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TIVERTON PLANNING BOARD
TIVERTON, RHODE ISLAND 02878



NOTICE OF MASTER PLAN AND DEVELOPMENT PLAN REVIEW DECISIONS

Application: Seasons Corner Market
Major Land Development

Owner: Colbea Enterprises, LLC
2050 Plainfield Pike
Cranston, Rhode Island 02921

Applicant: Colbea Enterprises, LLC
2050 Plainfield Pike
Cranston, Rhode Island 02921

Site Location: Plat 119, Lot 624
Corner of Main Road and Souza Road
Split Zone Lot: Pedestrian Friendly District and General Commercial

BACKGROUND:

Seasons Corner Market is a Major Land Development located at the corner of Main Road and Souza Road on approximately 1.52 acres of land. The project proposes to construct a 3,600 square foot convenience store with drive-through coffee shop and gas station with four pumps.

A Concept Plan was reviewed by the Planning Board (herein after "Board") on February 2, 2021. Certificates of Completeness, with notes, for the Master Plan Application and Development Plan Review Application were issued on April 10, 2022. The Master Plan and Development Plan Review Applications were advertised for a public hearing in the Sakonnet Times on May 5, 2022, and notice was mailed to abutters on April 25, 2022.

The public hearing on this Application was opened on May 17, 2022, and the Board received testimony. An Ad Hoc Technical Review Committee was appointed, and with the Applicant's permission, the public hearing was continued to June 7, 2022. At the request of the Applicant, the hearing was continued from June 7, 2022, to July 12, 2022. No testimony was received at the June 7, 2022, hearing. On June 16, 2022, an Ad Hoc Technical Review Committee meeting was convened to discuss and review this project. At the July 12, 2022, public hearing, the Board

received testimony, made a motion to engage an independent third party to conduct a traffic study, and, with permission of the Applicant, continued the hearing to September 13, 2022. At the September 13, 2022, hearing, the Board received additional testimony, closed the public hearing, deliberated, made findings of fact and issued its decision.

May 12, 2022, Hearing

Robert Stolzman, Esq., presented the Application. He opened by presenting an overview of the project, identifying his witnesses, and asserting that the Pedestrian Friendly District (“PFD”) was not properly adopted, is not enforceable, and that the design guidelines of the PFD do not apply.

The Applicant submitted a memorandum in support of its assertion that the PFD does not apply. Attorney Stolzman’s opinion regarding the PFD was countered by the Town’s Assistant Solicitor and members of the Board questioned this assertion.

Attorney Stolzman next presented the Applicant’s witnesses.

Sheryl Guglielmo and Leonard Bradley, P.E., DiPrete Engineering. Ms. Guglielmo and Mr. Bradley presented the site design prepared for the project as depicted in the Permitting Plan Set dated January 31, 2022. They highlighted specific areas of the project and discussed how the sewer easement drove the design and siting. In addition, they discussed the landscape plan prepared by John C. Carter, of John C. Carter & Company, Inc., the status of the Rhode Island Department of Environmental Management (RI DEM) Preliminary Determination of a Rhode Island Pollution and Discharge Elimination System (RIPDES) Permit and finding of insignificant alteration as to the Freshwater Wetland application, the dark sky compliant lighting plan, pending the Rhode Island Department of Transportation (RI DOT) Physical Alternation Permit and location of the underground storage tanks.

Eric Simpson, PG, LSP, of Tg2 gave an overview of the underground storage tank system. He discussed the number of tanks, the continuous seamless piping system, and the double wall fiberglass with saltwater brine buffer.

John Shevlin, Pare Corporation. Mr. Shevlin reviewed his traffic impact analysis report. He discussed the fact that the report utilized traffic numbers inflated by 20% to account for the impact of COVID on traffic. He discussed traffic accidents in the area, the American Association of Highway Transportation Officials (AASHTO) ratings, inclusion of the Tiverton Heights project but not Bayview project in the existing conditions analysis, use of the Trip Generation Manual and how the level of service is expected to remain the same. The opinions and report details presented were heavily questioned by members of the Board and members expressed their skepticism based on their own personal experiences and the experiences presented by members of the public during the hearing process.

Edward Pimentel, AICP, of Pimentel Consulting, Inc., presented his opinion regarding the project’s consistency with the Comprehensive Plan. He highlighted portions of his May 9, 2022 report, focusing on the fact that the proposed uses are consistent with zoning, that the

[REDACTED]

Comprehensive Plan recognizes that the Town is too reliant on a residential tax base and that commercial development is to be concentrated in this area. In addition, Mr. Pimentel echoed the sentiments of Attorney Stolzman that the PFD does not apply.

Larry Coburn, Chief Strategic Officer, of Seasons Corner Market testified in support of the project. He discussed the type of corporate citizen Colbea hoped to be, and he addressed specific questions regarding the Applicant's operations.

With permission of the Applicant, the time clock was extended to June 7, 2022, by unanimous vote of the Board.

June 7, 2022, Hearing

The Applicant, prior to the hearing, advised that it wanted to request a continuance and would agree to extend the time clock. At the June 7, 2022, hearing, the Applicant was represented by Attorney Patrick Coyne, who formally requested a continuance to July 12, 2022, and on behalf of the Applicant he agreed to continue the time clock to July 12, 2022. By unanimous vote of the Board, the time clock was extended to July 12, 2022.

June 16, 2022, Ad Hoc Technical Review Committee

The Ad Hoc Technical Review Committee met with the Applicant and its professional support staff on June 16, 2022. At the conclusion of that meeting, members of the Ad Hoc Technical Review Committee made a number of suggestions on how the project could be improved to meet the Town's standards. Those suggestions and concerns included commissioning an independent traffic analysis which took into consideration the other nearby projects planned in the Town, addressing concerns with vehicle queuing, addressing light pollution to protect the residential neighbors, relocating the building, incorporating architectural design aspects that would make the building compatible with the area, and designing the project to make it a pedestrian destination.

July 12, 2022, Hearing

The Application was presented by Robert Stolzman, Esq. Mr. Stolzman indicated the Applicant was interested in using this meeting to listen to public comment and would agree to extend the timeclock to have time to address and respond to public comments made at the meeting. The time clock was accordingly extended to September 13, 2022 by unanimous vote of the Board.

Attorney Karen Benson representing Preserve Tiverton spoke and gave a brief presentation posing questions and concerns about the proposed development. Attorney Benson asked that the Board have peer review studies performed regarding traffic and the stormwater mitigation plan. She relied on the Town's memorandum regarding applicability of the PFD, and she asked that the Board require the Applicant to meet the concerns of the Ad Hoc Technical Review Committee.

Attorney Benson questioned the Pare Corporation traffic impact analysis report. She asserted that a single day of traffic counts in 2021 cannot be sufficient. She questioned the proposed walkway and sight distances. She also questioned Pare Corporation's reliance on US Census data as

opposed to the Town's own population count. She submitted two exhibits to the Board: Exhibit 1 which was a page of the Town's website that stated the Town's population, and Exhibit 2, which was the U.S. Census Bureau's information on the Town's population. She argued that the Pare Corporation report did not meet the requisite degree of certainty.

Attorney Benson urged the Board to require the Applicant to respond to each of the concerns raised by the Technical Review Committee. She suggested that the Town look for traffic data and information from the traffic camera at Exit 5 and from the RI DOT. She also asked for further information regarding traffic accidents. Attorney Benson raised concerns about emergency vehicle access to the nearby Brookdale Nursing Home if vehicles are stacking up in queue at the gas station. She requested data regarding the number of delivery trucks. She raised concerns about gas infiltration into the sewer line. Attorney Benson argued that this is not the right location for this use and that the traffic is detrimental to the Town's safety and welfare.

Approximately 23 members of the public spoke in strong opposition to this project. Many objections were focused on traffic concerns. Many other objections raised concerns about the look of the project and whether it would fit into the community. Concerns were raised about increased crime, littering, noise and light pollution. In addition, members of the public raised concerns about benzene, air emissions, inconsistency with the Comprehensive Plan, conflict with the adjacent historic district, and degradation to quality of life. Two petitions totaling 368 signatures opposing the project were presented to the Board.

The members of the public who spoke were:

Patricia Atkinson Santos, 1057 Main Road
Michael Dow, 273 Village Road
Louise Durfee, 262 Highland Road
Susan Beusch, 219 Brackett Ave
Gary Leib, 620 Old Colony Road
Barbera Martin, 313 Neck Road
Cathy Calabrese, 14 Ocean View Avenue
Ron Marsh, 48 Four Rod Way
Tracy Heywood, 21 Souza Road
Steve Mohny, 1049 Main Road
Carol Herrmann, 1106 Main Road
Robert Miles, 35 Mainsail Drive
Kim Hanna, 33 Watermark Drive
Deborah Gee, 15 Evans Avenue
Judith Cutler, 67 Watermark Drive
Celeste Canfield Ferendo, 3731 Old Main Road
Cody Braz, 1359 Cradle road
Gail Lawrence, 108 long Pasture Way
Michelle Deasy, 1024 Main Road
Jamie French, 81 Hobson Avenue
Chauncey Connick
Sarah Trobaugh, 8 Bridgeport Road, Rear

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Bruce Hathaway, 43 Lewis Avenue
Susan Anderson, 1137 Main Road.

By unanimous vote, the Board elected to engage an independent consultant charged with reviewing the traffic aspects of this and nearby projects. The consultant was specifically to be engaged to provide:

1. An analysis of whether the traffic counts performed by Pare Corporation in its traffic impact study provide valuable information since they were performed during COVID and in March, and an analysis of whether a new traffic count is needed which includes summer traffic and traffic during the school year.
2. An analysis or reporting of the AASHTO level of service at the intersections of Main Road, Schooner Drive and Souza Road.
3. An ITE Manual analysis of customers for an eight-pump gas station, with an approximate 3,600 square foot convenience store and drive-thru.
4. An analysis of where the anticipated customers and vendors will come from.
5. Review and analysis of Figure 6 in Pare Corporation's traffic impact study relative to the left-hand turn analysis and concerns presented by Mr. Hathaway.
6. The impact of the project on Fish and Souza Roads as well as the interchanges off of Route 24.
7. An analysis, similar to an ITE Manual analysis, of vendors (fuel trucks, beverage and food deliveries, etc.) servicing an eight-pump gas station, with an approximate 3,600 square foot convenience store and Drive-Thru.

Prior to the July 12, 2022, meeting, The Board received a memorandum from the Planning Office dated July 7, 2022, discussing the adoption of the PFD and its applicability to this project. A copy of this memorandum was also provided to the Applicant. The Board found the evidence submitted contained in the Planning Office memorandum, as well as its rationale, persuasive. The Board agreed with the Planning Office.

September 13, 2022, Hearing

At the start of the public hearing, Chairman Hardy requested the Applicant grant a two-week continuance to complete the hearing and make decision. He outlined the circumstances warranting the continuance. Principally, the continuance was warranted because of the large volume of materials received since August 31, 2022. The materials received included a 200 plus page supplemental memorandum from the Applicant, received August 31, 2022, the Crossman Engineering review received on September 2, 2022, supplemental reports from Pare Corporation and DiPrete Engineering received on September 9, 2022, stormwater materials received from Preserve Tiverton received on September 12, 2022, and the Administrative Officer's report received on September 13, 2022. Chairman Hardy explained that several Board members require hard copies of materials and thus did not receive them concurrent with their electronic filing on these dates and that there was an intervening holiday weekend which impacted the Board's opportunity to review the voluminous materials. The request was denied by the Applicant contingent on extraordinary circumstances.

[REDACTED]

Attorney Stolzman then provided an overview of the revisions to the project and responded to comments received during the prior hearings. He explained the restrictions to developing the site and conforming with the Pedestrian Friendly District (“PFD”) design guidelines to specifically include the sewer easement along Main and Souza Road. He responded to concerns about the fumes/vapors asserting that the studies cited by the residents were out of date and/or from foreign jurisdictions. He referred back to the expert opinion that the Applicant had provided and argued that the vapor retention systems to be used are proven to have no effect on neighborhoods. He also highlighted that the tanks and pipes will have containment systems. He noted that the Applicant was abandoning the 24-hour operation and would be open from 5:00 AM to 12:00 AM, which is consistent with other stations in Town.

He addressed the traffic study of Pare Corporation and its conclusion based on the AASHTO and other standards, that the level of service will not be significantly impacted by this project. He also discussed how the Applicant had Pare conduct additional traffic counts in 2022 and how those verified Pare’s prior conclusions. He addressed the concerns raised about Pare’s use of the US Census data and how using the data for the entire Town, Pare still reached the same conclusions.

Regarding other environmental concerns, Attorney Stolzman discussed how the vegetation at the site is concentrated around the boundary lines, but the interior of the lot is mostly empty. He reminded the Board that the Applicant was working on a Brownfields site, and that the soils will continue to be examined as the project is developed and will continue to be remediated.

Attorney Stoltzman briefly discussed how the project is compatible with the Comprehensive Plan and referred to Mr. Pimentel’s expert reports. In this discussion, he highlighted that the uses are conditionally permitted and discussed the separate and distinct roles of the Town Council, the Planning Board and the Zoning Board in shaping the development of the Town.

Returning to traffic, Attorney Stolzman presented his interpretation of Crossman Engineering’s review of the Pare Corporation traffic impact analysis. He highlighted how Crossman confirmed that the adjustment for COVID was acceptable and that Crossman found Pare’s trip analysis and trip generation projections to be satisfactory. He highlighted how Crossman characterized Pare’s future build analysis as overly conservative. He responded to Crossman’s concerns regarding operation analysis and suggestion that a SIMS model be run, stating Pare subsequently did this and found no diminution in safety. He addressed the number of parking spaces for Crossman. He concluded stating that Crossman confirmed the methods of Pare Corporation.

Attorney Stolzman responded to Administrative Officer Sweet’s suggested conditions on possible ways to conform to the PFD. He gave a brief analysis of why the location of the building could not be moved towards the road. He indicated that moving the building towards the road and placing the pumps to the rear of the property would result in greater intrusions on the residences on Souza Road and the spacing would not work. Flipping the building and pumps would result in the back of the building facing Main Road or the pumps, and in either case creates safety concerns.

He concluded by briefly addressing each of the five standards that the Board must consider in assessing the project and stated that this project meets each of those standards.

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Chairman Hardy next called on Elizabeth McChesney, PE, Crossman Engineering. Ms. McChesney was engaged by the Town to provide an independent analysis of the traffic and to review the Pare Corporation report. Ms. McChesney referred to her report and also indicated that she had reviewed the supplemental materials from the Applicant. She indicated that the Applicant had responded to her request for backup data to support Pare's assumptions, for additional traffic counts, and information about the donut shop. She asked that Pare conduct a SIMS analysis because it provides a more realistic and conservative assessment. Pare did this, and the analysis did not demonstrate outrageous queuing.

Next, Chairman Hardy asked Richard Rogers, Director of the Department of Public Works and interim consulting engineer to the Board, for any comments. He did not have any comments concerning the proposed engineering.

Karen Benson, Esq., representing Preserve Tiverton, spoke next. She called Carol Herrmann, 1106 Main Road (Lot 218), to testify to her observations of flooding on Main Road in the area of the project. Ms. Herrmann presented a GIS map marked with the area of flooding. She testified to her observations of the catch basin becoming overwhelmed with rainstorms. She asserted that if the Applicant's lot is cleared and paved as planned, that this will increase the runoff into that catch basin and make the situation worse. She expressed concern about the ability of emergency vehicles being able to navigate through the pooled water. She has lived at this address for 30 years and sees the catch basin become overwhelmed multiple times per year. Attorney Stolzman declined the opportunity to question Ms. Herrmann.

Attorney Benson then identified how this project does not meet the standards. She does not believe the issue of stormwater management was properly vetted, especially in light of the other projects proposed for the area and argued the Applicant has not addressed the more frequent and severe storms expected. She asserted that the traffic study did not address the impact of the future development of the area. Next, Attorney Benson argued there is no information concerning the impact on wildlife, which residents testified to seeing on the lot. She asserted that the Applicant gave no consideration to the Osborne-Bennett Historic District, which was a concern raised by a number of residents. In addition, it was asserted that the Applicant did not give full consideration to the residential and historical nature of Main Road. Finally, Attorney Benson suggested a compromise of allowing the Board two weeks to return with its decision, without further public comment.

The Chairman then recognized individual members of the public. The concerns of the public echoed those previously raised. Those included the assertion that gas stations will soon be obsolete as electric vehicles are the future, and it will be an eyesore. One person suggested that the Town impose a moratorium on gas stations. Concerns about Little Willow School were again raised, and a photograph of the playground was introduced. Concerns about a 24-hour operation were raised. Some residents raised concerns about exhaust fumes. Susan Anderson presented an analysis of how the project is incompatible with the Comprehensive Plan, does not fit with the historical and residential character of the area, and will negatively affect home values. An additional petition opposing the project was presented. Concerns about the wildlife were again brought up. There was significant skepticism about the traffic study and whether the Crossman Engineering review was actually independent.

Members of the public who spoke were:

Toddnie Cherry, 8 Bridgeport Road, Rear
Clinton Clemens, 451 Seapowet Avenue
Barbara Martin, 313 Puncateest Neck Road
Elizabeth Lopes, 705 Old Colony Terrace
Pamela Thompson, 47 Puncateest Neck Road
Susan Anderson, 1137 Main Road
Kathleen Megin, 98 Horizon Drive
Sarah Trobaugh, 8 Bridgeport Road, Rear
Susan Benesch, 219 Brackett Avenue
Steven Mohny, 1049 Main Road
Louise Durfee, 262 Highland Road
Jamie French, 81 Hobson Avenue
Annette Ferrell, 1037 Main Road
Gary Lillytut, 620 Old Colony Terrace
Martha MacNaught, 189 Highland Road, Rear
Justin Rodriques, 75 Merritt Avenue
Dean Holt, Villages at Mount Hope Bay
Renee Jones, 161 Highland Road

Attorney Stolzman was afforded an opportunity to respond to the comments. He reiterated the supplemental traffic counts performed by Pare and how the Pare study used industry standards. As to stormwater management, he discussed that there is a plan in place and the engineers do not anticipate any additional runoff from the site to the street. As to the Comprehensive Plan concerns, Attorney Stolzman argued that no project can meet every aspect of a Comprehensive Plan and that the question for the Board is whether this project is consistent with the zoning districts it is in.

Chairman Hardy asked Board members for their thoughts and recommendations on potential conditions on Master Plan approval. Chairman Hardy then asked for Administrative Officer Sweet's comments. She summarized the points of her memorandum focusing on conditions that the Board may want to consider if it approves the Master Plan application. She asked for a further explanation and demonstration as to why the building and pumps could not be flipped. Attorney Stolzman reiterated what he indicated previously. He stated that this would be the smallest corporate model Seasons utilizes for its stores. He discussed the challenge of building on the lot due to its physical characteristics and how it slopes towards Main Road, which dictated where the stormwater management measures could be located. Attorney Stolzman affirmed that the Applicant was receptive to building design and landscaping changes and said those would be vetted during the Preliminary Plan review.

Chairman Hardy discussed how landscaping, design, and lighting conditions would be helpful, but concluded that in his mind the Board could not set any conditions that would bring the project into compliance with the Comprehensive Plan.

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their concerns was required. He indicated that he felt the traffic peer review that was conducted did not address the issues they had identified and approved for the peer review to be conducted. He felt that the Applicant's revisions and project as a whole were a slap in the face as it worked around the intent of the PFD.

Documents Received


The following documents were received by the Board and are made a part of the record:

March 17, 2022

- Permitting Plan Set, Seasons Corner Market, Sheets 1-21, Stamped by Leonard R. Bradley, Jr., PE, Dated 01/31/2022
- Application Cover Sheet, one page, Dated March 14, 2022
- Project Narrative from DiPrete Engineering, 7 pages, Dated March 16, 2022
- Tiverton Planning Board Checklist for Major Land Development/Major Subdivision – Master Plan, Dated March 11, 2021, with
 - February 10, 2022, Letter to National Grid regarding availability of electric service
 - February 10, 2022, Letter to National Grid regarding availability of gas service
 - February 10, 2022, Letter to Tiverton Wastewater District regarding availability of service
 - February 16, 2022, Email from the Stone Bridge Fire District regarding availability of water
- Quitclaim Deed
- Tiverton Planning Board Application Cover Sheet, 2 pages, Major Subdivision or Land Development - Master Plan, Dated March 15, 2022
- Tiverton Planning Board Development Plan Review for Commercial/Industrial Development Checklist, Dated March 9, 2022, with
 - February 10, 2022, Letter to Tiverton Wastewater District regarding availability of service
 - February 16, 2022, Email from the Stone Bridge Fire District regarding availability of water
- Quitclaim Deed
- Tiverton Planning Board Application Cover Sheet – Development Plan (Site/Design) Review, 2 pages, Dated March 15, 2022
- Stormwater Management Report, Dated 01/07/2022, 101 pages, Stamped by Leonard R. Bradley, Jr., PE
- Stormwater System Operation & Maintenance Plan, Dated February 3, 2022, 42 pages
- Abutters Mailing Labels and 200' Radius Map, 4 pages
- Soil Erosion and Sediment Control Plan, Stamped by Leonard R. Bradley, Jr., PE, Dated January 7, 2022, 58 pages
- Abutters list
- Request to be Placed on the Planning Board Agenda, Dated March 16, 2022
- Traffic Impact Analysis, prepared by Pare Corporation, Dated January 2022, 74 pages

April 10, 2022

- Certificate of Completeness – Master Plan Review, Dated April 10, 2022

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- Certificate of Completeness – Development Plan Review (Article XX), Dated April 10, 2022

April 25, 2022

- Sample abutter's notice, 1 page
- List of tracking numbers for abutter's notices mailed, 1 page

April 27, 2022

- Letter from Richard Rogers, Director of the Department of Public Works acknowledging that the Town is aware a Physical Alteration Permit Application had been filed, Dated April 27, 2022, 2 pages

May 5, 2022

- Copy of advertisement in Sakonnet Times, 1 page

May 10, 2022

- Entry of Appearance of Karen Augeri Benson, Esq. for Preserve Tiverton, Dated May 10, 2022, 2 pages

May 16, 2022

- Applicant's Memorandum regarding Tiverton's Form-Based Code, 26 pages
- Report of Pimentel Consulting, Inc., Dated May 9, 2022

June 6, 2022

- Preserve Tiverton Reply Memorandum Concerning Town of Tiverton's Commercial Form-Based Code, Dated June 6, 2022, 4 pages

June 16, 2022

- Ad Hoc Technical Review Committee, Planning Office Unofficial Notes

July 7, 2022


- Planning Office Memorandum, Dated July 7, 2022, 47 pages

July 12, 2022

- Preserve Tiverton Exhibit 1 – Tiverton Town Population from the Town Website, 1 page
- Preserve Tiverton Exhibit 2 – US Census Data
- Petition In Opposition, 7 pages
- Petition in Opposition, 9 pages
- Figure 6 to Pare Corporation Traffic Impact Study, introduced by Mr. Hathaway, 1 page
- Carol Herrmann supporting documents, 10 pages
- Public Speaker Sign In Sheet, 1 page

September 1, 2022

- Applicant's Cover Letter, Date August 31, 2022, 2 pages identifying supplemental materials

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- Applicant's Supplemental Memorandum dated August 31, 2022, with Appendix A – U, 219 pages
 - Site Layout Plan – Alternate, Sheet 6 of 13, Dated 08-30-2022, prepared by DiPrete Engineering
 - Architectural Drawings, Sheets A1.0, A2.0a, A2.1a, CP-1 and Proposed Monument Sign drawing, prepared by Harrison French & Associates, Ltd, dated July 6, 2022

September 2, 2022

- Crossman Engineering Report, Dated September 2, 2022, 31 pages

September 9, 2022

- DiPrete Response to Crossman Study, Dated September 9, 2022, 3 pages
- Pare Corporation Response to Crossman Study, Dated September 7, 2022, 37 pages

September 12, 2022

- Preserve Tiverton Comments Regarding Colbea Enterprise Stormwater Management Report, Dated September 12, 2022, 5 pages

September 13, 2022

- Interim Town Planner Memorandum, Dated September 13, 2022, 7 pages
- Preserve Tiverton Proposed Findings of Fact and Rulings of Law, Dated September 13, 2022, 5 pages
- GIS Map of locus as marked by Carol Herrmann, 1 page
- Photograph of the Little Willow playground, 1 page
- Petition In Opposition, 12 pages

Various Dates

- Multiple pieces of correspondence (emails, letters, etc.), with various dates, in opposition to the project

Planning Board Minutes

- May 17, 2022, Planning Board Minutes
- June 7, 2022, Planning Board Minutes
- July 12, 2022, Planning Board Minutes

DECISION:

Chairman Hardy asked the Board members if they had any suggestions for conditions to Master Plan approval that would bring the proposed project into alignment with the Comprehensive Plan. Ms. Shea indicated in the negative.

Based on the documents and testimony received, Chairman Hardy then presented findings of fact as to each of the five standards for approval stating:

Based on evidence submitted and in accordance with the requirements of RI General Laws § 45-23-60. Required Findings, and Art. IX – Required Findings, § 23-45(a) of the Tiverton Land

[REDACTED]

Development and Subdivision Regulations, the Tiverton Planning Board hereby makes the following findings of fact:

1. The proposed development is consistent with the town comprehensive plan and/or has satisfactorily addressed the issues where there may be inconsistencies.

The proposed development is inconsistent with the comprehensive plan.

Element 3 Planning Concept states “The protection of the town’s natural and historic features is crucial to retaining the character of the community.” (p. 10). The proposed gas station and convenience store are within several hundred feet of the Osborn-Bennet National Register Historic District. It will diminish the historic character of the immediate neighborhood.

Element 3 also underscores the importance of visual quality. “The visual quality of Tiverton is the heart of its character and charm. Each area of Tiverton possesses its own unique flavor, which should be echoed in both new development and redevelopment.” (p. 11). The proposed development does not in any way echo the historic residential character of the immediate neighborhood. It does not utilize historic design standards or traditional building materials.

Under ‘Contextual Development,’ the plan states “Compatible development which closely matches the existing historic and architectural fabric should be encouraged in all areas of town. . . .” (p. 17). In addition to the Osborn-Bennett Historic District of 18th century homes, the neighborhood consists of single-family homes (many dating from the 19th century) and a gated community of expensive condominiums (Villages at Mt. Hope Bay). The only business within sight distance of the proposed development is an antique shop. The proposed development, with a ‘formula’ design similar to other buildings in the Seasons chain, is incompatible with the existing neighborhood, according to at least a dozen of the town residents who spoke at the July 12, 2022, public hearing.

In a letter to the Planning Board dated July 20, 2022, Susan Anderson, Chair of the Tiverton Historic Preservation Advisory Board, noted that Tiverton is a federally-recognized ‘Preserve America Community’ with a commitment to preserving and enhancing its historic resources. She quoted the Plan’s ‘Planning Concept’ section 3.1 entitled ‘Historic and Scenic Character’ (p. 11) to make the point that historic stewardship is more than protecting buildings. It involves the preservation of historic landscapes that place historic structures in proper cultural context. She referenced the ‘Secretary of the Interior’s Standards for the Treatment of Historic Properties’ which apply to National Register Historic Districts such as the Osborn-Bennet District. These standards include ‘Guidelines for the Treatment of Cultural Landscapes.’ The development of a gas station and convenience store within the viewshed of the Osborn-Bennet Historic District diminishes the quality of the District’s landscape because the R.I. Historic Preservation and Heritage Commission considers the existing landscape of pastures and stone walls a significant part of the Historic District, according to Ms. Anderson – who lives in the Historic District.

The Plan’s ‘Natural and Cultural Resources’ element includes the following policies (Sec. 4.4, p. 29): “Preserve and enhance the visual quality of the community and its natural beauty,” and “Preserve the historic and architectural features and special areas of the community that contribute

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to its unique character.” A formula-designed chain convenience store and gas station is not consistent with the visual quality of the neighborhood. The Applicant’s store design modifications, submitted to the Board on August 30, 2022, include clapboard siding and gooseneck light fixtures on the store, as well as a shingle roof over the gas pumps. These modifications are minimal improvements and do very little to enhance compatibility in terms of visual quality. The proposed development is still incompatible with the neighborhood’s historic ambiance.

The Plan’s ‘Land Use’ element (Sec. 5.5) states as a Goal: “Promote land use patterns that are consistent with natural resource constrains, are environmentally and economically sound, minimize incompatibility among uses ... and preserve Tiverton’s rural, historic and small-town character.” (p. 53). A gas station and convenience store is an incompatible use in a residential neighborhood because it generates motor vehicle traffic which causes noise. It also involves artificial light glare, litter, diminished air quality, and poses the risk of violent crime, according to Michael Dow, Maureen Morrow and Carol Herrmann, among others, who testified at the July 12 hearing.

The Plan’s ‘Economic Development’ element (Sec. 10.7) states as a Goal: “Expand Tiverton’s economic base ... while protecting the environment, established residential neighborhoods and the small-town waterfront character of the community.” (p. 138). Residents value a quiet neighborhood that has high air quality and is free of litter and free of artificial light glare at night. The proposed gas station and convenience store, operating 5 a.m. to 12 midnight, with a drive-thru food service, do not protect the residential neighborhood – they diminish neighborhood property values, according to several local residents who spoke on July 12, 2022.

With respect to litter, the Board has a May 16, 2022, letter from Maurine Morrow, a long-time member of the Tiverton Litter Committee. She attests to the large amount of litter generated by convenience stores.

The ‘Economic Development’ element includes a policy (Sec. 10.7): “Support the growth and expansion of existing local businesses.” (p. 138). The proposed development will compete directly with three individually owned, non-chain gas stations on Main Road within 1.5 miles. There are also several food/convenience stores within 1.5 miles. These existing businesses will likely be harmed by the new competition from a regional chain.

Economic Development’s Action 18 (p. 140) states “Implement a streetscape improvement program to promote attractive commercial districts with cohesive public amenities such as sidewalks, lighting, benches and receptacles.” The proposed development includes a sidewalk on Souza Road and a picnic table and trash receptacle, but the overall design is similar to every other gas station and convenience store in the Season’s chain.

Finally, the Board notes the arguments advanced in the two ‘Comprehensive Plan Consistency Analyses’ prepared by Pimentel Consulting, Inc. and included in the August 31, 2022 memorandum under appendices T and U. The Board notes the emphasis placed on a gas filling station being a ‘conditionally permissible’ use in the General Commercial district. But we also call attention to the definition of the GC district in Zoning Art. III, Sec. 1(f): as a location for “businesses serving the community.” This is in contrast to the Highway Commercial district as a

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location for “businesses that serve regional needs.” We submit that Seasons belongs in Highway Commercial because it is a regional business that will draw motorists from Route 24. It will serve regional needs.

2. The proposed development is in compliance with the standards and provisions of the town zoning ordinance.

The Board notes that two special use permits are required for the gas operation and the drive-thru. A purpose of Tiverton’s zoning code is “Promoting the public health safety and general welfare.” (Art. I, Sec. 2).

The proposed development includes two access driveways on Main Road as well as one on Souza Road.

The traffic study prepared for the applicant (Traffic Impact Analysis for the Seasons Corner Market and Gas Station Development Project, Tiverton RI, Pare Corporation, January 2022) acknowledges that the Level of Service for the intersection of Main Road, Souza Road and Schooner Drive will be F (the lowest possible rating) if the development is built.

Bruce Hathaway noted at the July 12 public hearing that Pare acknowledges the large number of southbound left-turns entering the site at the northern driveway on Main Road and expressed a concern about traffic congestion and queueing.

Crossman Engineering provided the Board with a review (dated Sept. 2, 2022) of the Pare traffic study. Crossman included a number of addition measures to improve sight distance, queueing, and parking. Elizabeth McChesney, Crossman Project Director for Traffic, attended the September 13, 2022, hearing and told the Board that she has reviewed the supplement information from Pare Corporation and is now satisfied that the Pare data on trip generation, trip distribution, queueing, future-build traffic, and future traffic counts to be adequate.

Having reviewed the Pare and Crossman reports, the Board remains concerned about congestion and accidents at the intersection of Main Road, Souza Road and Schooner Drive due to the very poor ‘Level of Service’ and the accident risks of southbound traffic turning left into the site. Moreover, the Board notes the large amount of proposed development in the immediate neighborhood.

A second serious human health and safety issue involves the release of harmful air emission from gas stations. During the July 12, 2022, public hearing the Board heard from neighborhood resident and health professional Michael Dow, who called our attention to the known carcinogen, benzene, in particular. The Board’s legal counsel has advised us that the Little Willow Child Care Center just north of the proposed development on Main Road does not trigger the Zoning Art. X, Sec. 5 restriction on new gasoline stations within 1,500 feet of a school. However, resident and teacher Carol Herrmann noted at the July 12, 2022, hearing that children use a playground at Little Willow and there are other children residing in the immediate neighborhood who would be affected by dangerous fumes. This point was also made by Barbara Martin at the September 13, 2022, hearing.

[REDACTED]

The Board notes the vapor recovery letter included in Appendix L of the Applicant's August 31, 2022, memorandum. The fugitive vapor emission technology described may be the best available technology, but it does not eliminate harmful emissions altogether.

According to resident Michael Dow, a third serious human health and safety issue associated with gas stations and convenience stores is violent crime.

The proposed development has been reviewed by the Board as both a 'Major Land Development' and under Zoning Art. XX Development Plan Review.

The proposed development does not meet the purposes and standards enumerated in Art. XX, Sec. 1(a), (c) and (d), as follows:

Art. XX, Sec 1(a): "New industrial, commercial and major residential development, as defined in Sec 3 herein, having a high-quality site design, safe and convenient pedestrian and vehicular traffic circulation, and appropriate signage, landscaping and lighting;"

It has not been demonstrated to our satisfaction that the proposed development is a high-quality site design with safe and convenient pedestrian and vehicular traffic circulation. There is reasonable doubt that the intersection of Main Road, Souza Road and Schooner Drive can safely handle the additional traffic generated by the proposed development.

Art. XX, Sec 1(c): "New commercial and industrial development having architectural design and building location that is aesthetically pleasing, promotes walkability, enhances the public realm, is compatible with the character of adjacent areas and complements the town landscape."

The Board notes the design modifications and pedestrian amenities proposed recently, but these improvements fall short of the standard quoted above because it still adheres to a chain-business design. It is designed largely for motor vehicles. It does not enhance the public realm because it generates litter, attracts violent crime, involves noise and light pollution and diminished air quality. Nor is it compatible with the residential and historic character of adjacent areas.

Art. XX, Sec 1(d): "Protection of the historic character of Tiverton Four Corners and other areas of town where appropriate."

The project does not protect the historic character of the Osborn-Bennet National Register Historic District. It diminishes the historic fabric of the neighborhood, according to Susan Anderson, Chair of the Tiverton Historic Preservation Advisory Board and the owner of a property in the historic district, who spoke at the September 13, 2022, hearing.

3. There will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval.

The proposed development will cause a deterioration of neighborhood air quality, according to Michael Dow, a resident who spoke in opposition to the project on July 12, 2022. The proposed development poses additional environmental detriments. For example, a gas station and

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convenience drive-thru will cause light trespass and noise in a largely residential neighborhood, and convenience stores are a major generator of litter. Attorney Karen Benson, representing Preserve Tiverton, called our attention on September 13, 2022, to the need for additional steps to mitigate a potential stormwater runoff problem.

4. The proposed development will not result in the creation of lots/areas/parcels with such physical constraints to development that building on those lots/areas/parcels in accordance with pertinent regulations and building standards would be impracticable, unless such lots/areas/parcels are identified as permanent open space or are to be permanently reserved for a public purpose on the approved recorded plans.

Plat 119, Lot 624 is approximately 1.5 acres. The proposed development does not involve any subdivision. Therefore, it meets this standard.

5. All proposed land developments and all subdivision lots have adequate and permanent physical access to a public street. Physical access by means of an easement across adjoining property or lot frontage on a public street without physical access from required street frontage shall not be considered in compliance with this requirement unless specifically provided for under these regulations.

Plat 119, Lot 624 has adequate and permanent access along Souza Road. The Board notes that there is an easement along Main Road and Souza Road, and that the proposed development will require three Physical Alteration Permits from RI DOT for two curb cuts on Main Road and one curb cut on Souza Road. The project meets this standard if the conditions are satisfied.

A motion to approve Chairman Hardy's findings of fact was made by Amanda Souza and seconded by Peter Bramante. There was no discussion on the motion and a roll call vote was taken. The motion passed: 7-0-0. The following votes were cast:

Yea: Mr. Hardy, Ms. Eva, Mr. Bramante, Ms. Gomes, Ms. Souza, Ms. Shea and Mr. Shriver.
Nay: None.
Abstain: None.

A motion to deny Master Plan approval was then made by Peter Bramante and seconded by Amanda Souza. There was no discussion on the motion and a roll call vote was taken. The motion passed: 6-0-1. The following votes were cast:

Yea: Mr. Hardy, Ms. Eva, Mr. Bramante, Ms. Gomes, Ms. Souza and Ms. Shea.
Nay: None.
Abstain: Christopher Shriver.

A motion to deny the Zoning Ordinance Article XX, Development Plan Review application, based on the same findings of fact, was made by Amanda Souza and seconded by Janice Gomes. There was no discussion on the motion and roll call vote was taken. The motion passed: 6-0-1. The following votes were cast:

[REDACTED]

Yea: Mr. Hardy, Ms. Eva, Mr. Bramante, Ms. Gomes, Ms. Souza and Ms. Shea .
Nay: None.
Abstain: Christopher Shriver.

<u>Stuart Hardy</u> Stuart Hardy Planning Board Chairman	<u>28 September 2022</u> Date of Written Decision	<u>September 13, 2022</u> Planning Board Decision
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A party wishing to appeal this decision must do so on or before 20 days from the date of recording by contacting the Town of Tiverton Zoning Department.

[REDACTED]