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

Members Present: Steve Brusini, Chair; Michael Donegan, Vice Chair; John Ayotte; Dan Tagliatela; Brad Turchetta

Members Absent: Jason Gomez; David Eaton; Chris Russo

Staff present: Lisa Bourbonnais, Planning Director; Aaron Lindo, Planning Assistant; Sarah Jette, Legal Counsel

Mr. Brusini called the meeting to order at 7:11 PM and introduced members and staff present.

1. Recommendation: The Town Council would like the Planning Board's recommendation relative to amending the Town Code, specifically eliminating Article III of Chapter 93 (Fees), the Affordable Housing Development Fee, which currently gives developers the option of paying a fee into an affordable housing trust fund instead of developing deed-restricted affordable units as part of a new subdivision or other residential development. Also proposed for elimination is Section 260-99(B) which provides for said fee option within the Zoning Code. The Planning Board is required under Section 260-82 of the Zoning Code, Procedures for Adoption and Amendment, to make a recommendation regarding revisions to the Zoning Ordinance. The Town Council has scheduled a public hearing on the proposed amendments for October 14, 2015.

Mrs. Bourbonnais explained that this is a recommendation to eliminate the fee-in-lieu ordinance that is currently in place and gave background information. A number of years ago, a land development in Town was approved with the fee attached. The developer challenged the fee in court and the Supreme Court found that the Town was not statutorily authorized to impose a fee in lieu of affordable units. The Town has since stopped collecting the fee.

Mr. Donegan asked if the developers spent more money in litigation than the cost of the fee. The response was that they paid a lot more than the fee and the Town was responsible for their attorney's fees. Mrs. Bourbonnais continued saying that the Town was prevented from collecting the fee but since then, has never modified the local ordinance which still refers to the fee that the Town is not supposed to collect. In the meantime, State law changed and now the Town is able to collect fees. However, the Town does not want the fee due to the way the law is written (more "developer-friendly" than municipality-friendly) and the Town wants to get rid of the ordinance.

The Affordable Housing Committee has advised the Town Council that getting rid of the ordinance is supported by them. The Town Council is against the fee because it seems to give

developers total control over when and where they choose to use it. The permissive language of the law says that the Town *may* have a fee-in-lieu option but is choosing to not have it.

Mr. Brusini asked for an example of a circumstance where the Town would have wanted to collect a fee-in-lieu of a unit. Mrs. Bourbonnais responded that a recent development that was reviewed at a previous Planning Board meeting could be cited as an example. The development was proposed in an area where there are $700,000-900,000 houses nearby. The neighbors of the development were opposed to having affordable units in the area because they feared it would affect the neighborhood by lowering their land values. Under inclusionary zoning, affordable housing units work well in moderate income areas or true mixed-income developments. An example of this is the Cottages on Green. There, affordable units blended in with the market rate units so that it works well from a price-point perspective.

Mr. Tagliatela affirmed that the recourse would be to move the affordable houses off-site from a development. Mrs. Bourbonnais confirmed this and commented that item 2 on the agenda discusses this.

Mr. Donegan asked what the Affordable Housing Committee is. Mrs. Bourbonnais explained that they are a Town Council appointed board, created by the original affordable housing ordinance. One of their main charges was to take money that was deposited into an account that was set up to accept the fees-in-lieu and find ways to use them. Currently, the AHC has become an outreach board that gives presentations to community groups to dispel the myths of affordable housing. Mr. Donegan asked if the Town kept the funds that were taken from the fee. The answer was that the Town was ordered to give the money back.

Mr. Turchetta asked if 10% of any new development had to be affordable housing. Mrs. Bourbonnais responded that it depends on the zone under the current zoning ordinance. It is a range of 10-15% in most zones and 20% in PD zones. The Comprehensive Plan calls for all zones to increase the requirement to 20%. Mr. Turchetta followed up asking that if a development called for $800,000 houses, would the developer have to find land elsewhere to build the necessary affordable housing. Mrs. Bourbonnais replied the units would not necessarily have to be built. The ideal situation would be to buy housing that already exists, rehab it, and deed-restrict it.

Mr. Donegan added that it is with the caveat that the objective is not to create slums areas or other concentrations of affordable or low income housing. Mrs. Bourbonnais commented that this was addressed in the Comprehensive Plan and is called a “scattered site strategy” which ensures that all of the affordable units do not get focused to one area. Adding to this, Mr. Tagliatela asked how it would come to the State’s attention if clustering did occur and what the procedure would be in such an event. Mrs. Bourbonnais stated that there is a monitoring system in place. At the end of the year, the Town is required to give the State a tally of all of the affordable, deed-restricted units added. Rhode Island Housing compiles a statewide report and publishes it. They track affordable units in every community. There is not necessarily a penalty but the Town establishes in the Comprehensive Plan that unit clustering will not happen.

After no other comments were made, the Board was requested to give their thoughts. Mr. Turchetta agreed to remove the ordinance and commented that the Council wants to remove an ordinance of something that is not being acted upon anyway, which makes the removal make sense. Mr. Tagliatela was also in agreement to remove the ordinance. Mr. Donegan was in agreement and commented that regardless of the money [from the fee], having input into how the Town meets its goals is better left up to the Town rather than a developer. Mr. Ayotte said that it makes sense to delete the ordinance altogether and was also in agreement. Mr. Brusini followed suit and agreed.

After no member of the public came forward to comment, Mr. Donegan made a motion to delete chapter 260, section B regarding affordable units. Motion seconded by Mr. Tagliatela and passed unanimously after a vote.
Vote: 5 – 0 – 0 motion to delete Chapter 260-99, Section B from the Town Code.

2. Discussion: The Town is considering amending Chapter 260 of the Town Code, Zoning Ordinance, Article XVII, Affordable Housing. The revision would replace Sections 260-98 through 260-101 in their entirety and would add Sections 260-102 through 260-104. The affordable housing revisions are not yet before the Town Council for consideration and are still being drafted. No action or decision is required.

Mrs. Bourbonnais gave background on the item. The revisions were talked about in theoretical conceptual terms and dealt with giving developers an off-site option for affordable housing as well as mirroring language about compatibility of units developed under inclusionary zoning. The discussion is meant to re-visit the item for familiarization as it had not been brought to attention in some time and some members are new to the work being done to revise the affordable housing ordinance.

After confirming with the Board that material has been read, Mr. Brusini asked the Board if there were any questions, comments, or suggestions.

Mr. Turchetta had a question on 260-98 B. With the target number of 300 affordable housing units in the next 20 years, he asked if there was a penalty for not reaching that number. Mrs. Bourbonnais replied that the Comp. Plan calls for an affordable housing plan that projects reaching a specific target over the next 20 years. As long as substantial progress is being made toward the target, there is no penalty. The concern with not having working strategies in place is that someone can come to Town and force an affordable housing project that the Town does not necessarily want nor is desirable. There is no yearly quota.

Mr. Tagliatela commented that if it is to be assumed that 10% of future housing is to be built for affordable housing and the target is 300 units, it would mean that 3000 units would have to be built in order to reach the target. He asked if the Town even had the capacity for 3000 units. Mrs. Bourbonnais responded that from a build-out analysis it was determined that there is not enough land area for that amount of units. For the analysis, the remaining developable parcels were considered and the units were calculated by how many units under the current zoning could be built.

Mr. Donegan suggested that it would be better to reference the affordable section of the Comp Plan instead of the specific target number, so if the Plan target changes, the ordinance will not have to change.

Mr. Ayotte had a question regarding the off-site exactions in chapter 260-103: "[The Planning Board will allow off-site exactions when], (a) in its determination, it would not be feasible to provide affordable units on-site due to environmental, public health, public safety, or regulatory reasons." Mrs. Bourbonnais answered that the only way a project was going to work to get a certain number of affordable units, is if the project was given a density bonus, for example. It would come into effect if there was no way to get the appropriate number of units on site without having a negative stormwater impact, generating too much traffic, etc. The affordable units would be taken out of the project and be made elsewhere.

Mr. Donegan voiced concerns over the discretionary power of the Planning Board's permitting authority. The idea that a permitting authority could grant a permit when they solely decide it is beneficial is a dangerous path to take when there is not a standard criterion to follow. Mrs. Bourbonnais replied that the intention to use the off-site exaction determination is when there is a large group of people who are adverse to on-site affordable units. Mr. Donegan commented that the off-site exaction should have to be beneficial to the Town and not be determined by the Planning Board subjectively.

Mr. Brusini agreed with Mr. Donegan stating that he would not be comfortable being on the Board and having that high a level of discretionary power. He explained that people in wealthier neighborhoods might be opposed to having affordable units in their neighborhood. In turn, the Town would essentially say there will not be any affordable units west of Route 2, for example. It would be the exact opposite of inclusionary zoning. His thoughts were that the Planning Board should not have the high discretionary power at all or, if it needed to be included, to only be used in extraordinary circumstances. In the latter occurrence, there would be a need to develop criteria for when it should be used.

Mr. Donegan questioned the economics of building affordable units in a wealthy area from a developer's standpoint. He gave an example that if a developer were to buy land on the [west] side of Route 2, the minimum lot value, once it is subdivided, is out of the affordable housing range just in land value alone. He affirmed that the affordable housing law required developers to build houses that were $750,000 and sell them for $230,000, for example, with the theory that there would be enough million-dollar homes to compensate for the affordable houses. Even if someone paid $230,000 for a house, it is questionable how they would pay for routine maintenance/ utilities for a house that would normally cost $750,000.

Mrs. Bourbonnais responded that this subject is brought up frequently and is why the off-site option is important. It is an opportunity to have infill and to get derelict units rehabbed. Mr. Donegan followed up stating that if a development is going to spend $750k and get $230k for a house, it is a significant loss for the developer, especially if there a substantial amount of market rate homes. The developer might as well buy a separate piece of land and only build affordable units. If it is allowed to be off-site, there would be far more units that could be built.

Mr. Brusini stated that if the primary goal is to get affordable units at all costs, then off-site exactions should be done. If the goal is to have inclusionary zoning, then it should be done in some modified fashion. For example, if a developer wants to create a development, he will do a cost benefit analysis to see how much can be made from the market rate houses to subsidize the affordable units that have to be sold for less. They will come to the decision that they can or cannot do it. If they cannot, the lot does not get developed, which, from the Planning Board's perspective, does not matter. The Board's goal is to make sure a development is responsible and abides by the Comprehensive Plan.

Mr. Donegan hypothetically asked if a situation has ever happened that a house built for $1 million but sold for $230,000 that the buyer could even afford to live in the house or if they pay the same taxes as a market rate house. Mrs. Bourbonnais responded that the deed-restriction of an affordable house weighs in on the assessment made for the tax rate of the house. A house is deed-restricted for a minimum of 30 years but sometimes more.

Mr. Brusini commented that the foreseen constraint is that having an affordable unit on site makes development of the project unviable. The alternative to this is that developers will simply not build a development at all because they cannot afford it if the land is too expensive. If affordable housing on-site makes a development non-viable, it is an economic test.

Mr. Donegan opined that inclusionary zoning makes sense from a social engineering perspective. However it is also undesirable to be in an affordable unit from a practical sense. If the Town is made affordable as a whole, i.e. making more affordable units in Town, it would have an impact in the schools. It would also get the Town closer to the State goal as well as integrate the schools and community. He proposed that off-site exactions make sense from a numbers perspective. If developers build affordable housing off-site, a lot more units could be built versus if they were to be included in a high-income, generally low density development (e.g. "The Woods"). It makes sense for the developer and it makes sense for the community as it gives more of an impact. It is desirable for the economic value of 3 units in a high-income development to be translated to 12+ on another site.

Mr. Brusini asked if the economic translation could work, where an off-site consideration was given for a million dollar house, 4 $250,000 houses could be provided ($1 million worth of affordable units), or if it would be unit for unit. The answer was that the current regulations provide on a unit for unit basis. He followed up saying if that economic translation could happen where the Town gets the value of the housing investment, it would be beneficial to include off-site exactions.

Mr. Turchetta affirmed with an example that a developer could build 4-5 high-value houses in a high-income area, and then could buy 2-3 houses in a lower income area and rehab them to make them affordable for the same price as 1 high-value house. He commented that it could lead to clustering of affordable units.

Switching gears, Mr. Brusini stated that he had questions on [260-99], Section 3: "This article shall apply to all subdivisions and land development projects of four or more residential units, as classified under East Greenwich's Zoning Ordinance and Land Development and Subdivision

Regulations, within all residential (R) zones, all farm (F) Zones, all commercial downtown (CD) zones, as well as the Planned Development, Mixed Use Planned Development and Waterfront Zones." He asked why the Town limits affordable housing to certain zones.

Mrs. Bourbonnais replied that all the zones that permit housing require affordable housing. The only zone not listed is the RH (Rocky Hill) zone because no traditional residential units in that zone would ever be developed, it will only be dormitories. Every zone where housing is allowed is mentioned. Mr. Brusini suggested that "Every zone where housing is allowed" would be an easier way to reword the section.

Mr. Brusini asked if the "yield plan" was in a form the Town has or if a developer could come up with one. Mrs. Bourbonnais replied that the yield plan is defined in the cluster zoning ordinance.

In 260-100, Section A – "All projects [subject to the provisions of this Ordinance] shall be entitled to a density bonus of 20% [more units than otherwise allowed consistent with the following:]" Mr. Brusini asked if the Town can award from 0-20% or 20% or greater or if it is exactly 20% automatically. The interpretation is that exactly 20% is the requirement.

In 260-100, Section B - "The Planning Board shall have the discretion to modify or require the modification of the minimum dimensional standards including […]", clarification was requested as to what criteria pertained to the 'discretion' of the Planning Board.

In 260-100, Section B, Sub-section 2 – "Lot size, setback, and frontage requirements can be reduced by up to 20 percent but only following an affirmative finding by the Planning Board that: … 2. Using a flexible zoning standard would result in a better use of the land than otherwise permitted under conventional zoning." It was stated that 'better use of land' would be tremendous discretion to the board. Clarification was requested to give criteria on what was considered 'better.'

In 260-100, Section C, regarding the "Yield Plan," clarification was requested to define "Rhode Island General Law 45-53, The Low and Moderate Income Housing Act. (OR should it refer to 42-128-8.1 as in 99(1) C as above)."

In the same statute, Section D, sub-section 2 – "All Affordable units shall be, to the extent possible…," Mr. Brusini suggested that 'extent possible' could be said in a different way. Everything is possible with enough time and money (best efforts vs. commercially reasonable efforts). He continued, citing the language "…externally indistinguishable from market-rate units in the same development." It was indicated that the Planning Board decides whether or not an affordable unit is indistinguishable. A definition of indistinguishable is to be included.

Mr. Donegan asked who buys the affordable housing units in Town. Mrs. Bourbonnais gave the example of the Cottages on Green. When the project was first built out, the people who bought the units were mostly divorced women living on their own. This dynamic has changed since the initial sales to include a diverse range of people.

The affordable housing formula is derived from an area median income number specified for all of Kent County. Every community in Kent County uses this number as a base, then the housing cost is targeted to about two and a half times the annual individual income. 80% or less of the final number is considered affordable. The reason the numbers are different in each community is because there are different interests and tax rates.

In 260-100, Section F, Mr. Brusini points out that it is a lot of responsibility put on the Planning Board to "have the authority to specify unit types, including location, size and scale in relation to the market rate units and establish general design parameters for the Affordable units." It gives the Planning Board the ability to be a designer of affordable units. This also shows up in 260-101, section D, "The Planning Board, with advice from the Technical Review Committee, shall determine the dimensional requirements for these applications." This takes away power from the Zoning Board and gives it to the Planning Board.

Mr. Donegan stated that a lot of the comments that are being made are "lawyer comments.". He suggested that the Town Solicitor comb through the ordinance and make changes, especially where defining terms is important.

With no further comments, Mr. Brusini suggested that items 3 and 4 be switched because of recusals.

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

There being no comments, Mr. Brusini and Mr. Donegan recused themselves and left the meeting. Mr. Ayotte took over as chair of the meeting.

3. Recommendation: The Town Council would like the Planning Board's recommendation relative to amending the Town Code, specifically Chapter 260, Zoning: Article II, Zoning Definitions; Article XV, Administration and Procedures of the Zoning Board of Review; and Attachment A, Table 1, Table of Permitted Uses By Zone. The amendments are designed to regulate Compassion Centers and residential medical marijuana cultivation and distribution. The Planning Board is required under Section 260-82 of the Zoning Code, Procedures for Adoption and Amendment, to make a recommendation regarding revisions to the Zoning Ordinance. The Town Council has scheduled a public hearing on the proposed amendments for October 26, 2015.

The remaining 3 Planning Board members had a discussion about the item but because the quorum was lost, an informal meeting took place with no formal action taken.

A motion to adjourn was made by Mr. Tagliatela, seconded by Mr. Turchetta.

Meeting adjourned at 8:35 PM.