

For November 21, 2011 meeting

To: Mark Boyer, Chair
Planning Board

From: Jennifer Paquet
Town Planner

Re: Carrs Pond Residential Compound AP 2, Lots 6 & 12
Off Carrs Pond Road
Preliminary Plan

Minor Subdivision: 4 new house lots proposed for development, (plus two existing house structures)

Applicant/Owner: Carrs Pond Associates, LLC (Carmin D'Ellena, Steve Kent, and Michael Kent)

RFR-2, Residential Compound: 2 acre minimum; 200 feet of frontage; Residential Compound requires an overall density of no greater than one dwelling unit per 4 acres of land, and a maximum of 5 lots total per compound. There are two dwelling units existing on the land, and with the 4 proposed new homes, the project will not meet the maximum limit of one dwelling unit per 4 acres of land. The existing parcels total about 20.38 acres. Additionally, 2 acres of suitable land is needed per residential compound lot, 1.4 of which must be contiguous. The new proposed lots each have at least 2 acres of suitable land, however the existing lot, while proposed to be enlarged, does not appear to meet this requirement (see table on sheet 4 of 10), as the road easement does not count as land suitable for development for a house lot.

Review: Preliminary stage. Public Hearing (required for all Residential Compounds)

Wetlands: none present on site; see letter from environmental scientist dated July 18, 2011, included in Project Narrative.

A RIPDES construction permit is required; the applicant has filed a Notice of Intent.

ISDS: Preliminary Subdivision Suitability identification number S37-73 approved by RIDEM on September 29, 2011 on five lots.

Water: private wells are proposed for the 4 new homes. In this location, Kent County Water lines run down Carrs Pond Road.

TRC

Application was reviewed by Technical Review Committee on Wednesday, October 12, 2011. Present at the meeting were myself, Tim Behan, PE for the applicant, and David Tacey, Building Official and Dan Cotta, PE, PLS from American Engineering, consulting engineer for the Town. Discussed was the second dwelling structure on the property, explanation that the road is an easement over lot 1, and the concern of the residents of the compound being able to maintain and care for the drainage system.

Fire Chief comments dated 10/11/11, attached, along with follow-up correspondence.

Consulting Engineer, Dan Cotta, PE, PLS from American Engineering, comments dated November 10, 2011, attached. We are expecting revised plans for construction to reflect some changes to the pitch of the drainage access road, and possibly the location of the drainage to the other side of the compound road due to a rock.

It is critical that the drainage be installed properly. Mandatory inspections at key stages in the construction should be required. The owners will need to sign an Agreement with the Town regarding long term maintenance of the drainage, as it will not be Town-owned infrastructure. This is a requirement of the RIPDES Phase II Stormwater regulations.

Zoning History:

There are two dwelling structures on the property. There is no evidence that anyone has lived in the second dwelling since 2004. In the past, the second structure was considered a legal, non-conforming use, and family members related to the main dwelling inhabited the structure. In 1996, Wayne and Sally Peckham applied for and received a side yard variance and a Special Use Permit for an expansion of the non-conforming use from the Zoning Board to put an addition onto the second dwelling. I've attached the minutes from the January 2, 1996 Planning Board meeting, the Planning Board advisory opinion, and the Zoning Board January 3, 1996 decision. Tax Assessor records for motor vehicle taxes indicate that one daughter moved to Robin Hollow Road in 2000, and the other daughter moved to Mishnock in 2004.

According to the Zoning Ordinance, "if a lawful non-conforming use is discontinued for a period of one (1) continuous year, it shall not be allowed to be resumed and any future use of such structure or land shall conform to the provisions of this ordinance."

Planner's Comments

The Board needs to discuss the fate of the second dwelling structure.

The Board should find out and discuss the method that is planned for removing the rock(s) that are in the right-of-way.

The Planning Board needs to decide whether detailed As-builts will be required for Final Review, or if a statement from the applicant's engineer stating that all the improvements have been constructed according to his design and will function as intended, with a follow-up inspection by Town's consulting engineer, will suffice.

At this time, the following draft motion is offered for the Board's consideration:

Draft Motion

Motion to approve the proposed Residential Compound Minor subdivision plan entitled, "Carrs Pond Estates," being Assessors Plat 2, Lots 6 & 12, dated June 2011, revised through (****09/22/11??), prepared by TJB Engineering, LLC and K. Andrews Associates, for Carrs Pond Associates, LLC, with the following conditions:

1. The applicant shall reimburse the Town for the cost to run the public hearing advertisement in the Kent County Daily Times
2. All improvements need to be inspected by the Town during construction, and completed and fully stabilized prior to Final Review.
3. the applicant shall submit all legal documents as part of Final Review

4. an inspection, maintenance, and repair program for the drainage system as shown on the Preliminary Plan shall be the responsibility of the residents of the compound, and shall be incorporated into the Homeowners' Association Documents.
5. The owners shall sign a Post-Construction Storm Water Management and Maintenance Agreement with the Town (a template is attached).
6. the Planning Board shall review the Final Plan and detailed As-built plan to ensure that the improvements have been completed properly.
7. as part of the Final Plan application, the applicant's engineer shall certify whether the drainage has been installed and constructed properly and will function according to his design (**or does the Board require detailed As-built drawings?**)
8. proper erosion controls shall be used during all stages of construction, including house construction.
9. the Project Review Fee account shall be replenished by the applicants as needed, when requested by the Town.
10. Open Space and Recreation fee be assessed on the 4 new house lots at time of recording.
11. the Final Plan submission shall comply with the additional requirements as noted in the Residential Compound Ordinance
12. (any condition about the second dwelling unit?)

This approval, with conditions, is based on the following findings of fact:

1. That the proposed subdivision is consistent with the requirements of the West Greenwich Comprehensive Community Plan, including the future land use map.
2. That each lot in the subdivision conforms to the standards and provision of the West Greenwich Zoning Ordinance.
3. That there will be no known significant negative environmental impacts from the proposed development as shown on the preliminary plan, with all required conditions for approval;
4. That the subdivision, as proposed, will not result in the creation of individual lots with such physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable.
5. That the proposed subdivision lots have adequate and permanent legal access to a public street;
6. That the subdivision provides for suitable building sites.
7. That the design and location of building lots, utilities, and other improvements in the proposed subdivision shall minimize flooding and soil erosion.

**POST-CONSTRUCTION
STORM WATER MANAGEMENT AND MAINTENANCE AGREEMENT**

This EASEMENT and MAINTENANCE AGREEMENT made and entered into this ____ day of _____, 2009 by and between the OWNERS OF LOT[S] [nos.] on Assessor's Plat [no], their successors and assigns, (hereinafter the "Landowners") and the TOWN OF WEST GREENWICH, RHODE ISLAND, it's successors and assigns (hereinafter the "Town"), a Rhode Island municipal corporation.

WHEREAS the Landowners are the owners in fee simple of Lots [Nos] on Assessor's Plat [no]; and

WHEREAS, Landowners have submitted a [SUBDIVISION PLAN/DEVELOPMENT PLAN/SITE PLAN] that provides for a surface and subsurface storm water drainage system; and

WHEREAS, the Planning Board of the Town of West Greenwich, has reviewed the proposed drainage plan and approved post-construction storm water maintenance plans in conjunction with a development application; and

WHEREAS, the Planning Board has indicated that the storm water drainage facility, as detailed in the plans prepared by [whom] and dated [what] is adequate, provided that Landowners provide the maintenance agreed to in the "Post-Construction Storm Water Maintenance Plan" approved on [date]; and

WHEREAS, pursuant to this Agreement, the Landowners, on behalf of themselves and their successors and assigns, are willing to bear the burden, financial or otherwise, of maintaining said storm water drainage system in perpetuity, as provided for in said plans and as herein set forth; and

NOW THEREFORE, IT IS HEREBY AGREED:

1. That the Landowners shall construct all improvements as set forth in the plans dated _____, 2009, by [name] for the [name of development project] as approved by the Planning Board.
2. That, in the event any changes or alterations are to be made to the detailed facilities which affect flow, capacity or locations, or the nature of the improvements, said changes are to be approved, in writing, by the Town Planner, and any such changes will be noted as to be in compliance with this Maintenance Agreement and the Management Plan.
4. That the Landowners, their successors or assigns, shall maintain, the storm water drainage system at their sole expense in accordance with *The State of Rhode Island Storm Water Design and Installation Manual* as amended. In addition, in accordance with RIDEM Phase II Storm Water requirements maintenance records shall be kept on-file by the Landowners and their successors or assigns, and an annual maintenance report shall be submitted to the Director of Public Works of the Town. The Landowners and their successors and assigns agree to indemnify and hold the Town harmless from any and all claims arising from injuries or damages arising from their negligence in the installation and maintenance of the storm water drainage system.
5. That, in the event the Landowners do sell, convey, or transfer its rights to any or part of the above described lands, the successors or successors in interest shall be responsible for the costs and maintenance of the storm water drainage facilities detailed on the approved plans prepared by [name], dated _____, 2009. Upon the sale, conveyance, or transfer of interest by Landowners, they shall notify

the Public Works Director of such transfer or conveyance, specifying the name and address of the successor in interest and the description of the lands conveyed.

6. That in the event that the storm water facilities maintenance is not conducted timely or properly, the Public Works Director shall notify the Landowners, their successors or assigns, specifying the necessary maintenance. Within thirty (30) days of the notice, the Landowners, their successors or assigns, shall perform the specified routine maintenance, at its expense. Within thirty-six (36) hours of notice, the Landowners, their successors or assigns, shall perform any specified emergency maintenance.

7. The Maintenance Obligations shall be the obligation of the Landowners, their successors or assigns, and the Town shall not be obligated or liable in any way for the Maintenance Obligations. Notwithstanding the foregoing, in the event that the Landowners, their successors or assigns, shall fail to maintain the drainage system or detention basin system, as aforesaid, the Town, at its option, may enter upon the premises and perform such maintenance of the drainage and detention basin areas as it deems necessary and in accordance with the requirements of the Maintenance Obligations and thereafter charge the Landowners, their successors or assigns, for the cost of such maintenance. The recording of a notice of any such charge with a copy of the charge in the Land Evidence Records of the Town of West Greenwich shall constitute a lien against said Lot or Lots until such charge is paid in full.

8. The Town shall be under no obligation to enforce the terms of this Agreement except as required by State law or local ordinance, provided, nevertheless, that the Town may, at its sole option, seek to enforce the terms, provisions, and conditions of this Agreement against the Landowners, their successors in title and/or assigns, including said Lot Owners, their heirs, successors or assigns; and any costs or expenses, including reasonable attorneys' fees incurred by the Town in preventing any violation or enforcing the terms of said Agreement, shall be recoverable by the Town from the parties in violation or others making wrongful use of the property.

9. In the event that a violation of these terms, conditions, or restrictions is found to exist, the Town, its successors or assigns may, upon notice to the offending party, institute an action in Providence Superior Court (or other Court of competent jurisdiction) to enjoin, by ex parte temporary and/or permanent injunction, such violation, to require the restoration of the property to its prior condition and/or for monetary damages and for breach of this Agreement, at the sole option of the Town. This Agreement shall be binding upon the Landowner, its successors in title and/or assigns and all persons making use or attempting to make any use of the subject property herein before described.

10. The Town, for itself, its successors and/or assigns shall have the right to enter the areas at all reasonable times for the purpose of inspecting the drainage structures to determine if the Landowners or their successors and/or assigns are complying with the terms, conditions, restrictions and purposes thereof.

11. The Landowners agree that the terms, conditions, restrictions and purposes of this Agreement will be incorporated by reference in any subsequent deed or other legal instrument which Landowners divest itself of either the fee simple title or any portion thereof, to or of Landowners' possessory interest in the subject property and shall include an affirmative obligation of the grantee therein to abide by the terms of this Agreement. Notwithstanding the foregoing, whether or not therefore is specifically stated in any conveyance of a lot made by the Landowners, the Owners by acceptance of this title thereto, or by taking possession thereof, covenants and agrees to abide by the terms of this Agreement.

