

TOWN OF ESSEX
PLANNING COMMISSION
DRAFT MINUTES
NOVEMBER 18, 2021

Note: This meeting was in-person and virtual on Teams.

PLANNING COMMISSION (PC) PRESENT:

IN PERSON: Dustin Brusco, Chair; David Raphael; Ned Daly; and Jonathan Schumacher.

VIRTUAL: Josh Knox, Vice-Chair; John Mangan, Clerk; and Tom Furland.

OTHERS PRESENT:

IN PERSON: Owiso Makuku, Community Development Director; Sharon Kelley, Zoning Administrator; Darren Schibler, Planner; TaTanisha Redditta; Paul O'Leary; Shawn Cunningham; Bryan Currier; Paula Duke; Denele Brouner; Katie Ballard; Evan Teich; Rick Bove; Joel Page; Taylor Rochester; Traci Rochester; Irene Wrenner; Ken Signorello; James Grimsley; and CCTV.

VIRTUAL: Bill Ellis, Esq.; Dawn McGinnis; Jim Bernerger; Gina Barrett; Joe Flynn; Alison Levy; Dawn Fleury; John Alden; Lorraine Zaloom; Matthew Roy; Sharon Illenye; Gregory Duggan; Liam (unknown); Sharon Zukowski; Brian Shelden; Chris Kline; Gabrielle Smith; WKeithcart; and Essex ReTorter.

Chairman Brusco called the meeting to order at 6:30 p.m.; called out the Commissioners who were in attendance virtually and in person; noted the Gutema application was postponed to a later date; and provided the public oath, and repeated the oath to late arrivers.

AGENDA ITEM 1: PUBLIC COMMENTS:

Paula Duke, 34 Lavigne Road, Essex, recommended that the PC support the suggestion for a full-time building inspector, even if shared with another town.

Commissioner Raphael suggested that Ms. Duke was thinking of a different type of inspector as a building inspector inspects building codes and the Town of Essex does not regulate building codes. Ms. Duke did not agree and stated that she would expect that the Town follows State building codes. Commission Raphael said, "That is not how it works."

Sharon Zukowski, Essex, VT, suggested that Paula Duke was talking about a building inspector that inspects rental properties. She noted she has rentals in Winooski and the rentals are subject to an inspection every three years as codes change. Zukowski noted that Burlington and Winooski offer this service and believes the cost is \$200.00.

**AGENDA ITEM 2: CONTINUED FROM 6/10/21-SITE PLAN-PUBLIC HEARING:
RICK BOVE D/B/A HDI REAL ESTATE, INC.: PROPOSAL FOR 2 RESIDENTIAL
BUILDINGS TOTALING 30 APARTMENT UNITS; AND 1 MIXED-USE BUILDING
INCLUDING 30 APARTMENT UNITS AND 6000 SF OF COMMERCIAL SPACE
LOCATED AT COMMONWEALTH & 10 CARMICHAEL STREET IN THE MIXED-
USE COMMERCIAL (MXD-C) DISTRICT & BUSINESS DESIGN CONTROL (B-DC)
OVERLAY DISTRICT. TAX MAP 91, PARCEL 1.**

Commissioner Daly stated that he has an outside relationship with Mr. Bove, therefore recused himself from this application. He stated that he will sit in the audience and participate as a member of the public.

Chairman Bruso noted the Public Hearing remained open from the last meeting. Bruso reported that a comprehensive staff report was submitted to the PC and applicants which laid out the proposal and concerns, therefore asked the PC if they objected to going straight to the applicant so that they to deliver their comments on the report and the project.

Bryan Currier and Paul O'Leary represented the applicant and provided comments.

Currier noted that this was a continued hearing from 6/10/2021, and at that time HDI proposed 3 buildings as a part of the overall Town Center; a similar plan was approved in 2017. He noted as a part of the amended proposal, the essence is still that Building G continues to be 15 units; G1 is 15 units; and Building H is 4 stories, with 30 units and contains 7600 sq. ft. of commercial space; underground parking; and the first phase of the Town Green. Currier noted that they asked for "very specific guidelines" at the 6/10/2021 hearing and, the PC provided very specific feedback as to what they wanted to see as a part of a continued hearing. Currier noted that at the June meeting, the PC asked for more density and stated it would support a height waiver for Building H in order to preserve commercial space around Carmichael Street, which has been done with the latest proposal. He noted the remaining space on the first floor is for amenities for the apartments above this floor. The fourth floor increases the residential units from 22 to 30 units. He noted the height waiver request has changed since application submittal from 66 feet to 54 feet. He noted the PC requested more variability to the architectural features and noted that Scott & Partners have revised the elevations to change the rooflines along Buildings G & G1; and changed the color pallets on the buildings in order to satisfy the mix so that it does not seem like a solid building as you are driving down Commonwealth Avenue. Currier noted that they no longer need a height waiver for buildings G & G1 as they will be constructed less than 40' in height as required by the Zoning District. Currier noted that the PC previously asked for a more attractive streetscape and, they hired T.J. Boyle Architect, who changed the sidewalks, reoriented the parking in the back, added some green islands, street trees, many shrubs and plantings around the building. He noted the proposal included the construction of a portion of the Town Green, which would include street trees on the south side of Carmichael Street, benches and over a 1/4-acre green on the southeast corner of the development. Currier reminded the PC that they asked for approval conditions for this application, and they have provided conditions.

Paul O'Leary reminded the PC of the "lively meeting in July." He stated that they specifically asked for direction and said, "you gave it to us." He noted the minutes were clear as to what they had to come back with for the application and said, *The last line of the meeting minutes said, "Chairman Bruso asked staff to rewrite as an approval incorporating the common space. The staff report is pretty similar to as it was back then. They really haven't changed too much and they really haven't added anything. They strengthened their argument a little bit. They certainly haven't written an approval. We've held up our part of the bargain. We re-did the buildings; hired a landscape architect; looked at the streetscape; re-looked at the height on Building G; added the Town Green features across the street. We've done everything you've asked for at our June 9th meeting and we are back today looking for approval. If you have specific questions about something in the Staff Report, water issues, density, we'll be glad to answer those. But, essentially, it is a very negative Staff Report. It was the first time and*

continues to be. We don't really think at this point in time we need to go down through that Staff Report point-by-point because frankly, I don't think they did what this Board asked them to do.

Chairman Bruso responded that the PC has a Staff Report in front of them recommending denial and it is for the Commission to decide on the application. Bruso stated that there are clear statements, both in the beginning of the Staff Report and with the conclusion at the end of the Staff Report, that provide clarity for recommending denial. He stated that with every meeting the process evolves and, the review evolves, it enhances, it changes. Bruso stated that the PC was looking at the Staff Report before them at this meeting.

O'Leary had the following additional comments:

- He noted that the original traffic report was done in January 2021. As the proposal now included a fourth story with additional units and some commercial space, this added 11 pm peak trip ends. As a result, Public Works wanted a revised study. However, since January, Babaroosa had changed location and hopes to be moving into the movie theater. As a result of the cinema leaving, there will be 100 trips less and the traffic impact will be less than the January study.
- He stated that Staff looked at the ETC Plan and noted at full build-out there will be a water pressure issue. He stated there will not be any water pressure issues, noting that there would be 40-45 pounds of water pressure on the fourth floor, which "is plenty of pressure." He noted the international plumbing code pressure is 20 psi.
- He does not expect any issues with fire flows, noting that in-order-to get a permit they will have to create a sprinkler design for the State of Vermont to show adequate flows. If they can't show that, they will not get a state building permit. He was confident they would get the permit. He is fine to provide reports to Public Works but, needs the approval first.
- He was on a town committee 10-15 years ago to discuss density, which resulted in a recommendation to modify the regulations by adding the 400% density bonus for multi-family housing if 25% of the units are affordable housing. He noted that even years ago, everyone realized the density was way too low in the Town Center. He noted that they met the criteria.
- He noted that currently 24 of 44 units in the Whittier Building are affordable. The applicant is agreeable to make all 44 units affordable, however there is no reason to pursue this yet.
- He noted that at the last meeting Commissioner Raphael stated that the ETC Plan did not apply to this project's Master Plan as there is nothing specific in the Zoning Regulations as amendments have not moved forward yet.
- They are only asking for a height waiver for Building H;
- The sidewalk for the last approval on this site was 8 feet.
- They agree they will fully construct Carmichael and Commonwealth Avenue before they are issued a Certificate of Occupancy,

Commissioner Furland was concerned that the Town Green would not receive enough sun in its proposed location. O'Leary stated that the lot is bigger and thought this lot would be the best place for the Green. Commissioner Furland noted that the parking lot abuts the lot so this will help not block the sun from the lot.

Vice-Chair Knox asked to explain the discussion starting on Line 344 of the Staff Report regarding existing affordable housing, and reads, in part

In any case, the applicant has failed to support the claim that there are in fact 44 existing units of perpetually affordable housing in the PUD, as defined in the Regulations and under state law.

Darren Schibler, Planner, stated that every proposal over the years represented that 44 affordable housing units are within Building K (Whittier Building) and this building was already granted a density bonus. Schibler did not uncover any deeds in the records and, after he researched the files he discovered that density bonuses were granted up to 15% for things other than affordable housing. The affordable housing units were not deeded to a land trust or a non-profit, which guarantees perpetual affordability. Schibler was concerned about utilizing more affordable housing, especially when there have been a number of fire and life safety violations over the years and, is concerned for the quality of that housing. He was troubled that the affordable units were not represented accurately. He has not received any deeds; the applicants did not indicate that they are working with a land trust; and he would like to see these documents.

O'Leary noted the Whittier Building goes back to 1997 and he always thought all 44 units were affordable, but it turns out that only 26 are guaranteed affordable, noting that the other 8 units apply to another project. He stated that they were willing to offer paperwork, for the town attorney, to make all 44 units perpetually affordable.

Commissioner Schumacher asked O'Leary to clarify his comments on market rate units. O'Leary replied that the original paperwork is confusing and it appears that the affordability sunsets after 15 years. If so, they may not need to remain affordable. O'Leary noted that if there is no credit for the bonus, there may not be a reason to maintain as affordable and they would investigate market rate units.

Darren Schibler provided the following comments on the Staff Report:

- He repeated that outstanding information on existing affordable units needs to be submitted;
- Regarding Buildings G & G1, he expressed concern as private units are on a busy space, noting that if the ETC come to fruition, the usability of porches exposes the public space;
- He is willing to work with the applicant on designs, but there has not been a lot of cooperation. There is a concern with headlight glare and he would suggest parallel parking;
- The ETC|Next Plan is an update to the 1991 Town Center Master Plan; and
- The goal is to create a project with vibrancy and look out to 50-100 years in the future.

Chairman Bruso asked Owiso specifically, about the viability of the ETC|Next Plan, noting

that the Plan has been approved. He noted that she had referenced some enabling concepts that made it a part of the active planning process.

Owiso Makuku, noted the PC also needs to address the violations on the property.

Makuku stated that because the 1991 Plan was replaced with the 2021 Plan, there are provisions made for the accommodation of an existing plan to be replaced and adopted by reference. She read the following, "Specific design requirements in the MXD-C District. In the portion of the Business Design District which overlays the MXD-C District, the general purposes of that district shall apply. In addition, the general concepts and specific policies and recommendations for this area set forth in the Town Center Master Plan (1991) and the Essex Town Plan shall guide all future developments."

Chairman Bruso stated it is his understanding that the 2021 Plan is approved and is a viable tool even though the regulations have not been amended.

Schibler stated the PC may want to consider waivers if the application is consistent with the plans and goals for the community.

O'Leary noted that the applicant has a Master Plan, which has been approved multiple times. It serves two purposes, 1) it gives the Board an idea of where they are going forward; and 2) it gives the applicant some assurances as it goes forward with a multi-phased plan. O'Leary understands there is an ETC|Plan and stated it would be different if they were coming in the door with a brand new, never seen, project, however the applicant has an approved Master Plan which has been around a long time.

Owiso Makuku noted that like the applicant, the Town can make revisions to its Master Plan, which include making provisions to the layout to its Town Center.

Commissioner Furland noted the Staff Report mentioned that the Town does not have a ladder truck and asked if that was a merger issue.

O'Leary stated that he felt like that "was a reach" as the Town has an agreement with the Village. He noted the Village is closer to this project than the Town Fire Department. O'Leary stated the Village owns the ladder truck.

Makuku noted that the Town Manager was in the audience and, he may be able to speak to this issue. Chairman Bruso stated that he did not want to bring the separation issue into this meeting and assumed the opinion on the ladder truck was not coming from just the planning office. Makuku noted that this concern comes directly from the Fire Chief.

Darren Schibler, Planner, noted that a day or two prior to the hearing, several emails received by the public and were sent to the PC electronically. The PC acknowledged receipt of same. The following persons provided public comments:

Katie Ballard, Chair of the Housing Commission, read its letter into the record.

At its November 17 meeting, the Housing Commission discussed serious concerns about the development proposal for the Town Center (Buildings G, G1, and H) currently under your

243 review.

244 *The Housing Commission does not support approval of the most recent proposal because the*
245 *design includes residential uses on the ground floor of a commercial corridor, which will*
246 *negatively impact the inhabitants' quality of life due to lights, noise, and lack of privacy. The*
247 *ETC|NEXT Plan calls for this to be a mixed-use commercial zone that specifically dedicates*
248 *the first floor to commercial use, so the proposal must be revised to reflect this. If an*
249 *exception for ground-floor residential is allowed, the developer must revise the proposal with*
250 *a redesign that includes proven mitigation strategies for first-floor residential uses in mixed-*
251 *use commercially zoned development.*

252 *Furthermore, the Housing Commission does not support the density bonus request which*
253 *relies on existing designated affordable units (which have no guarantee of perpetual*
254 *affordability) to justify additional market-rate units. The Housing Commission is also deeply*
255 *concerned that these units have a history of fire and life safety violations that impact quality*
256 *of life for their residents, and we would not support the project unless existing violations*
257 *were rectified.*

258 *Livability and dignity of housing is a core belief of the Housing Commission. It is our intent*
259 *to lead further conversation about the quality of housing in our community and what can be*
260 *done to better meet all residents' needs. We welcome the Planning Commission and the*
261 *developer of this project to this conversation.*

262 Brian Sheldon, Chair of the Essex Economic Development Commission, asked if the PC saw
263 its letter to the PC. Chairman Brusco replied yes. Sheldon reinforced that the Economic
264 Development Commission feels that the PC should enforce the ratio of commercial and
265 residential of the ETC|Next Plan on this project. He appreciates that there is first floor
266 commercial in Building H, but there is not commercial space in Buildings G & G1. Sheldon
267 stated that the Economic Development Commission requests that the construction at least be
268 built to commercial standards so that Essex can grow into more of a walkable community.

269
270 O'Leary was surprised that he has not been provided the written comments submitted by the
271 public and would like to see the emails.

272
273 Traci Rochester, 4 Carmichael Street, stated that she has lived in her unit for 22 years while
274 raising her daughter. She said the building and the premises were "beautiful" when owned by
275 Homestead Design. She stated that ever since the property was sold to Mr. Bove everything
276 has gone downhill and listed some of the issues as follows:

- 277
- 278 • The roof outside her unit in the hallway has leaked for months and she has been told
 - 279 that Evergreen is too busy to fix it;
 - 280 • The leak has made its way to the storage unit and has leaked all over her things. She
 - 281 noted it was fixed this week, after the 7-Day article came out in the news;
 - 282 • Broken locks that are supposed to be secure;
 - 283 • She can't prove it but believes drug activity is active in the building;
 - 284 • Screens are punched out and the "bugs are unbelievable";
 - 285 • There is a pothole in the parking area "that can swallow your car";
 - 286 • The laundry machines have been broken for over 1 year;
 - 287 • The stairway has issues with the rail and door locks;

- The sidewalks are thick with ice in the winter and the parking lot is not plowed;
- She has no control over the heat and it is 78 degrees all year long;
- The grounds are not maintained and the property has not been raked in the past 2-3 years; dog feces and trash is everywhere;
- She stated that she is not being treated as a human, rather a rent check. She has never needed to go into an affordable housing unit and pays a high rent;
- She is embarrassed to tell people where she lives because of the condition of the building and premises; and
- She is concerned for retaliation, but felt the PC needed to know what was going on before Bove is allowed to build anything else.

Taylor Rochester, 4 Carmichael Street, Essex, stated that she has lived in the Whittier Building since before Bove owned the premises. She has watched it fall before her eyes. She noted the following deficiencies:

- Nine out of ten times the front doors are not locked;
- The emergency stairwell is always broken;
- The stairwell banister is broken and a firefighter nearly “took a header”;
- The communal area has stains on the carpet and there are no screens;
- The outside is poorly lit, and she is concerned as a woman;
- He does not do any background checks on tenants and is concerned for safety;
- Daytime hours are safer, but they have to deal with dog feces, potholes and trash;
- Tenants personal belonging are being destroyed in the storage area;
- She is concerned that Bove will go back to his old ways once people stop caring; and
- She was frustrated that he is living his life in a multi-million-dollar home while his properties are not being maintained.

Katie Ballard, 10 (D4) Sugar Tree Lane, Essex, encouraged the PC, before they approve or deny the application, to consider that the more developers are allowed to develop rental properties, that the PC also consider those who can’t speak up for themselves. Ballard said, “We cannot let the benefit to bring something economically outweigh the community.” Ballard continued to state that until someone speaks up, important pieces are missed. Ballard asked that they be thoughtful to the tenant’s dignity and not to let the other pieces outweigh its decision.

Alison Levy, 8 Bashaw Drive, Essex, is a member of the Housing Commission. She asked the PC to not throw away its experience with how Bove has been as a property owner.

James Grimsley, 22 South Summit Street, Essex, spoke on issues not pertaining to the application. Chairman Bruso informed him that his comments were outside the scope of this application and asked him to relinquish his seat.

Lorraine Zaloom, stated that she took the time to watch the June meeting. She was concerned with O’Leary’s presentation, noting that he seemed angry. She felt like he was doing an end-run. She likes the option of ground floor commercial with the construction to switch to residential, however she is concerned with residential on the first floor. She stated that if you are watching, commercial is becoming stable, noting that Black Flannel and Phoenix Books are viable. Hard work has occurred over the last 4 years to make the area walkable, however she was not sure what 8’ sidewalks mean. As she lives on Route 15, she is concerned with headlights and noise; and noted that ground floor residential would be surrounded by these issues. She is concerned with human rights.

Dawn Fleury, stated that with all the work done with the ETC|Next Plan, the applicant should be required to follow its recommendations.

Gina Barrett, noted the proposed units seem to allow for 45 one-bedroom and 17 two-bedrooms. She would like to see more diverse units by lessening the units and adding some 3-bedroom units.

Ned Daly, stated that there are two issues, 1) how the buildings are managed and run by this person. Commissioner Raphael called “Point of Order” as Daly technically recused himself from the application and believes Daly cannot weigh in on this matter. Commissioner Mangan agreed and said he was going to say the same thing.

Commercial Raphael said, “a recusal is a clear declaration of a conflict, so then coming before the body that you’re a part of, to then present your opinion on, kind of puts you in an uneven playing field. Recusal is typically a flat-out, usually you leave.”

A brief discussion ensued on recusal. Alternate PC Member, John Alden, agreed that Daly should be able to offer his comment as he often does with Village applications. He stated that he leaves the room and comes back in when public comment is taken. Commissioner Mangan looked up recusal and read from state statute. It was determined that further discussion will take place on the Operating Procedures. Daly chose not to provide further comment on this application.

Commissioner Schumacher Moved and Vice-Chair Knox Seconded a Motion to close the Public Hearing. The Motion passed 6-0.

A brief discussion ensued on whether the PC should go into deliberative session. The PC did not feel it to be necessary and was ready for a vote.

Chairman Bruso Moved and Commissioner Furland Seconded a Motion to Deny without prejudice, the application based on the Staff Report dated November 18, 2021. The Motion passed 6-0.

AGENDA ITEM 3: MINUTES 10/28/2021:

Commissioner Raphael MOVED and Commissioner Schumacher SECONDED a MOTION to approve the site visit minutes and the hearing minutes, both dated 10/28/2021, as written. The MOTION passed 6-0.

ITEM 5: OTHER BUSINESS:

Staff reported that the Housing Commission will be coming to an upcoming PC hearing to discuss inclusionary zoning.

A brief discussion continued on the topic of building inspector. John Alden noted that a handful of towns have arrangements with the state to accomplish this matter.

The meeting adjourned at 8:20 p.m.

PLANNING COMMISSION

By: _____

Dustin R. Bruso, Chair