

From: Peter Skwirz peteskwirz@utrlaw.com
Subject: Re: Suffolk Realty; South County Commons MP
Date: April 26, 2023 at 8:37 PM
To: Matthew Landry mjl@blishcavlaw.com



Thank you Matt. I'll forward this to Planning Staff for scheduling and advertisement.

- Peter

Sent from my iPhone

On Apr 26, 2023, at 11:20 AM, Matthew Landry <mjl@blishcavlaw.com> wrote:

Peter,

Thank you again for your assistance and guidance before the board last night. I know there are a number of issues that have been difficult to work through and I appreciate your thoughts and position on these procedural matters. As promised, I had a lengthy call with my clients this morning after they had a chance to review the meeting last night. They are agreeable to an extension of time up to and including **June 1st** for purposes of deliberation, decision and/or a special meeting. My clients believe that the board has had ample time to consider the expert reports and materials that have been in the record since January and a 4th extension of time to **June 1st** will allow them additional time to consider the testimony provided on 5/23 and deliberate on the application. I understand they may not be agreeable to that, but I believe I have pressed my clients as much as possible on extensions and deadlines. My clients would make themselves available at the board's convenience for any special meetings up to an including that date.

I will be forwarding a formal letter from my office that grants the extension through June 1st and per Jay's request, that it also include a notation for the file that we are seeking an amendment (or waiver) to the 1998 MP as it relates to the residential use. By copy of this email, I would also ask that we work together on making sure the newspaper ad includes a note that this is for a Comp Permit and seeks an amendment to the MP - again out of an abundance of caution. I have attached a draft notice for the newspaper and abutter notice for your review and consideration.

In terms of re-noticing the hearing, my office will reissue certified notice to all of the properties within SCC, in addition to all properties within 200' of the permitter of SCC to ensure everyone is included.

Please let me know what else you need from my office to facilitate the meeting, notice etc.

Thank you,
Matt

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<pastedGraphic.png>

30 Exchange Terrace, Providence, RI 02903

MATTHEW J. LANDRY | ATTORNEY
P 401-831-8900 | F 401-751-7542
mjl@blishcavlaw.com | www.blishcavalw.com

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<esig-graphic-830px.png>

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<Amended Abutter Notice (May 2023).docx>

<Amended Newspaper Ad (May 2023).docx>

BLISH & CAVANAGH LLP

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May, 2023

**PLANNING BOARD
TOWN OF SOUTH KINGSTOWN
NOTICE OF CONCEPTUAL MASTER PLAN
PUBLIC INFORMATIONAL MEETING
UNDER THE SUBDIVISION AND LAND DEVELOPMENT REGULATIONS**

On **May 23rd, 2023** at 7:00 p.m. in the Council Chambers at the South Kingstown Town Hall, 180 High Street, Wakefield, RI, the South Kingstown Planning Board will conduct a Conceptual Master Plan Public Informational Meeting Public Hearing on the **SOUTH COUNTY COMMONS DISTRICT 5 APARTMENTS MAJOR LAND DEVELOPMENT AND COMPREHENSIVE PERMIT APPLICATION**, a request to construct a single seventy (70) unit apartment complex with associated site improvements. The Application includes a request to amend the South County Commons Master Plan to allow residential uses. The parcel is identified as Assessor's Plat 50-4, Lots 22 & 26 located on 2 Fairfield Way, Suffolk Realty, LLC and Southern RI Hospitality, LLC, *applicant/owner*.

As owner(s) of property within 200' of the proposed subdivision you are invited to attend this meeting to discuss the Conceptual Master Plan with the Planning Board.

Detailed plans for the proposed **SOUTH COUNTY COMMONS DISTRICT 5 APARTMENTS MAJOR LAND DEVELOPMENT AND COMPREHENSIVE PERMIT APPLICATION** are available for review on the Planning Department website (<https://www.southkingstownri.com/1133/South-County-Commons---District-5-Apartm>) as well as in the Planning Department office between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday.

The Conceptual Master Plan may be revised by the Planning Board as a result of further study or because of the views expressed at the Public Hearing.

Maria H. Mack, Chair
Planning Board

NOTE: Legal ad type size shall be at least as large as the normal type size used by the newspaper in its news articles.

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Maria H. Mack, Chair
Planning Board

Advertise under Legal Notices, 2 issues only: **May ____, 2023** and **May __, 2023**.

Contact person:
Lynn Smith
Planning Department
401-789-9331, ext. 1244



From: Peter Skwirz peteskwirz@utrlaw.com
Subject: RE: South County Commons District 5 Comp Permit
Date: April 25, 2023 at 11:06 AM
To: Matthew Landry mjl@blishcavlaw.com
Cc: Jennifer Cervenka jcervenka@cgdesq.com, James Rabbitt jrabbitt@southkingstownri.com, Jason Parker jparker@southkingstownri.com, Brian Wagner bwagner@southkingstownri.com

Matt,

Thanks for this. I'm cc'ing Attorney Cervenka and Planning Staff on my response so we can all be on the same page for tonight. As discussed in our phone call, I understand your concerns about notice. I'm not sure I agree that these concerns would prevent the Board from hearing the matter tonight, but I don't have an objection if you want to take a belt and suspenders approach with regard to notice. That being said, it will be up to the Board regarding whether they will agree to a special meeting date or whether they want to continue this to a regular meeting date.

Also, as discussed, while I can understand you wouldn't want to put your expert testimony on tonight with several procedural issues we've discussed outstanding, I do think that we should apprise the Board tonight of the procedural issues that have arisen since this matter was last before the Board. Although there has been discussion among the attorneys and Planning Staff regarding these issues, the Planning Board has yet to have an opportunity to discuss these issues and hear the positions of the parties. After letting Planning Staff and the attorneys speak on these procedural issues tonight, I think we could follow one of two paths. First, if you and the Board can agree on scheduling a further hearing date (whether at a regular or special meeting), then the matter may be continued to that date so that you and the other interested parties may address the procedural issues and any other issues you would like to address. If, however, you and the Board cannot agree on rescheduling (*i.e.*, if you insist on a special meeting date and the Board is unable to accommodate the request), I would recommend a denial without prejudice, which would allow you to refile an if and when the procedural issues previously outlined are resolved.

- Peter

Peter F. Skwirz, Esq.
Ursillo, Teitz & Ritch, Ltd.
2 Williams Street
Providence, RI 02903
(401) 331-2222
(401) 751-5257 (fax)
peteskwirz@utrlaw.com

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From: Matthew Landry <mjl@blishcavlaw.com>
Sent: Tuesday, April 25, 2023 10:41 AM
To: Peter Skwirz <Peteskwirz@utrlaw.com>

Subject: South County Commons District 5 Comp Permit

Good Morning Peter,

Following up from our previous discussion, my client was prepared to proceed this evening and conclude any remaining testimony we had. However, I believe we had discussed, the meeting for this evening is not properly advertised. You will see that our agenda item is listed as **PUBLIC INFORMATIONAL MEETING: CONCEPTUAL MASTER PLAN REVIEW, MAJOR LAND DEVELOPMENT PROJECT.**

However, this should have included a notation that it is a Comprehensive Permit application as well. You can see that the agenda item immediately before us was properly advertised as a comp permit. Our application was properly advertised and noticed during pre-app and initial hearing, so I am not sure what the disconnect is now. I flagged this exact issue back in January and corrected all of the abutter notifications that went out, however, the Town has subsequently failed to advertise this as a Comp Permit over the last few meetings that were continued. Second, the Orange Sign that is required had been up on the property for several weeks, including prior to and after the initial hearing on this matter. However, it recently came to our attention that someone removed the sign. We obtained a new sign from the Town but it still had the January hearing date on it. Since the initial hearing was continued to a date certain, I don't believe it is an issue. To ensure proper notice, we believe the meeting needs to be re-advertised as a Comp Permit and the Orange sign should reflect any new hearing date. You may also recall that the Town improperly noticed the hearing in February with the wrong time via the SOS website and we needed to continue that meeting as well. An additional extension was provided upon receipt of a memo from the Town in late March raising procedural issues for the first time only about a week prior to the hearing.

As we discussed last week, we are of the position this is not a subdivision plat and these lots were created before the enabling legislation took effect. We believe submitting a new Master Plan is the proper mechanism to remove any purported restrictions from the 1998 Master Plan and would serve to supercede or amend the 1998 MP as applicable to these lots. This has been done throughout South County Commons before. Whether you classify that as an amendment or new master plan we believe is immaterial since it serves the same function. However, given this hearing needs to be re-noticed as a Comp Permit, we wish to include a request to amend the MP to the extent necessary or deemed required. In March, I specifically asked the town what additional documentation they needed to serve this request and my several emails and phone calls went unanswered until we received the March memo. You may recall I reached out to you after not hearing from the Town and we had discussed procedure.

As you can imagine, my client is growing frustrated with the repeated extensions and notice issues so he has authorized me to extend the deadline only up to and including May 19th for purposes of holding a special meeting and reaching a decision. I don't believe we can put anything substantive on the record this evening since it is not properly advertised or noticed. Procedurally, it may make sense to bump this up to the beginning of the meeting and address it since I anticipate Attorney Cervenka and most of Wakefield Meadows to fill the room (we are last on the agenda). We are asking for a special meeting to address any remaining substantive issues, complete any remaining testimony and allow Attorney Cervenka any time she may need to address the board in response. I don't believe we can do that at the end of an already long agenda and 3.5 weeks should be ample time to advertise and find an agreeable date.

Please let me know if you wish to discuss and how we should handle this evening. I expect to attend this evening for purposes of answering any questions the board may have, but let me know your thoughts on the same.

Regards.

BLISH & CAVANAGH^{PC}

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From: Peter Skwirz peteskwirz@utrlaw.com
Subject: RE: South County Commons, District 5 Apartments,
Date: April 18, 2023 at 2:48 PM
To: Matthew Landry mjl@blishcavlaw.com
Cc: James Rabbitt jrabbitt@southkingstownri.com, Jason Parker jparker@southkingstownri.com, Brian Wagner bwagner@southkingstownri.com

Matt,

Couple of quick points:

1. While there have been prior amendments to District 5 in the past, there has never been an amendment that would violate a condition of the overall Master Plan for South County Commons, so this is unprecedented in that respect.
2. I believe the overall Master Plan for South County Commons did include the subdivision of land (I'll let Planning staff correct me if I'm wrong on that). Therefore, I think it may be in error when you say that "[t]his is not a subdivision plat."
3. It seems we may agree to disagree about the requirements for amending the restriction on the SCC Master Plan. You can certainly make your case to the Board next week and I'll advise the Board as well, and the Board can make the ultimate decision. If you intend to move forward without addressing the issues raised in my 3/28 email, my intention is to advise the Board to deny the application without prejudice to your client addressing these issues in a new application at some point in the future.

- Peter

Peter F. Skwirz, Esq.
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From: Matthew Landry <mjl@blishcavlaw.com>
Sent: Tuesday, April 18, 2023 2:17 PM
To: Peter Skwirz <Peteskwirz@utrlaw.com>
Cc: James Rabbitt <jrabbitt@southkingstownri.com>; Jason Parker <jparker@southkingstownri.com>; Brian Wagner <bwagner@southkingstownri.com>
Subject: Re: South County Commons, District 5 Apartments,

Peter,

My client intends to move forward as scheduled next week and present our remaining witnesses. We have been reviewing the South County Commons historic records and

permitting information DiPrete has on file since DiPrete, particularly Dennis DiPrete and Eric Prive were involved from the beginning. We see no precedent or legal basis to include every lot owner of South County Commons in the proposed application. That would require upwards of 200+ signatures since the lots are in individual ownership and include several condominiums. None of the other SCC lots owners hold development rights or interests in the lots proposed for development. The pending application includes the owners of only those lots implicated and it is our position that is all that is required. This is not a subdivision plat and to require signatures of the entirety of SCC would amount to a restrictive covenant over future development and every amendment to any lot located within the District. That has never been the position of the Town on prior applications within the District. Our records indicate there have been several amendments concerning SCC Master Plans and Preliminary Plans made to the town (and approved by the Board) that only ever required the signatures of the specific lots affected. The abutter radius stemmed only from those lots being affected as well. We intend to introduce those documents into the record and show that this issue has been raised for the first time in the context of a Comp Permit. When we originally discussed this matter, we did not disagree that the Preliminary Plan needed to be amended, however, we are at the Master Plan stage and it would be improper and premature to amend that plan with out a corresponding MP. We would agree that any approval of the present MP application could be conditioned upon an appropriate Preliminary Plan amendment at the next stage. We would of course need to submit plans that comply with the Preliminary Plan checklist. Finally, I would also note that this application included an Owner authorization form that was duly signed by the owners of property "proposed for development" as is required and our submission received a Certificate of Completeness. I do not believe the Town can retroactively invalidate the certificate of completeness on the basis it is now claiming.

Available to discuss at your convenience.

Regards,

BLISH & CAVANAGH
LLP

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On Apr 18, 2023, at 11:29 AM, Peter Skwirz <peteskwirz@utrlaw.com> wrote:

Matt,

Just following up regarding the email below. What is your client's intention with regard to the upcoming Planning Board meeting on 4/25? Thanks.

- Peter

Peter F. Skwirz, Esq.
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From: Peter Skwirz
Sent: Tuesday, March 28, 2023 6:56 PM
To: mjl@blishcavlaw.com
Cc: James Rabbitt <jrabbitt@southkingstownri.com>; Jason Parker <jparker@southkingstownri.com>; Brian Wagner <bwagner@southkingstownri.com>
Subject: FW: South County Commons, District 5 Apartments,

Matt,

I've had an opportunity to meet with Planning staff regarding the letter sent to you by Jay Parker dated March 20, 2023. After discussing the relevant materials, it is clear that the original Master Plan approved on August 11, 1998, for The Village at South County Commons has a restriction that prevents residential uses in the District 5 area that is the subject of your current application. This restriction in the Master Plan predates the plan approved for phase 1 & phase 2 for the hotel and restaurants that I referenced in my March 9, 2023, email to you. So, in addition to amending

referenced in my March 5, 2023, email to you. So, in addition to amending the phase 1 & 2 plan previously referenced, the original 1998 Master Plan must be amended as well.

Similar to my prior email about amendment of the phase 1 & 2 plan, I believe the amendment of the 1998 plan can be achieved through the Comprehensive Permit process. The concerns raised in my prior emails, however, still apply: (1) the relief for the appropriate plan revisions must be requested, (2) the owners of the properties subject to 1998 Master Plan must sign on to the application for relief, (3) this issue must be presented so the Board can consider the site as a whole (the entire South County Commons area, in addition to the phase 1 area & phase 2 area previously referenced) when considering the Comp Permit request, and (4) abutter notices must be corrected, using the perimeter of the entire site.

I've spoken with Planning staff and there is no objection to the continuance requested for tonight, and any additional time you may need to address this issue. I'd also be happy to have a call if you'd like to discuss and can set up a Zoom meeting with Planning staff if you'd like. I'd also be willing to consider anything else you may be able to provide on this issue. Thanks.

- Peter

Peter F. Skwirz, Esq.
Ursillo, Teitz & Ritch, Ltd.
2 Williams Street
Providence, RI 02903
(401) 331-2222
(401) 751-5257 (fax)
peteskwirz@utrlaw.com

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From: Peter Skwirz
Sent: Monday, March 6, 2023 11:46 AM
To: Matthew Landry <mjl@blishcavlaw.com>
Cc: James Rabbitt <jrabbitt@southkingstownri.com>; Jason Parker <jparker@southkingstownri.com>; Brian Wagner <bwagner@southkingstownri.com>
Subject: RE: South County Commons, District 5 Apartments,

Matt,

I've cc'd the Planning Department on this email so that they can weigh in on any of the questions you've asked or any of my answers if they have a different opinion. As to procedure, I think the Board could consider the

modification and the Comp Permit issues all at once. Since the phase 1 owner is already a co-applicant, my remaining concerns are that (1) the relief is requested, (2) this issue is presented so the Board can consider the site as a whole (phase 1 area & phase 2 area) when considering the Comp Permit request, and (3) abutter notices are correct, using the perimeter of the entire site. So long as these concerns are addressed, I think it makes sense to present everything to the Board all at once, for the sake of efficiency.

With regard to kicking out the March hearing, I suppose that would depend on how much time you think you might need to address these issues. I would assume you might need some additional time, particularly to ensure proper notice. If that is the case, we can agree to an extension. Thanks.

- Peter

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(401) 331-2222
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From: Matthew Landry <mjl@blishcavlaw.com>
Sent: Monday, March 6, 2023 11:30 AM
To: Peter Skwirz <Peteskwirz@utrlaw.com>
Subject: Re: South County Commons, District 5 Apartments,

Peter,

I was away last week but received your most recent email below. Our team was proceeding on the basis of a "new" master plan for this phase which would allow consideration for a modification of the restaurant use. The Phase 1/hotel owner is already a co-applicant to this application. In terms of procedure, is it your position the board would need to approve the plan modification before addressing issues related to the Comprehensive Permit or can we do so simultaneously? I would like to get a sense of timing and whether we need to kick out the March hearing since we would need to re-advertise this project with the relief you suggested and notify the abutters accordingly.

Thanks -

<image001.png>

30 Exchange Terrace, Providence, RI 02903

MATTHEW J. LANDRY | ATTORNEY

P 401-831-8900 | F 401-751-7542

mjl@blishcavlaw.com | www.blishcavalw.com

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<image002.png>

[I am running the 2023 Boston Marathon in Support of the Stepping Strong Center at Brigham & Women's Hospital - Please click here to read more and to make a charitable donation.](#)

On Mar 3, 2023, at 11:25 AM, Peter Skwirz
<peteskwirz@utrlaw.com> wrote:

Matt,

In reviewing the proposal for the above-referenced matter, the Planning Department has flagged an issue that needs to be addressed. When this land was approved for a phased development, there was a plan recorded that defined the uses on both phase 1 & 2, consisting of a hotel and two restaurants. The current application seeks to modify that plan by placing housing units where one of the restaurants would have been located. This requires a plan modification request for that plan. Because the plan modification would be for a plan that delineated the uses of phase 1 & phase 2, the entity currently owning phase 1 would have to be added as a party to the request for a modification.

Additionally, requesting a modification to this plan would allow the Board to consider modifications of all aspects of the plan in deciding whether to grant approval for the request, whether located in the phase 1 or phase 2 area. Since the phase 1 & 2

plan was approved as a whole, any modification would need to be considered as a whole.

I think you could request the modification through the comprehensive permit process, but you would have to make sure that all necessary parties are included in the application and you would need to make sure that the request for this modification is listed in the relief you are seeking.

I understand you may need some additional time to address this issue and modify your application appropriately. If so, please let me know and we can discuss an agreement to extend the consideration deadline. Thanks.

- Peter

Peter F. Skwirz, Esq.
Ursillo, Teitz & Ritch, Ltd.
2 Williams Street
Providence, RI 02903
(401) 331-2222
(401) 751-5257 (fax)
peteskwirz@utrlaw.com

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From: Peter Skwirz peteskwirz@utrlaw.com
Subject: RE: South County Commons - District 5 Continuance
Date: March 24, 2023 at 11:45 AM
To: Matthew Landry mjl@blishcavlaw.com



Matt,

I agree with you that a continuance is in order until all the issues raised have been straightened out, and I intend to advise the same. Thank you for written confirmation of the decision deadline. I have a meeting with planning staff on Monday to talk through some of the issues raised and I expect to reach out to some time next week after that with further details. Thanks.

- Peter

Peter F. Skwirz, Esq.
Ursillo, Teitz & Ritch, Ltd.
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From: Matthew Landry <mjl@blishcavlaw.com>
Sent: Friday, March 24, 2023 11:35 AM
To: Peter Skwirz <Peteskwirz@utrlaw.com>
Subject: South County Commons - District 5 Continuance

Peter,

Is it possible for you to confirm with Jamie that a continuance is in order for Tuesday? I just left a message for Jamie but all of my messages to Jamie and Jason have gone unanswered over the last 2 weeks except for their letter of 3/20/23 that raises a number of additional issues. We of course need time to address their comments and re-notice the meeting with the appropriate amendments that you and I have discussed. There appears to be a need to clarify our position to the Town with regard to the Master Plan amendment. My understanding from our correspondence is that the amendment could be done under our existing Comp Permit application so long as it is properly advertised and re-noticed. The Town is taking a different position. Our team is not planning to attend on Tuesday given the need for continuing the matter and their most recent letter of 3/20. Just trying to confirm everyone is on the same page with Tuesday.

To the extent necessary, the Applicant agrees to an appropriate extension of time of the deadline for decision from 4/3/23 to 5/1/23 to accommodate the continuance. I have also inquired as to their availability for a meeting to discuss the procedural issues they have raised above what you and I have already discussed.

Regards,



30 Exchange Terrace, Providence, RI 02903

MATTHEW J. LANDRY | ATTORNEY

P 401-831-8900 | F 401-751-7542

mjl@blishcavlaw.com | www.blishcavalw.com

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From: Matthew Landry mjl@blishcavlaw.com
Subject: South County Commons - District 5 Continuance
Date: March 24, 2023 at 11:34 AM
To: Peter Skwirz Peteskwirz@utrlaw.com



Peter,

Is it possible for you to confirm with Jamie that a continuance is in order for Tuesday? I just left a message for Jamie but all of my messages to Jamie and Jason have gone unanswered over the last 2 weeks except for their letter of 3/20/23 that raises a number of additional issues. We of course need time to address their comments and re-notice the meeting with the appropriate amendments that you and I have discussed. There appears to be a need to clarify our position to the Town with regard to the Master Plan amendment. My understanding from our correspondence is that the amendment could be done under our existing Comp Permit application so long as it is properly advertised and re-noticed. The Town is taking a different position. Our team is not planning to attend on Tuesday given the need for continuing the matter and their most recent letter of 3/20. Just trying to confirm everyone is on the same page with Tuesday.

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Regards,

BLISH & CAVANAGHE

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From: Peter Skwirz peteskwirz@utrlaw.com
Subject: RE: South County Commons - District 5 Continuance
Date: March 24, 2023 at 11:45 AM
To: Matthew Landry mjl@blishcavlaw.com



Matt,

I agree with you that a continuance is in order until all the issues raised have been straightened out, and I intend to advise the same. Thank you for written confirmation of the decision deadline. I have a meeting with planning staff on Monday to talk through some of the issues raised and I expect to reach out to some time next week after that with further details. Thanks.

- Peter

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From: Matthew Landry <mjl@blishcavlaw.com>
Sent: Friday, March 24, 2023 11:35 AM
To: Peter Skwirz <Peteskwirz@utrlaw.com>
Subject: South County Commons - District 5 Continuance

Peter,

Is it possible for you to confirm with Jamie that a continuance is in order for Tuesday? I just left a message for Jamie but all of my messages to Jamie and Jason have gone unanswered over the last 2 weeks except for their letter of 3/20/23 that raises a number of additional issues. We of course need time to address their comments and re-notice the meeting with the appropriate amendments that you and I have discussed. There appears to be a need to clarify our position to the Town with regard to the Master Plan amendment. My understanding from our correspondence is that the amendment could be done under our existing Comp Permit application so long as it is properly advertised and re-noticed. The Town is taking a different position. Our team is not planning to attend on Tuesday given the need for continuing the matter and their most recent letter of 3/20. Just trying to confirm everyone is on the same page with Tuesday.

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Regards,

BLISH & CAVANAGH

30 Exchange Terrace, Providence, RI 02903

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From: Jason Parker jparker@southkingstownri.com
Subject: South County Commons - District 5 Correspondence
Date: March 21, 2023 at 4:30 PM
To: Matthew Landry mjl@blishcavlaw.com, Eric Prive eprive@diprete-eng.com, hstrauch@hdsarchitecture.com
Cc: James Rabbitt jrabbitt@southkingstownri.com, Peter Skwirz Peteskwirz@utrlaw.com, Brian Wagner bwagner@southkingstownri.com

Matthew/Eric,

Please see the attached correspondence and let me know if you'd like to set up a meeting to discuss further. Thank you.

Jay Parker, AICP, CFM | Principal Planner, Town of South Kingstown | (401) 789-9331 x1245

From: James Rabbitt jrabbitt@southkingstownri.com
Sent: Tuesday, March 21, 2023 3:56 PM
To: Jason Parker jparker@southkingstownri.com
Cc: Peter Skwirz Peteskwirz@utrlaw.com
Subject: District 5 Planning

Jay,

Please forward attached letter and attachments to the applicant.

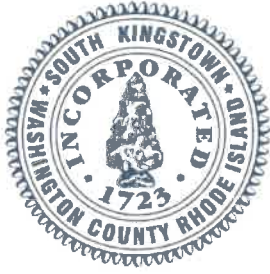
Thanks,

Jamie R.

JAMES D. RABBITT, AICP | PLANNING DIRECTOR
Town of South Kingstown | 180 High Street | South Kingstown, RI 02879 | (401) 789-9331 x1246 | jrabbitt@southkingstownri.com

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Town of South Kingstown, Rhode Island

PLANNING DEPARTMENT

180 High Street
Wakefield, RI 02879
Tel (401) 789-9331 x1244
Fax (401) 789-9792

March 20, 2023

Blish & Cavanagh, LLP
c/o Matthew J. Landry, Esq.
30 Exchange Terrace
Providence, RI 02903

RE: South County Commons – District 5 Apartments
Assessor's Plat 50-4, Lot 22
Conceptual Master Plan

Dear Mr. Landry:

Over the course of the last month, Planning Staff has been in correspondence with Eric Prive, Project Engineer, in regard to density and vesting information related to the waiver requests associated with the District 5 Apartments Conceptual Master Plan application. Within that correspondence, Mr. Prive explained that it was his understanding that the applicant has a vested and active Master Plan from when the Route 1 Special Management District Zoning Ordinance was approved around May 10, 1999.

In reviewing the approval history of *The Village at South County Commons*, we would like to bring the following information to your attention:

- On February 23, 1998, the Route 1 Special Management District Amendments were adopted by the Town of South Kingstown.
- On August 11, 1998, the Planning Board voted "To grant Conceptual Master Plan approval for the land development project entitled 'The Village at South County Commons' in accordance with plans and supporting documents...". The written decision, dated August 12, 1998, as well as the plan referenced in the decision, is attached.
- The approval decision referenced a Conceptual Master Plan, entitled "Master Plan Land Use Plan" for *The Village at South County Commons, South Kingstown, RI* completed by *Weinmayr Associates, Inc.* and *Diprete Engineering Associates, Inc.* The referenced plan provided site development information, as well as a breakout of the proposed uses and use limitations, for all eight (8) districts within the South County Commons. In reference to District 5, the *Master Plan Land Use Plan* states:

District Five

Use limitations: No retail or residential

Anticipated Use: 100% Light Industry, commercial, office

<u>Use</u>	<u>Total Usable Area</u>	<u>% of Usable Site Area</u>
<i>Lt. Ind., Office</i>	<i>14.76 acres</i>	<i>17.7%</i>

- Later, in correspondence dated March 2, 2017, associated with the previous application in permitting the existing hotel, Attorney John F. Kenyon explained, in part, that *"The original Master Plan approval contained a map entitled, 'Master Plan Land Use Plan'" and "That plan divided the property up into eight districts. The subject property is in District Five which included the use limitations (no retail or residential) anticipated use; 100% light industry, commercial, office."*

The August 1998 Conceptual Master Plan approval clearly recognized that District 5 was to be developed with 100% light industrial uses (including commercial and office use) and neither retail nor residential uses were anticipated nor proposed (as specifically stated on the approved Master Plan). As such, it's clear to us that the subject property never received Master Plan approval for any type of residential use, including the proposed District 5 Apartments. Furthermore, as the applicant never requested or received approval for residential uses within District 5 and, in fact, the prior approvals expressly stated that the district would not contain any residential uses. Consequently, we don't understand the basis for Mr. Prive's claim that the proposal acquired a vested right to residential development densities in-place at the time the Master Plan was originally approved. It is hard to understand how one can claim that they are vested in any particular residential density for an area that was never approved for residential development from the onset.

Given the above information, it is our stance that in order to proceed with the current proposal, the applicant will need to amend their August 11, 1998, Conceptual Master Plan approval with the Planning Board. While we understand that the current application is being submitted as a Comprehensive Permit, Staff is not aware that the Comprehensive Permit process allows for an applicant to by-pass any typical stage of review, particularly Conceptual Master Plan. It is possible that the current application will need to be paused and/or withdrawn and resubmitted after the original Master Plan for South County Commons is amended.

Respectfully,

James D. Rabbitt

James D. Rabbitt, AICP
Planning Director



Town of South Kingstown, Rhode Island

P.O. Box 31
Wakefield, RI 02880-0031
Tel 401-789-9331

PLANNING DEPARTMENT

12 August 1998

Alex Petrucci
NORTH COLONY REALTY, LLC
109 Airport Road
Warwick, RI 02889

Re: THE VILLAGE AT SOUTH COUNTY COMMONS
Conceptual Master Plan Decision

At the meeting of the Planning Board held on Tuesday, 11 August 1998, the Board voted as follows:

"To grant Conceptual Master Plan approval for the land development project entitled; 'The Village at South County Commons' in accordance with plans and supporting documents prepared by DiPrere Engineering Associates, Inc. Engineering, Surveying and Planning Consultants and Weinmayr Associates, Inc., Landscape Architects, dated April 1998 and Bera Engineering, Inc. dated March 1998 submitted for North Colony LLC. project owner/developer based upon the following Findings of Fact and Conditions of Approval:

FINDINGS OF FACT

1. The Conceptual Master Plan for The Village at South County Commons is consistent with the policies and requirements of the South Kingstown Comprehensive Community Plan, as amended on February 2, 1998 relative to the Route 1 Special Management District;
2. The Conceptual Master Plan for the Village at South County Commons, with the conditions of approval, is found to be in accord with the requirements and standards of the Route 1 Special Management District Zoning Amendments, adopted February 23, 1998;

NOTE:
CMP APPROVAL
LETTER NOT TO
BE SENT UNT
COND. #10 IS
COMPLIED WITH
ADMIN. SUB. TO
COMBINE LOTS.
per TL

3. The land development project will not design or locate building sites in a manner that will require relief from Article 3, Section 308 of the Zoning Amendments, as amended. The land development project will be serviced by municipal sewers;
4. There will be no significant negative environmental impacts from the proposed development, with the conditions of approval;
5. The land development project will not result in the creation of individual building sites with such physical constraints to development that building upon such areas according to pertinent regulations and building standards would be impracticable;
6. The proposed land development project will have adequate and permanent physical access to Route 1, in accord with the Physical Alteration Permit Application, (PAPA) pending before the Rhode Island Department of Transportation;
7. The land development project provides for safe circulation of pedestrian and vehicular traffic, for adequate surface water run-off, for suitable building sites, and for preservation of the natural, historical, or cultural features that contribute to the attractiveness of the community; and,
8. The design and location of streets, building sites, utilities, drainage improvements and other improvements minimize flooding and soil erosion.

CONDITIONS OF APPROVAL

1. The Conceptual Master Plan approval relates to the proposed project in general terms and approves the basic parameters of the development. It does not constitute approval of specific building sites, engineering or architectural details. These items shall be addressed during the preliminary review process stage. It is understood that uses, building sites and other project aspects, including sizes and scale of buildings may change in conformity with the zoning ordinance as the project proceeds through subsequent review stages;
2. Prior to the Preliminary Review Stage the developer shall explore the potential to relocate the gazebo structure and redesign the intersection, (as a T-type intersection), at the west terminus of the main access road into the subdivision. In addition, design alternatives relating to establishing a "green" within the right of way for the central east/west axis street should be considered;

3. The developer shall provide a design manual for the project to be considered at the Preliminary Review Stage. The manual shall include, but not be limited to the following: architectural details, including permissible choices of building materials and finishes, signage, landscape, and other site features:

4. The developer shall secure overall environmental permits and acceptance of the plan for the provision of utilities to the site by the respective responsible agencies before preliminary consideration of the plan or its component phases;

5. The shared parking arrangement plan, as proposed in the Master Plan Narrative and Supporting Materials document prepared by DiPrete Engineering Associates, dated April 1998 is approved as per Article 3, Section 338, N of the zoning ordinance;

6. The developer shall, as a component of the Preliminary submittal for the land development project, provide additional detail on the hierarchy of sidewalks, pedestrian and bicycle circulation system and pedestrian connections within the site. In particular, attention should be afforded to strengthening and elimination of conflicts within these connections from District 2 (Residential) to District 1 (Mixed-Use) and within the various parking areas on the site;

7. The developer shall explore alternative design scenarios aimed at achieving a more compact design for the southerly end of the site, District 4. Alternatives may include relocation of proposed building site #27 to the northeast and/or schemes aimed at softening the large parking area east of buildings #24, 25, and 26;

8. In consideration of the provision of open space in excess of the required 15% of land suitable for development, (35.3% or 29.64 acres per Master Plan Figure 5-Open Space Plan), the Planning Board hereby permits a Theater facility of 15,000 sq. ft. (25% larger than the 12,000 sq. ft. allowed under the ordinance), as permissible under Article 3, Section 338, O-1;

9. Roads within the development may be privately owned and maintained. If private, the developer shall provide easements to the Town and/or utility companies for the provision of utility service, maintenance of such facilities and for public safety access. The developer may request the Board's consideration of public streets prior to final approval;

10. This approval shall not become effective until such time as an Administrative Subdivision combining all lots on the subject property has been recorded in the Town of South Kingstown Land Evidence Records; and,

Mr. Alex Petrucci

4

12 August 1998

11. With the recognition that modifications will occur in the project as it proceeds through subsequent review stages, the Planning Board will establish an administrative procedure to consider post final changes to the land development project."

Respectfully,



David C. Baud, Chairman
Planning Board

DCB:NCS

cc: J. Kenyon, Esq.
DiPrete Eng. Assoc.
Public Services Dir.
Town Engineer
Finance Dir.
Bldg. Official
Town Clerk



From: Jason Parker jparker@southkingstownri.com
Subject: RE: RE: [EXTERNAL] District 5 Apartments
Date: February 22, 2023 at 1:33 PM
To: Eric Prive eprive@diprete-eng.com
Cc: James Rabbitt jrabbitt@southkingstownri.com, Matthew Landry mjl@blishcavlaw.com

I would suggest calculating Land Suitable For Development (taking into consideration wetlands, easements, drainage features) for all non-encumbered areas and then applying the 5 dwelling units per developable acre allowed by the SMD to confirm that your waiver(s) are accurate. I think part of my confusion is I don't see any reference to land suitable for development or developable acreage on the plans.

This probably doesn't need to be submitted, perhaps an explanation during the meeting would suffice since your waiver request is 17 DUs/acre (which implies that you have already calculated developable acreage but can't confirm).

Jay Parker, AICP, CFM | Principal Planner, Town of South Kingstown | (401) 789-9331 x1245

From: Eric Prive eprive@diprete-eng.com
Sent: Wednesday, February 22, 2023 1:03 PM
To: Jason Parker jparker@southkingstownri.com
Cc: James Rabbitt jrabbitt@southkingstownri.com; 'Matthew Landry' mjl@blishcavlaw.com
Subject: [EXTERNAL] RE: District 5 Apartments

We have never done a yield plan for a commercial multi-family use. We have the plan which shows the previously approved restaurant within the submitted Master Plan site plans. If you give me the use you want to show, we can figure something out. If you want a residential use, maybe suggest the style of residential, the density that you want for it, and if it should be based on the entire 150-acre parcel of the Route 1 SMD as the ordinance calls for and was done in the past. We have a supporting exhibit (attached) that demonstrates the appropriateness of the density to the previously approved residential projects within South County Commons. Ed Pimentel will also be at the upcoming meeting to provide expert testimony regarding the appropriateness of the density for this project.

Best,

Eric Prive, PE
Senior Project Manager

401-943-1000 | **DiPRETE ENGINEERING**

From: Jason Parker jparker@southkingstownri.com
Sent: Wednesday, February 22, 2023 12:54 PM
To: Eric Prive eprive@diprete-eng.com
Cc: James Rabbitt jrabbitt@southkingstownri.com
Subject: FW: District 5 Apartments
Importance: High

Hi Eric,

Just following up on this yield information request for SCC District 5 Apartments.

Best,

Jay Parker, AICP, CFM | Principal Planner, Town of South Kingstown | (401) 789-9331 x1245

From: Jason Parker

Sent: Wednesday, February 8, 2023 11:57 AM

To: Eric Prive <eprive@diprete-eng.com>

Subject: District 5 Apartments

Eric,

Do you have a yield plan or something that can be submitted to document max yield of the site for comparison to the density request? I know it's not a checklist item, but I have been asked by several people, including legal, about it and I don't know if we have the information on file to answer that question. Thanks...

Jay Parker, AICP, CFM | Principal Planner

Town of South Kingstown | 180 High Street | South Kingstown, RI 02879 | (401) 789-9331 x1245 | jparker@southkingstownri.com

Hi Jay,

Following up on the Certificate of Completeness for SCC District 5 Apartments.

Best,