



**TOWN OF PORTSMOUTH
PLANNING BOARD**

2200 East Main Road
Portsmouth, RI 02871
401-683-3717

**PORTSMOUTH PLANNING BOARD
Regular Meeting
February 9, 2022**

Members Present: Luke Harding, Edward Lopes, David Garceau, Ryan Tibbetts, Kathleen Wilson, Seth Pilotte and Chris O'Connell

Members Absent: none

Others Present: Leon Lesinski, Administrative Officer, Portsmouth Planning Board and Michael Asciola, Assistant Town Planner, in person. Atty. Kevin Gavin, Town Solicitor in the Zoom meeting.

The Zoom Meeting was called to order in the Town Council Chambers by Mr. Harding at 7:00 p.m.

1. Agenda Continuances/Modifications: none

2. Approval of minutes for Planning Board meeting of January 12, 2021

MOTION:

Mr. Harding made a motion, seconded by Mr. Tibbetts to approve the January 12, 2021 meeting minutes with the following correction: Page 2, under Item #5, in the motion, change "Mr. Harding" to "Mr. Lopes. According to a verbal call of votes from each Planning Board member the motion is carried. All in favor.

3. Applicant/Owner: High Point Ave, LLC, - AP 38, Lot 7D (High Point Avenue) Development Plan Review and Advisory Opinion to the Zoning Board of Review for the construction of a proposed 100 X 240 foot building.

Karen Beck, RLA, FASLA, Principe Engineering, Inc. 27 Sakonnet Ridge Drive, Tiverton, RI appeared representing the applicant/owners with a request for an advisory opinion to the Zoning Board of Review. She stated that the proposed, 2.6-acre parcel, Lot 7-D is located in the Portsmouth Industrial Park, along High Point Avenue. She reviewed the plan which proposes a 2-story, 100 X 240 foot, metal building to be occupied by Kirby Marine. The building is surrounded by a 24 foot wide, porous/paved access driveway which will reduce the amount of impervious surface area on the site and provide drainage retreatment for water quality. Ms. Beck listed other features of the proposed plan including the 18 required parking spaces, a storage area on the backside of the site, a single, two-way lot entrance off High Point Avenue to the west, a series of tiered, 4 foot

retaining walls to the front (north) and rear (south) of the site and the proposed landscaping along High Point Avenue and at the building entrance. She explained that the roof run-off is directed to an infiltration basis located in the northeast corner of the site and that the septic system is located in the southeast corner. Ms. Beck noted that the proposed plan meets the town requirements for lot coverage and that the Portsmouth Fire Department made a satisfactory review of the plan.

In response to Mr. Tibbetts, Ms. Beck confirmed that no variances are required for the proposed plan. She also explained that RIDEM and CRMC allow the proposed impervious road surface under rigid maintenance requirements which are part of the development operation and maintenance plan that is included in the application. She stated that her office has explained to the owner the aspects of the roadway maintenance. In response to Mr. Lopes, Ms. Beck agreed to enter the project comments from the Portsmouth Design Review Board into the record.

MOTION: Mr. Tibbetts made a motion, seconded by Mr. Harding, to enter into the record the *Comments regarding submission of the Development Plan for Review by Design Review Board on February 7, 2022*, for High Point Ave, LLC, - AP 38, Lot 7D (High Point Avenue). According to a verbal call of votes from each Planning Board member the motion is carried. All in favor.

MOTION: Mr. Tibbetts made a motion, seconded by Mr. Harding, to enter into the record the *Long Term Operation and Maintenance Plan, Principe Engineering, Inc., January 31, 2022* and the *Drainage Summary, Principe Engineering, Inc., January 7, 2022* for High Point Ave, LLC, - AP 38, Lot 7D (High Point Avenue). According to a verbal call of votes from each Planning Board member the motion is carried. All in favor.

In response to Mr. Pilotte's question on the intended operations in the proposed building, Ms. Beck stated that the property owner, Jerome Kirby was supposed to be available to speak to that issue. Mr. Kirby was not in attendance. Mr. Lopes called for public comment to which there was none.

MOTION: Mr. Harding made a motion, seconded by Mr. Tibbetts, to make a favorable advisory opinion to the Portsmouth Zoning Board of Review for High Point Ave, LLC, - AP 38, Lot 7D (High Point Avenue) with the incorporation of the *Long Term Operation and Maintenance Plan, Principe Engineering, Inc., January 31, 2022*, the *Drainage Summary, Principe Engineering, Inc., January 7, 2022* and the *Comments regarding submission of the Development Plan for Review by Design Review Board on February 7, 2022*. According to a verbal call of votes from each Planning Board member the motion is carried. All in favor.

**4. Applicant/Owner: Aquidneck Club Inc. – AP 26, Lot 10 (Willow Lane)
Review the proposed modifications to the Special Use Permit regarding the**

development of Lot 10 and Advisory Opinion to the Zoning Board of Review regarding the proposed modifications.

Mr. Lopes recused himself from the hearing of this agenda item. Mr. Harding presided over the hearing.

Atty. Cort Chappell, Chappell & Chappell, 171 Chase Road, Portsmouth appeared representing the applicants and owners with a request for an advisory opinion to the Zoning Board of Review for proposed modifications to a special use permit, which was previously approved in 2009 under the 380-acre, Carnegie Abbey Club development, now Aquidneck Club Inc. Under the special use permit, Lot 10, a 6.4 acre parcel located between Willow Lane and North Shore Road, is sited for 36, three bedroom units in three buildings, which were never constructed. Atty. Chappell explained that according to the zoning ordinance, special use permits run with the land and that any proposed modifications required a technical review and a favorable advisory opinion from the Planning Board to the Zoning Board for approval. He explained that the modifications propose 22 single family homes and four duplex buildings for a total of 28 residential units, yielding a reduction in units and lot coverage. He noted that the units are similar in character to the resort units once advertised by Newport Beach Club and Carnegie Abbey Club. Atty. Chappell highlighted where density has already been reduced in other areas of the resort development. He emphasized that under the resort development ordinance, which was passed subsequent to the approval of the special use permit for Carnegie Abbey Club, minimum density is set at a ratio of two houses per one acre, overall. He noted that existing overall density at Aquidneck Club is one house per 2 acres. Atty. Chappell explained that the proposed modifications require a variance for a setback of 30 feet, along Willow Lane, because, under industrial zoning, minimum setback is 60 feet.

Jeremy Lake, AIA, LEED AP, CNU, Senior Associate, Union Studio Architects & Community Design, 144 Allen Drive, 140 Union Street, Providence, RI and 144 Allen Drive, East Greenwich, RI made a slide presentation on the proposed modifications for Lot 10. He reviewed the site's existing conditions, noting the design plan retains a private road, Seashell Drive that runs from Willow Lane, north to West Shore Road, just west of the train tracks. Atty. Chappell explained how Seashell Drive is part of the road circulation between the resort amenities and properties. Mr. Lake described the site's topography which is flat to the east and elevates about 10 feet to the west. He described the proposed building, sidewalk and road layouts, and the two shared green spaces. Referring to the slide of Sheet 6 of the plan, Atty. Chappell explained how the north front setback and the east and west side setbacks are met under industrial zoning. He noted that under the zoning ordinance, the site essentially has two front yards, to the north and to the south. He explained that the south front yard, along Willow Lane, requires a variance for a proposed 30-foot setback under the approved special use permit but would not under the resort development ordinance. In response to Mr. Harding, Mr. Lake explained that the small back yards of the

units along Willow Lane sit at the top of a slight grade. He noted that this area will be screened with landscaping. Atty. Chappell noted that the Design Review Board [DRB], in its conceptual review, agreed with consistent fencing and vegetation along Willow Lane and recommended the installing sidewalks along Willow Lane. He suggested that since Willow Lane is one of the widest roads in Portsmouth, sidewalks might not be necessary. Mr. Lake reviewed the façade schematics and floor plans for the proposed units and an aerial view perspective of the proposed “village” community. Atty. Chappell described the gate system in the development, noting that the proposed clamshell community road would not be gated. He stated that all the roads are private and will be maintained under a Home Owners Association.

Lyn Small, P.E., Northeast Engineers & Consultants, Inc., 6 Valley Road, Middletown, RI gave a technical review of the individual wastewater treatment plant that serves the resort development and its associated residential units. She stated that her office has worked on the system since 1998. During the early 2000’s, Northeast Engineers, in collaboration with RIDEM, designed for the development one of the first, privately owned, wastewater reuse systems in Rhode Island. The system features a wastewater treatment plan and a reduced leach field. During the resort peak use season, the treated wastewater is used by the eighty-acre golf course’s irrigation system. Based on monthly reports submitted to Northeast Engineers and RIDEM, the plant operates successfully since the beginning. Ms. Small noted that the reporting goal is to ensure that the reuse system is operating according to projections and that the off-peak flow is not exceeding the constructed leach field capacity. She explained that the entire development has a permitted daily flow of 67,000 gallons, which includes a few permits that have since expired. She noted that the plan for Lot 10, with the 28 units, proposes a daily flow of 9600 gallons. She noted that the wastewater treatment plant has a daily capacity of 80,000 to 90,000 gallons. She explained that the estimated capacity, with the existing build out and the proposed construction, is 77,000 gallons per day but that the actual daily flow is substantially below capacity, from 1000 gallons in the winter and up to 20,000 gallons in the summer, due to the operating wastewater reuse system. She emphasized that Northeast Engineers continues to monitor the wastewater flows to the plant, to the reuse system and to the leach field. Ms. Small explained that the state permit includes triggers which mandate that when the overall project reaches a certain flow in the wintertime, the developers have to submit to build more leach fields.

In response to Mr. Harding, Atty. Chappell explained that the number of bedrooms per unit remains at 3, yielding a reduction of bedrooms from 108 to 84 or a total of 24. Ms. Wilson suggested that the proposed plan may require a RIDOT permit if the culvert in the northeast corner is connected to the railroad property. Atty. Chappell explained that the Planning Board approved the Newport Beach Club’s drainage system with an easement, including the culvert, that crosses West Shore Road and the railroad tracks. He noted that if the

proposed plan is approved according to the submitted design, the drainage stays the same and that no modifications to the easement are necessary.

Molly Titus, P.E., DiPrete Engineering, 2 Stafford Court, Cranston, RI presented testimony on the proposed plan. She described the internal site layout, which features 20-foot width roadways. She noted that Seashell Drive is wider to provide more than the existing width of the seashell path. She said that the road width is a reduction from the subdivision regulations but is in keeping with the resort development area and matches the existing roadways within the development. Atty. Chappell noted that under the resort development ordinance, the Planning Board approved a road width reduction to 20 feet for Newport Beach Club. Ms. Titus noted that the turning radii and the road width are satisfactory with the Portsmouth Fire Department. Referring to the proposed drainage system, Ms. Titus explained, that as a conservative measure, she evaluated existing conditions as the site stands today, electing not to use the previous design flows or take credit for what went to Willow Lane under previous designs. She noted that the proposed design point at Willow Lane is considerably smaller, limited to one strip of grass along the front edge, which she considers the flow point to Willow Lane under future conditions. She noted the large detention structure located underneath the open grass area in the northeast corner of the site, which meters the flow to match existing condition rates. The system connects through a culvert to an existing drainage area to provide secondary water quality treatment prior to discharge to a coastal wetland. The culvert is included in the existing easement over the railroad property for Newport Beach Club. Ms. Titus noted that she does not have to perform volume calculations given that the site is in a tidal and coastal flow area but that the design meets all the state water quality requirements. She explained that the system straddles the jurisdiction line with the site falling within that of CRMC and the wetlands within that of RIDEM but she understands that CRMC is taking jurisdiction of the whole project. She stated that the plan requires full Zoning approval prior to applying to CRMC for an assent. Atty. Chappell noted that any advisory opinion from the Planning Board or approval from the Zoning Board of Review is conditional upon CRMC approval of the proposed in the design and that if any changes to the design occur, it would have to be re-submitted to CRMC for evaluation.

Ms. Wilson agreed with Ms. Titus' testimony but commented that the existing easement across the railroad should be indicated on the plan. Atty. Chappell agreed stating further that the book and reference for the easement should also be included. Ms. Wilson commented that the plan may require a permit from RIDOT. She suggested that Atty. Chappell or Ms. Titus confirm with RIDOT that a Physical Alteration Permit exists under the Newport Beach Club. Atty. Chappell agreed that specific approvals from RIDOT could be a condition of the Planning Board advisory opinion. In response to Mr. Pilotte, Ms. Titus confirmed that Seashell Drive will be paved in the future. In response to Mr. Harding, Mr. Lake testified that site lighting is minimized as much as possible. Atty. Chappell

added that the DRB suggested lighting in the green areas. Mr. Harding suggested that lighting may be necessary to read the house numbers. Atty. Chappell explained that the proposed plan requires a variance for building height because the maximum height in heavy industrial zoning is 2 stories and the proposed hillside homes are considered three stories. In response to Mr. Tibbetts, Atty. Chappell noted that the internal design includes sidewalks but that he questions the DRB comment that the plan features a sidewalk along Willow Lane. Mr. Tibbetts suggested that the plan include an easement for the town to possibly place a sidewalk there in the future. Mr. Lake stated that the right of way for Willow Lane is very wide. In summary, Atty. Chappell stated that the Zoning Board requires a favorable advisory opinion and a completed technical review of proposed the road width, the road radii a drainage design, and the existing wastewater treatment plant and reuse system. He noted that the Zoning Board of Review can set the road bond but that the Planning Board could grant its advisory opinion conditional upon its approval, at a later date, of the road bond amount. Mr. Harding called for public comment and Mr. Asciola announced the public portion to the Zoom meeting participants. There was no public comment.

MOTION: Mr. Tibbetts made a motion, seconded by Mr. Pilotte, to enter into the record the following documents for *Aquidneck Club Inc. – AP 26, Lot 10 (Willow Lane)*:

- Exhibit 1: The Design Review Board minutes of December 8, 2021
- Exhibit 2: The Proposed Use of the Property and Dimensional Regulation Requests and Comments
- Exhibit 3: The design plan as submitted by the petitioner to the Planning Board

According to a verbal call of votes from each Planning Board member the motion is carried. All in favor.

MOTION: Mr. Tibbetts made a motion, seconded by Ms. Wilson to grant a favorable recommendation for *Aquidneck Club Inc. – AP 26, Lot 10 (Willow Lane)*, *the proposed modifications to the Special Use Permit* based on the following conditions:

- The Planning Board has reviewed the proposed road widths, setbacks, and drainage, and the existing wastewater treatment system.
- Exhibits 1, 2 and 3 are entered into the record
- The existing drainage easement to the railroad is indicated on the design plan (Exhibit 3)
- The required approvals are obtained from Rhode Island Department of Transportation and Coastal Resources Management Council

According to a verbal call of votes from each Planning Board member the motion is carried. All in favor.

5. Applicant/Owner: Michael and Mary Zani – AP 1, Lots 55 & 56 – Concept review to add land to lot 56 from lot 55 so that development of lot 55 can proceed with minimal variance.

Atty. Cort Chapell, Chappell & Chappell, 171 Chase Road, Portsmouth appeared representing the applicant/owners, Mike and Conley Zani with a concept review for a subdivision of their residential properties, located along Anthony Road and Mt. View Road (paper street), that adds land to lot 56 from lot 55. Both lots are taxed separately. He explained that the purpose of the subdivision is to correct aspects of Lot 56 in order to construct a home for a relative. The Zani's home sits on lot 55 which is conforming. Lot 56 is a pre-existing, non-conforming lot with an accessory use; it has a garage and no house. It also does not meet some setbacks and thus requires variances for development. Atty. Chappell explained that with the proposed design of the house for Lot 56, the lot coverage exceeds the minimum by .05 percent. In response to questions from Ms. Wilson and Mr. Garceau, Atty. Chappell confirmed that the proposed subdivision plan will be properly prepared with the engineer's stamp and that he will make full notice to the abutters and neighbors within 200 feet for the Zoning Board hearing.

Atty. Kevin Gavin, Portsmouth Town Solicitor questioned the procedures adopted by Atty. Chappell with the concept review. He stated that the regulations mandate that an administrative subdivision that requires variances must be submitted as an application for a major subdivision, which includes abutter notice at the Planning Board level and under which is made the variance approvals by the Zoning Board. Atty. Chappell argued that if he obtains the zoning relief in advance of applying for the administrative subdivision then there is no requirement for application under a major subdivision procedure. He stated that the evening's concept review is a courtesy to the Planning Board to make members aware of the variance request to the Zoning Board of Review. Atty. Gavin emphasized that the Planning Board does not take a vote on the proposed subdivision under a concept plan.

6. Applicant: West Shore Solar, LLC, Owner: Carnegie Trails, LLC – AP 26, Lot 13 (226 West Shore Road) – Final Plan Approval for the development of a large scale solar project.

Mr. Lopes continued his previous recusal from this agenda item. Mr. Harding presided over the hearing.

Atty. Cort Chappell, co-owner and abutter, Chappell and Chappell, 171 Chase Road, Portsmouth representing Carnegie Trails LLC, of which he is a member and the applicant, West Shore Solar, LLC. He requested final plan approval for a large-scale, solar development on a 36-acre site which is zoned heavy industrial and located on the west side of West Shore Drive. He stated that the proposed final plans have been submitted with all the recommendations made by the Planning Board in its preliminary plan approval of December 2021. He noted that the Fire Department wants to select the location of the second access gate in the

course of construction and that the plan will note this stipulation.

Andrew Bernstein, Managing Partner, Kearsage Energy, 1380 Soldiers Field Road, Boston, MA, developer and operator of the project explained that the decommissioning bond amount is derived through an analysis by an independent engineer. He reviewed that analysis which determines the difference between the scrap metal value of the panels and transformers and the cost to remove the panels and restore the site landscape. He stated that the concluding decommissioning bond value is \$83,490.00. He added that Kearsage Energy is agreeable to have final approval conditional upon a 10 year, re-evaluation of the bond value by an independent engineer. Atty. Chappell was amenable to Mr. Bernstein's suggestion. Mr. Harding called for public comment to which there was none

MOTION: Mr. Tibbetts made a motion, seconded by Mr. Pilotte, to grant final plan approval, for *West Shore Solar, LLC, Owner: Carnegie Trails, LLC – AP 26, Lot 13 (226 West Shore Road)* with the bond value set at \$84,000.00 and with the requirement that the applicant have the bond amount re-evaluated in ten years for the remaining fifteen-year life cycle of the development. According to a verbal call of votes from each Planning Board member the motion is carried. All in favor. All in favor.

7. Applicant/Owner: WC Coastal Development, LLC – AP 43, Lots 3 & 4, AP 50, Lots 6 & 7 – Concept Plan review for a Marine Village at Weaver Cove.

Mr. Lopes recused himself from the hearing of this agenda item.

Atty. Girard Galvin, Galvin Law, 10A Washington Square, Newport, RI appeared representing the applicant/owner with a concept plan review for a marina village at Weaver Cove, located west of Burma Road and the railroad tracks along Narragansett Bay. He explained that the concept plan is a joint venture of the Karam family, under First Bristol Corporation and the Marshall family, under Marshall Properties, Inc. who have business and development history in Rhode Island and Massachusetts. Atty. Galvin noted that the site is comprised of several lots and is designated as brown fields or a superfund site. The property was used as a fueling station for the U.S. Navy for several decades. He explained some of the remediation undertaken by the EPA and RIDEM. The site is currently vacant with remnant pavement and fencing. Atty Galvin emphasized that if the proposed project goes forward, the result would be a substantial improvement to the property. He noted that previous proposals for the site, are far in excess of the proposed plan which indicates 400 residential units and a 350 slip marina. He explained that the applicants are not seeking to achieve maximum density but rather to establish a marina village like the model set forth in the code for a planned marina village development. Atty. Galvin listed the features and retail/service businesses that could be included in the development according to the code along with a ten percent Low-to-Moderate Income [LMI] housing allowance. With regard to LMI, Atty. Galvin commented that he is aware

of an additional requirement for LMI housing which was placed on the property by a previous owner in another proposal. In addition, Atty. Galvin noted that the plan will include public shoreline access and a coastal greenway. He stated to date the plan has been reviewed by town staff, CRMC and state staff, and the abutters to the site, all who have given positive feedback. He noted that the Design Review Board will review the plan and that the overall aesthetic is a coastal New England shingled look.

Lyn Small, P.E., Northeast Engineers and Consultants, Inc., 6 Valley Road, Middletown, RI reviewed the intended amenities for the proposed, marina village planned unit development [PUD]. She described where the housing and amenities are located in the plan stating that the features will be compliant with the PUD ordinance. She noted that the existing topography and site constraints will determine the types of residential units appropriate for the development. She commented that she will have to work with existing U.S. Navy utilities. Ms. Small also highlighted a proposed railroad crossing at the northern most section of development where most of the commercial features will be located. She stated that the narrow, coastal portion of the site will feature residential units and has an existing railroad crossing. Ms. Small pointed out the flood plain, the coastal buffers and the 50-foot, public greenway on the proposed plan. She noted that she has submitted the plan to CRMC for a preliminary determination. She stated that the site has the rights to connect to navy sewer and water.

In response to Mr. Pilotte, Ms. Small explained that CRMC requires that the plan provides a public walking path for the whole length of the coastal area. She stated that the plan must retain the existing railroad crossing because it provides access to the public boat ramp. In response to Mr. Harding, Ms. Small stated that the railroad crossings will be kept to a minimum but the applicants would not be opposed to the bike path plan should RIDOT pursue it. She explained that the additional seven LMI units from the Newport Beach project are deeded to the property. Mr. Harding called for public comment, to which there was none. Atty. Girard said that he did not need action on the part of the Planning Board and that he will look into the issues raised by the members.

8. Approve February 8, 2022 Monthly Project Status Report, Administrative Subdivisions and Plat Plan Recording.

MOTION:

Mr. Tibbetts made a motion, seconded by Mr. Garceau, to accept the Portsmouth Planning Board Monthly Project Status Reports, Administrative Subdivisions and Plat Plan Filings, February 9, 2022 and to place it into the record. According to a verbal call of votes from each Planning Board member the motion is carried. All in favor

At 9:20 p.m., a motion was duly made and seconded to adjourn the meeting. All in favor. So voted.

Respectfully submitted:
Dede Walsh
Recording Secretary for:

Leon Lesinski, Administrative Officer