

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PLANNING BOARD FOR THE TOWN OF BARRINGTON

IN RE: **COMPREHENSIVE PERMIT APPLICATION
PALMER POINTE LMIH PROJECT (AS REVISED BY DEVELOPER)**

**POST PLANNING BOARD HEARING MEMORANDUM
PERTAINING TO THE PROPOSED PALMER POINTE DEVELOPMENT**

A. **Introduction**

On June 7, 2016, the Planning Board for the Town of Barrington, held a hearing to determine the eligibility of the Comprehensive Permit Application from the East Bay Community Development Corporation (“EBCDC”) for the proposed Palmer Pointe Low Income Housing development project. This memorandum will summarize the key points outlined during the hearing by counsel for the citizen’s group Committee Opposed to Detrimental Development and for Environmental Responsibility (“CODDER 02806”) and for its abutter members, opposing the Comprehensive Permit application for the Palmer Pointe development. The points outlined herein reflect the points of importance presented at said hearing, but unlike the Post Hearing Memorandum in reference to the previous hearing on May 3, 2016, this Memorandum will not be broken down by category; and no additional references to expert testimony will be included, although previous expert testimony will be cited.

B. **Summary**

It has been shown from the preliminary surveys that the site for the proposed Palmer Pointe LMIH development is substantially contaminated, due to its previous usage as a commercial nursery. Per both the Environmental Protection Agency (EPA) and the Rhode

Island Department of Environmental Management (RIDEM), the assessment of the site to establish the extent of the contamination is at an early stage. It is simply too early in such process to ascertain the extent and seriousness of the contamination; the testing will be going into a secondary testing phase in July 2016. Until this assessment is completed, no credible proposals on a possible remediation plan can be offered. Such remediation plan must meet the standards for the proposed use as low income, relatively dense housing. What is currently being offered is inappropriate and unworkable for this proposed use, in addition to being based on early-stage site assessment work only.

We have offered fully qualified experts to provide evidence on these facts, including a Senior Environmental Engineer, Thomas Nicholson, who is highly regarded in his field and has extensive experience directly relevant to these issues. In addition we have offered a senior Chemical Engineering Professor from Brown University, Prof. Gerald Diebold, who is also highly experienced in directly relevant matters including as to the presence of contamination in the environment. Professor Diebold's expert testimony relating to the contamination found on the proposed site, the toxic chemicals Arsenic and Dieldren, remains unrebutted by the developer. We also presented expert testimony from Ashley Hahn-Sweet, a Town Planner and Planning Consultant*, who demonstrated that in several key respects the developer's plans in support of this pending application do not adequately address (or fail entirely to address) the conditions set forth in this Board's Master Plan decision.

*The credentials of Ashley Hahn-Sweet had been previously questioned by counsel for the developer; this challenge is completely invalid. As a Town Planner, it is an integral part of her training and of her day-to-day work to review and evaluate reports such as that of the developer's traffic engineer. It is the Planner who evaluates such technical input in forming his/her opinions and advice for the relevant Board or Commission to which he/she reports. This expert's credentials were screened and cleared as sufficient for her testimony to be presented before this Board.

The following are the significant issues raised by our experts, including the fundamental issue of substantial contamination:

1. The most important, and substantially un rebutted, issue presented by this project continues to be the site's proven severe contamination with Arsenic and Dieldren. Significant contamination was found during the preliminary testing of the site. The essential secondary testing phase will not begin until sometime in mid-July, with results to follow. The final report, which will yield a more accurate and complete foundation for any workable remediation plan, will not be available until late-August. This situation makes it logically impossible for this Board to make any decisions on the proposed development so far as a remediation plan without the necessary additional information being available. Furthermore, RIDEM's Voluntary Procedure Letter that is on file with this Planning Board, gives the impression that the Department staff was basically unaware of the use of this site for relatively dense low-income housing on a constrained property with high levels of contamination.
2. Our chief environmental engineering expert, Thomas Nicholson, also testified in depth regarding the site's contamination, due to the site's former usage as a commercial nursery. There exist the presence of toxins and chemicals which were in daily use by the commercial nursery occupying the property, mainly herbicides and pesticides, which are known to cause cancer through ongoing exposure. He testified that the possible implementation of an Environmental Land Use Restriction (ELUR) on this site, which was claimed by the developer to be a normal course of remediation when dealing with such contamination, would be entirely inadequate given the proposed land's usage for an

LMIH development. Any workable remediation plan would be extremely costly to the developer and/or the Town of Barrington.

3. Professor Gerald Diebold, Professor of Chemistry at Brown University, testified as to the Nobis Engineering report which involved 24 borings taken from the proposed Palmer Pointe site and noted that high levels of Arsenic and Dieldren were found in those samples. Of the shallow soil samples, 42% of the samples exceeded the relevant RIDEM limit, and 63% of the depth soil samples exceeded the RIDEM limit for Arsenic contamination. The RIDEM safe limit is currently listed as 7.0 mg/kg (ppm); it is made clear in that report that the "RI arsenic standard is based on state background studies and is not a risk based standard...a risk based standard for residential exposure scenario would be 0.4 ppm." This critically important distinction between generalized so-called "background levels" and safe levels for residential exposure on a particular site is entirely disregarded by the developer in its proposals, even though the proposed use of the contaminated property is residential. The Arsenic and Dieldren levels at this site are already high; adding in the factor of this proposed site having low-income residents, including children and elderly, makes the situation even more problematic. Prolonged exposure to Arsenic and/or Dieldren, given the site contamination, would clearly be seriously detrimental to human and environmental health. According to the Nobis Engineering report, Dieldrin was detected in 10 out of 24 holes bored; three of those holes yielded levels of 150 and 97 microgram/kg, which exceeds the RIDEM level of 40 microgram/kg exponentially. The only workable remediation plan would involve the removal of many tons of soil on the site and bringing in new soil, a remediation that, by

itself, would, in the expert opinion of Mr. Nicholson, clearly render the project uneconomic.

4. This proposal violates the controlling statute (R.I.G.L. § 45-53-4) as there is a serious risk of “significant negative environmental impacts” and of “significant negative impacts on the health and safety of current”... ..”future residents of the community...”
5. We have also demonstrated the isolation of this development within the surrounding established neighborhood. It is to be set back from the road behind two unrelated private houses and separated from the abutting residential neighbors by drainage swales and fences. The design of the development is overly dense and inward-looking, thereby highlighting the factor of isolation. The density of the proposed site is in direct conflict with the Developer Guidance and Village Zoning Requirements, and the changing of acreage by the developer from 5.64 to 6.63, to currently 8.7 acres of developable land, is a matter of concern. Clearly the density of the proposed development has not in fact changed.
6. The isolation of the site from community services, and the community in general, is also a serious problem and issue. The idea that all its low income residents, which are likely to include elderly, single parents, juveniles, children and disabled persons will have access to personal vehicles is inconsistent with basic purposes for this kind of project. Access to public transportation is a necessity when housing low income members of the community.
7. We have offered un rebutted evidence that walking Sowams Road to the nearest public transportation will be severely hazardous, especially in darkness and bad weather. Placement of a sidewalk has been shown to be beyond unlikely as an alternative. The

traffic study submitted by the developer's traffic expert was not done during normal, daily peak hours to show a more consistent and accurate automobile usage and traffic study of Sowams Road, but instead was done during days just before the Christmas Holiday, thereby making the study unpersuasive and unreliable in the important areas of automobile dependency and pedestrian safety.

8. The Town's own Comprehensive Plan specifically discourages such isolation; for wealthier residents, this is in the form of gated communities. This project, as presently proposed, is a low income equivalent, clearly violating that principle in community planning.
9. We have shown that critical elements of the project remain without an adequate plan for this stage of your review process. The recreational element remains completely undefined as do the specifics of the stormwater management plan, including calculations of the run-off into the Palmer River, which, along with the already existing site contamination, has the potential to create a toxic mix of discharge from the site, further harming efforts to remediate the already contaminated river.
10. It is a fact, demonstrated by the evidence and testimony presented, that this developer, East Bay Community Development Corporation (EBCDC) is planning to leave in the hands of the Town and its tax-paying residents, a large part of the cost and obligation for maintenance and operation of the development's infrastructure, including the streets and the above/below ground drainage systems, as well as the on-going obligations of protection of residents and visitors from the latent contamination to be left on site. This makes action by the Barrington Town Council necessary as this is in effect an appropriation of public funds.

denied at this stage of the Town's project review process based on its having a number of the same problems and issues which are present in the Palmer Pointe proposed development.

C. Conclusion

The Decision of the Barrington Planning Board should be to deny the Preliminary Plan Comprehensive Permit application submitted by the East Bay Community Development Corporation (EBCDC) regarding the proposed Palmer Pointe LMIH project because: (1) the proposed site for the Development does not comport with state guidelines for siting affordable housing; (2) the plan does not properly integrate the LMIH community with the existing neighborhood; (3) the proposal is fundamentally inconsistent with local needs; (4) there is major toxic contamination on the site which, unless extensively remediated, poses a wholly unacceptable level of risk to the residents of the proposed development, not to mention a substantial immediate risk to the neighborhood residents and the surrounding environment, including the Palmer River; (5) the presently proposed remediation plan, which relies heavily on placing an ELUR restriction on the property, would directly conflict with the type and level of development being proposed; and (6) the proposal is inconsistent with the Town's comprehensive plan on multiple levels.

Presented to the
Barrington Planning Board by,



J. William W. Harsch, Esq. (#3688)
J. William W. Harsch, Esq. & Associates
2258 Post Road
2nd Floor
Warwick, RI 02886
Tel: 401-921-5636
Fax: 401-921-5639
bill.harsch@harschlaw.necoxmail.com

CERTIFICATION

I hereby certify that on the 20th day of June, 2016, the within was sent by U.S. Mail to the following:

Town of Barrington Planning Board
c/o Mary Ann Rosenlof
283 County Road
Barrington, RI 02806

Andrew Teitz, Esq.
Ursillo, Teitz, & Ritch, Ltd.
2 Williams Street
Providence, RI 02903

Phillip Hervey
Barrington Town Planner
283 County Road
Barrington, RI 02806

Christian Capizzo, Esq.
Shechtman Halperin Savage, LLP
1080 Main Street
Pawtucket, RI 02860



Tamara A. Dallaire
Office Manager/Legal Assistant