority. Once this project goes to the Preliminary hearing, it will be more important as it is a more technical review. At that level, the Planning Board has the ability to deny or approve the project.

Mr. Donegan replied that the Board holds a different posture because usually, at the Preliminary hearing, the Board is conducting a technical review but in this case, the Preliminary review must address the issue of Comprehensive Plan consistency as it was deferred at the Master Plan hearing. From the Board's perspective, this recommendation should be evaluated in the same conditions as it would be at the Preliminary hearing for consistency purposes.

Mr. Shekarchi asked what the decision made at Master Plan was. Mrs. Bourbonnais responded that the condition in the written decision was that the finding of Comp Plan consistency would be withheld until the Preliminary Plan review.

Mr. Tagliatela asked Mrs. Bourbonnais' her opinion on whether or not the vote at the Town Council meeting was an endorsement for the project or something that had been included in the Comp Plan that would have been done regardless. She responded that it is both and that the Comp Plan is being confused with the zoning ordinance. The aforementioned "living, breathing" document is talking about the Comp Plan. But the Council took action upon the zoning ordinance and changed the zoning to what the Comp Plan called for. This project does not reflect what the Comp Plan nor what the zoning ordinance calls for.

The Zoning Board of Review has five legal standards that every applicant needs to meet. They are derived from state law and they are mirrored in the local zoning ordinance. §260-91-3: "... [T]he granting of the requested variance will not alter [...]or impair the intent or purpose of the Zoning Ordinance or the Comprehensive Community Plan upon which said ordinance is based." The Zoning Board asked for this recommendation. They are comfortable assessing the application in the framework of the zoning ordinance as they deal with the ordinance on a regular basis. They understand the variances requested and will render an opinion about them. The Planning Board writes and is the local expert on the Comp Plan. The decision of the consistency with the spirit, intent and policies of the Plan lies solely with the Planning Board. The applicants are before the Board for the interpretation of whether or not this project, which includes the needed relief, impairs or alters the purpose or intent of the Comprehensive Plan.

The applicant went to the Town Council and received a zone change to MUPD (Mixed Use Planned Development) which is specifically designed to accommodate high density housing. When looking at this commercial application, a decision has to be made regarding whether or not the MUPD zone includes the commercial project. Mr. Shekarchi agreed this was the fundamental question to be resolved.

Mr. Donegan affirmed with Mrs. Bourbonnais that the zone change did not address the project-specific use. The zone was changed to mirror the language in the Comp Plan but this applicant's use is not accommodated by that language.

The zone reflects the language in the Comp Plan, but the issue now is if the actual use proposed is consistent with the defined use in the Plan. The only question is if the use on the specific 6 acres in question is consistent with what the Plan calls for. Mrs. Bourbonnais stated that no, it is not. The applicants could have sought a Comp Plan amendment at the same time they were seeking a zone change and dealt with both issues simultaneously.

Mr. Ayotte asked if the applicant could have requested the Town Council assign zoning to accommodate the proposed use. Mrs. Bourbonnais replied that the commercial use could be sited on a Commercial Highway or a Light Industrial zone. The applicant sought a zone change from a farm to MUPD zone which is specifically designed to accommodate housing and not commercial enterprises.

Mr. Donegan followed up stating that when a Comp Plan gets adopted and there is a zoning ordinance in place that is now inconsistent with the Plan, a statute is in place that says that the zoning ordinance is still in control. Once the Comp Plan is finalized, the municipality has the ability to change zones but now the Plan trumps the ordinance. The Council could not pass a new zone that is in direct conflict with the Comp Plan.

The only thing permitted would be whatever is included in the Comp Plan's definition of the zone. If something is proposed that is not consistent with the definition, a Use Variance from the Town does not make it consistent. The Comp Plan would need to be changed as well. In order for a commercial use to be legal, it has to meet the zoning (i.e. a use variance) and it has to be consistent with the Plan, requiring an amendment.

Mr. Shekarchi respectfully disagreed, stating that the commercial use is the same use proposed a year ago. The process was discussed and the current path was the agreed upon path to take for this project. He opined that, ultimately, if the plan is a good use and it is wanted in the Town, it should be recommended for approval, if it is not, don't recommend it.

Mr. Brusini commented that the Board can like a project and think it is a good project, or not like a project. In terms of consistency with the Comp Plan, the issue is black and white. It is either consistent or is it not consistent; it has nothing to do with "liking" a project. Any decision made by the Board is objective and does not reflect the opinions of the Board members. Mr. Brusini also commented about the presumption that the proposed use is not consistent with an MUPD zone and what it allows. He asked Mr. Shekarchi if he agreed or disagreed with the presumption.

Mr. Shekarchi replied that if the Board or Town wanted this project, there is ample justification to allow the use. If there is an inconsistency, it is the applicant who pays the penalty and there is no risk to the Town. If the abutting owner had a problem and appealed the project, it would be understood the project would be dead. Yet the abutting owner endorsed the project. The project benefits the applicant but it also benefits the Town. Ultimately, it is up to the Town if the project is wanted or not.

Mr. Russo asked how it could be argued that the proposed use is consistent with an MUPD zone and the language in the Comprehensive Plan. Mr. Shekarchi replied that the zone has changed to allow some kind of commercialization, which is the proposed use.

Mr. Brusini clarified what Mr. Russo was asking. The Plan and zoning use table is specific as to what is considered commercialization. The zone in question is high-density residential with affordable housing units and ancillary commercial uses such as retail, office, etc. He asked how the proposed commercialization could be adapted for consistency with that. Mr. Shekarchi replied that there will be office space on the site as well as a retail component available. In terms of the residential aspect, the remaining 84 acres of the original 90 can still be residential.

Mr. Brusini asked if Mr. Shekarchi believed the Board had the ability and authority to disregard the 6 acres as residential and just focus on the remaining 84 acres. The reply was in the affirmative and Mr. Donegan followed up by asking how much area the Board would be allowed to disregard. Mr. Shekerchi responded that he has never heard of a Town Council zone change over-turned. To his knowledge, he has never heard of a situation where a town has approved a use change in the zoning which was not consistent with the Comp Plan and was penalized. The state wants to see a set amount of affordable housing but relies on the judgement of a town's local administration to find affordable housing areas.

Mr. Donegan commented that the State allows the Town to come up with a Plan. The Town is then required to submit it to the State to approve and accept. At that point, the public has participated and approved the Plan as well. Mr. Shekarchi agreed with this and said the State also allows the Town to make changes twice a year. A change in the plan could be submitted to accommodate the zone change but it would be a long process.

Mr. Gomez made a comment regarding whether the Board liked the project or not. He opined that he liked the project from the start but that does not mean it is consistent with the spirit of the Comp Plan, which is what is being decided. Twice a year, the Board has the option to make changes to the Comp Plan and the applicant had that option. Mrs. Bourbonnais explained that towns are supposed to re-write the Comprehensive Plan every ten years and amendments are approved by the State up to twice a year. Mr. Gomez commented that the applicant could have applied for an amendment at the same time a zoning change was being applied for.

Mrs. Bourbonnais continued and explained that as soon as the Town approves a Comp Plan amendment, it governs local action. There is no reason to wait on a State approval of the Comp Plan amendment as it is only guiding for State action purposes once the State approves it. The amendment would be the law of the land in East Greenwich as soon as the Town Council adopted it as an ordinance. It would carry weight the day it is approved locally. As soon as the applicant received approval of an amendment concurrent with the zone change, they would have been cleared to proceed with the project.

Mr. Brusini gave a hypothetical situation of the aforementioned process was followed. He asked if a Comp Plan amendment was passed by the Town locally, what happens to the applicant if the State disagrees with the amendment. Mrs. Bourbonnais answered that it would not affect the applicant. The burden would be placed with the Town. For example, if the amendment did not advance the affordable housing goal according to the State, the Town would have to find a way to make up the lost units in another area.

Mr. Brusini explained that it would be understandable not to try to obtain an amendment if the process were to take over a year, but if it were a local process that would take just a few months, it could be seen as more viable. Mr. Shekarchi replied that the problem arises after the project is finished. If the State rejects the amendment but the applicant is fully invested in the finished project, the marketability of the site is diminished. He expressed his surprise that a Comp Plan amendment is currently being discussed because the path for this project never involved an amendment.

Mr. Donegan followed up with two points. When the applicant first met with the Town Planner, the process suggestion was to obtain a Comp Plan amendment. The second point Mr. Donegan addressed was that it seemed like the applicant suggested that the Board had already heard the application at the Master Plan hearing and had found the project consistent with the Comp Plan but are now seeing the same evidence and are making a different conclusion. He explained that the Planning Board specifically said that the issue could be decided at Master Plan or it could be decided at another time after a more informative presentation was given to the Board. The applicant presented a great argument for the Board not to make the decision at Master Plan. The Board was very clear that it was not making a determination regarding the consistency with the Comp Plan.

Mr. Shekarchi explained that his frustration stems from not having the issue of Comp Plan consistency raised until this point in the process. He questioned why it was not formally brought to attention in previous meeting with the Planning Board or the Town Council. Mr. Donegan answered him, saying that a lawyer decides how an application is presented through a process from start to finish. A plan is crafted, the necessary permits are vetted, and a full and complete understanding of every agency, local and board is garnered. From this, a strategy is determined. To the Board's knowledge, a Comp Plan amendment could have been a part of the applicant's strategy. He asked Mr. Shekarchi why the Comp Plan consistency determination was deferred at Master Plan. Mr. Shekarchi replied that the zone needed to be changed to allow a commercial project. An amendment was not asked for because it was unknown that it was needed at the time. The Board did not say it would be required at a later point in the process.

Mr. Donegan replied that it is not within the purview of the Planning Board to make an assumption of the needs of an applicant. An applicant must specifically ask for what they require. The Board would only know a Comp Plan amendment was needed if the applicant asked the Town Council, who in turn would ask the Planning Board for a recommendation. In this situation, the applicant never asked Town Council and therefore, the Planning Board was never asked.

Mr. Brusini interjected and asked staff about a Comp Plan amendment possibility. Mrs. Bourbonnais stated that when the application for Master Plan approval first came in, it was rejected on the basis that staff did not find it consistent with the Comp Plan. Staff was overruled by upper management that it could not be determined at the staff level and had to be made at a higher level. The application was accepted and was slated to go through the zone change process with Town Council.

Mr. Brusini stated that when the issue came before the Board, it had a concern about deferring the Comp Plan consistency finding. The Board gave the applicant every opportunity to proceed with the

project but cautioned that it was at the applicant's expense should the Comp Plan consistency finding be denied at a later stage in the process.

Mr. Ross asked to speak and was sworn in. He expressed his frustrations about the current state of the project.

Mr. Brusini responded that the frustration was appreciated and the Board's intent is not to be adversarial but to be thorough in procedure. Time was spent going over the procedure for this project because there were concerns over investing time, resources, etc. for a project that could have problems.

With no further comments from the applicant, Mr. Brusini asked if members of the Board had any comments to make.

Mr. Tagliatela inquired about the option of a Comp Plan amendment from the applicant. Mr. Shekarchi responded that the process would have to be restarted from the beginning. He said he would also want the State to approve the amendment before starting the project, which could take up to 20 months after the State receives the amendment.

Mr. Brusini asked Mrs. Bourbonnais how long the Comprehensive Plan amendment process would take on the local level from start to finish. She responded that it would consist of a standard 3 readings of an ordinance. The first reading would introduce the amendment. It is advertised and a second reading is conducted. After 3 weeks, the final reading can be done. The process can be finished in 8 weeks. The applicant's concern is the time the amendment would take at the State level.

Mr. Gomez commented that if the Town passes an amendment, the risk would be assumed by the Town if the State denies the amendment. There are no repercussions to the applicant. The Town would need to fix the Plan to appease the State.

Mr. Russo commented on the statute that was originally read: "The proposed development is consistent with the Comprehensive Community Plan **and/or** has satisfactorily addressed the issues where there may be inconsistencies." He asked Mrs. Bourbonnais to define 'satisfactorily addressed.' Mrs. Bourbonnais replied that it usually means an amendment to the Plan to comply with consistency.

Mr. Tagliatela affirmed that the argument advanced by the applicant is that there are not inconsistencies with the Comp Plan because the use is commercial. The Plan has a specific area to include some form of commercial use along with the residential uses and the proposed use is commercial.

Mr. Donegan stated that there is an issue with the assumption that the remaining 84 acres of land is buildable land. The land could contain wetland or have other site constraints which would prohibit construction. The remaining land may or may not be enough to accommodate the high density, affordable housing goal that the Comp Plan calls for.

Mr. Brusini followed up, asking if the Town could accommodate the loss of the 6 acres if the applicant chose to seek a Comp Plan amendment. Mrs. Bourbonnais replied that this was discussed a year ago

with the applicant and his team. Mr. Shekarchi commented that he remembered this and it was his understanding that it was agreed that a Comp Plan amendment did not need to be obtained. If it was a requirement, the applicant would have probably re-assessed the project to accommodate an amendment. The application that has been presented to the Planning Board and the Town Council never included a Comp Plan amendment because it was thought to be unnecessary.

Mr. Donegan commented that the project is thought of as a good project for the Town, albeit procedurally difficult. Referring to the language of the statute "...and/or satisfactorily addressed the issues where there may be inconsistencies," he asked what the difference was between having an opinion about a change in the Comp Plan and getting approval for a change in a Comp Plan. Mr. Brusini reiterated that the way to change the language in the Comp Plan is through an amendment and asked if there are any other ways to satisfactorily address the issues where there may be inconsistencies.

Comment [AL1]: 96:18

Mrs. Bourbonnais replied with a recent example. An applicant has come before the Town seeking a residential development in a light industrial zone. The *housing chapter* of the Comp Plan identifies the site as potentially being an MUPD zone with the potential for affordable housing residential units and some commercial units. The *land use chapter* of the Comp Plan shows this site as being consistent with abutting properties on the same side of the street which is light industrial/office use. The Comp Plan is inconsistent internally and the site could be used either way. This applicant is pursuing a Comp Plan amendment to make sure that all of the parts of the Comp Plan that might be related to the project are consistent. There are grey areas that could be interpreted either way and amendments are made out of an abundance of caution to make sure no inconsistencies remain.

Mr. Brusini added that another example could be to look at the building official's report for the proposed project which leans more toward the stance of not having to 'satisfactorily address the issues where there may be inconsistencies.' It could simply be interpreted as "the proposed development is consistent with the Comprehensive Community Plan" based on the interpretation of what commercialization is. He added that the language of "and/or" leads to ambiguity.

Mr. Brusini asked for comment from Ms. Jette. She commented that a reasonable interpretation of the statute language is that the project is either consistent with the Comp Plan or there is some evidence of inconsistencies. Otherwise, the language would read that it is either consistent with the Comp Plan or there is an intent to amend the Comp Plan. A suggestion that could be entertained is that even though a project may not be entirely consistent with the Comp Plan, the inconsistencies are not significant because of evidence presented.

Mr. Brusini gave his interpretation of the language in the statute ["satisfactorily addressed the issues where there may be inconsistencies."] If the Board found a project was **not** consistent, the word 'may' could be eliminated. If the Board was **not sure** a project is consistent or not, it would give leeway to entertain insignificant inconsistencies.

Comment [AL2]: 101:58

Mr. Shekarchi agreed with the interpretation and added that the statute allows a review of the evidence to address the possible inconsistencies.

Mr. Brusini opened public comment and there being no one to speak, it was closed.

Mr. Brusini asked the Board for their thoughts on 3 different aspects; thoughts about the project in general, Comp Plan consistency, and how to proceed with an amendment of the Comp Plan to allow the proposed use to be consistent.

Mr. Gomez commented that the project was a good use of the land and he would like it to succeed. He opined that the project is not consistent with the spirit of the Comprehensive Plan even considering the recent zone change. He would be in favor of a Comp Plan amendment to change the zoning of the piece of land in question to fit the use better.

Mr. Ayotte was in agreement with Mr. Gomez. He commented that the project was great for the land but had concerns regarding the use for the zone. The use does not fit the Comp Plan.

Mr. Donegan explained that the reason for the lengthy discussion is because the Board wants the project to work and is trying to figure out how to make it work. It is a good project but it is not consistent with the Comp Plan. He stated that he would vote in favor to recommend an amendment to make the project work.

Mr. Russo stated that he liked the project and would like to see it progress but in the scope of the Board's purview, it is not consistent with the language of the Comp Plan. He commented that he would support an amendment to the Comp Plan.

Mr. Tagliatela agreed with the previous Board members and would be in favor of an amendment to the Comp Plan. The reason for creating a Comp Plan is to follow important procedures but the applicant is asking the Board to disregard it and give excessive leeway in interpretation.

Mr. Brusini echoed what Mr. Tagliatela said. He commented that he supported the project itself and that it is a clever, adaptive use of a unique piece of property. In terms of compliance with the Comprehensive Plan, it is not consistent as it is currently written. It is his understanding of the current law that where there is inconsistency between the zoning and the Comprehensive Plan, the Plan trumps. While the Board treats every application on its own merits, it is important to be consistent in decision making. If the Board were inconsistent, a decision could be easily appealed and reversed. It is also unfair to future applicants to not be consistent. People should have expectations based on predictable outcomes and an understanding of how the Board acts.

In terms of the Comprehensive Plan, although the Board writes the Plan and is arguably the municipal resident expert on the Plan, the Board does not adopt the Plan. The Board makes recommendations and the Town Council makes a decision. In regards to the 6 acres the applicant will be using independently of the other 84 acres for purposes of Comp Plan compliance, the Board cannot pick and choose which acres are being applied to a specific use. The only way to distinguish between the 6 acres and the 84 acres is if they were to be treated differently in the Comp Plan.

If the applicant was interested in receiving a Comp Plan amendment, it could be supported and the Board would try to make sure that process moved along quickly at the Board level.

Mr. Ross asked the Board what classification would be needed for an amendment. Mr. Brusini replied that a request would be made to the Town Council for a Comprehensive Plan amendment that would address the 6 acres of the project. The intended use would become consistent with the Plan. The Council would ask for a Planning Board recommendation. The Board would have a hearing and would give a favorable recommendation back to the Town Council. The amendment would go through process resulting in the Town Council making a decision to either amend the Comp Plan so the proposed use would be consistent or reject the amendment. After the Town Council approval, the amendment goes to the State for approval.

Mr. Gomez commented that the zone has already been changed to MUPD and the proposed use does not fit in this zone. The applicant would probably have to ask for another zone change as well, likely to something commercial.

Mr. Donegan asked Mrs. Bourbonnais if the Town is able to work with the State to quickly move the Comp Plan amendment forward. Mrs. Bourbonnais affirmed and stated that it has been done in the past.

Mr. Brusini asked the Board to make a motion for a recommendation to the Zoning Board. Mr. Donegan made a motion that the Planning Board recommend to the Zoning Board that the project is not consistent with the Comprehensive Plan. Motion seconded by Mr. Russo.

Mr. Donegan commented that the Board would like to see an amendment happen. After discussion, the motion was amended to include that although the project is not consistent, the Board would favorably support an amendment of the Comp Plan to allow the project to proceed. Mrs. Bourbonnais added that the Town can initiate a Comp Plan amendment. The Board can recommend to the Town that a Comp Plan amendment is desirable which would take the burden off the applicant to apply for said amendment.

Mr. Brusini invited the applicant to speak on what course of action he would like to take. Mr. Shekarchi stated that he would welcome any positive information that the Board felt comfortable making.

Mr. Donegan retracted his original motion and presented a motion that the Planning Board believes that the proposed use is a positive use for the Town however it is not consistent with the terms of the Comp Plan. If the Town Council seeks an amendment to the Comp Plan, the Board would view it favorably. Motion seconded by Mr. Tagliatela and passed unanimously after a vote.

Vote: 6 – 0 – 0 in favor of the motion to recommend that the project is a positive use for the Town but not consistent with the Comprehensive Plan. Further, the Planning Board would be in favor of an amendment to the Comprehensive Plan.

Stating for the record regarding agenda item #1, Mr. Brusini stated that he was not at the original hearing two weeks ago but in the interim, he read the minutes and the transcript which is the reason he participated in the deliberation.

3. Minutes: September 2, 2015

Mr. Ayotte had corrections to the minutes on page 11 in the last paragraph: "Traffic is also an issue, specifically on Middle Road for emergency vehicles getting by." He stated that he meant to say was "...specifically internal circulation for emergency vehicles." The change was noted and corrected in the minutes.

Mr. Donegan had a correction on page 2 in the second paragraph: "It was initially asserted that the plan needed a zone change as well as a Comprehensive Plan amendment..." He commented that he understood that to mean that the Planning Department initially asserted to the applicant that the plan needed a zone change. He stated that he wanted clarification on who asserted what and to whom it was asserted. [The recording of the minutes were reviewed and at 13:54, the verbatim recording is "We initially asserted that this applicant requires not only a zone change, but a Comprehensive Plan amendment..."]

Mr. Brusini had a question on page 3 in the second paragraph: "Mr. Donegan followed up by saying the Board was being generous when allowing the project to be approved past Master Plan." He commented that there would have been no approval and clarified that it should say 'allowing the project to *proceed* past Master Plan' to make the language more clear. The change was noted and corrected in the minutes.

Mr. Russo motioned for approval of the minutes as corrected and was seconded by Mr. Tagliatela. With no public comment a vote was taken for approval and passed unanimously.

Vote: 5-0-0 in favor of the motion to approve the September 2, 2015 minutes [Chair abstaining].

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

Mr. Donegan had two things to comment on. The first was regarding the final draft of a decision. A vote is taken and a decision is drafted by the Town Planner. The Chairman of the Board reviews it and signs it. However the rest of the Board members never get a chance to see the decision before it is signed. After it is signed, the finalized decision is appealable. Whatever was meant may not be what is in the finalized document. He proposed a procedural change that would have the Town Solicitor draft the decision after a review from the Planner and would have the draft be reviewable with the minutes of the meeting where the decision was made.

Mr. Ayotte asked if a decision is appealed, what would hold more weight: the decision or the transcript of the meeting where the decision was made. Mrs. Bourbonnais replied that both the decision and the transcript would hold weight but the decision would carry the most weight.

Mr. Brusini commented that the Board spends sometimes hours deliberating about a matter and then makes a decision that nobody but the Chairman sees. He questioned if the decision should come back to Board to review. The only foreseen drawback would be a timing issue. Mrs. Bourbonnais replied that a decision is supposed to be recorded within 30 days of it being made. When the Board is meeting twice a month, it is very possible to get a decision on the subsequent agenda to get approval from the Board. However, there are situations where this is not plausible, i.e. when a meeting is cancelled. There are Boards around the State that docket a decision to get full Board approval to make a final decision.

Mr. Brusini suggested that the Planning Board not proceed in that direction. He presented the idea that the draft decision gets circulated to the Board for review. At the next meeting, the Board and the public comments on and discusses the decision, like what is done to review the minutes of a previous meeting.

Mr. Donegan commented that reviewing a decision at a meeting would be a difficult task accomplish. If people give input at the public comment, the discussions held may or may not reflect what was heard at the meeting. In many instances, one word can change the whole document. The public is not best served by having a decision written that is never seen but opening up a decision could mean that it would never end. A hearing could be held and everyone objects and another hearing has to be held ad nauseam, which does not seem reasonable.

Mr. Gomez clarified that the concern is that the decision might not reflect what the Board has voted on, regardless of public opinion. He asked if it was possible to have a time frame in the Planning Department where the decision would be available to be reviewed. The response was that it probably would not work out.

Mr. Brusini presented the idea that when a matter comes before the Board, the staff prepares a draft motion. The draft motion that is approved will be the verbatim language that going to be placed into the decision. If there are changes, the motion will be re-read so that everyone knows exactly what will be in the decision and what they are voting on.

Mr. Donegan asked what would happen if the written decision is still ambiguous when it is finalized. Mr. Gomez replied that time would be taken to go over everything that has been changed, re-read, voted on, and given to staff. The only error would be from human error through transcription.

Mrs. Bourbonnais put forth the idea of a sub-committee that would not constitute a quorum of the Board, consisting of the Chairman and the two members who made and seconded the motion. The decision would be reviewed to make sure everyone agreed.

Mr. Tagliatela suggested that he would be in favor of whatever solution would be the least administrative burden. Mr. Russo was in favor of slowing down and re-reading the decision so that the language is clear and it understood by everyone.

Mr. Donegan asked how re-reading is different than what is already done. A template motion is written down, read, and recorded on record by the stenographer. Mr. Brusini commented that a transcript of a meeting can be misleading. The words are often not in context because the conversation is in real time. What normally happens is that one person makes a motion, another makes a comment, another makes a suggestion, and after the revised version is finally written down, it sometimes does not reflect the original intention. The step that is being added is that whenever a change is made, the Board reads the revised version slowly and deliberately so everyone in the room understands exactly what is being stated in the final decision.

Mr. Ayotte agreed that the added step is a good avenue to take and suggested that the revised copy be forwarded to the Chairman to compare the original hard copy.

Mr. Brusini asked if the additional step eliminated the question of who drafts the decision. Mr. Donegan commented that he liked the idea of having a lawyer draft legal documents but there is a timing issue

when the solicitor might not have the time to draft a legal document is the appropriate amount of time. He asked Mrs. Bourbonnais if it would be helpful to have someone else draft the decisions. She said that it would be helpful in one way but not in another. Sometimes it is a convoluted process, especially at Preliminary Plan when it is more technical, but it would be more appropriate for the solicitor to draft decisions.

Mr. Donegan stated that the issue is that the solicitor does not review the document before it reaches the Board and a lot of the legal questions are asked by the Board. For the legal and procedural questions, it would be helpful to have input from the solicitor. Mrs. Bourbonnais affirmed that it would be a good idea for staff to draft a document and give it to the solicitor to review before it reaches the Board.

After a discussion, Mr. Brusini summarized a 4 step process: 1. Coordination between staff and legal counsel to confirm the initial formation of the document. 2. When the document comes before the Planning Board and modifications are made, the Board will take time to re-read it for undisputed understanding. 3. Staff will create a formal decision and give it to legal counsel to review. 4. The document is reviewed by the Chairman and signed.

With no other comments, Mr. Brusini made a motion to adjourn. Motion was made by Mr. Gomez and seconded by Mr. Donegan. Meeting adjourned at 9:31PM.

Minutes respectfully submitted by the Planning Department. For further information, please contact the Department.