

MINUTES OF REGULAR PLANNING BOARD MEETING OF APRIL 23, 2012
Planning Board's Meeting Room #315, Town Office Building
400 Slocum Road, Dartmouth, MA

Planning Board

Mr. Joel Avila, Chairman
Mr. Joseph E. Toomey, Jr., Vice Chairman
Mrs. Lorri-Ann Miller, Clerk
Mr. John V. Sousa
Mr. Stanley M. Mickelson

Planning Staff

Mr. Donald A. Perry, Planning Director
Mrs. Joyce J. Couture, Planning Aide

The Chairman called the meeting to order at 7:00 p.m. with all Planning Board members and Planning staff present.

Administrative Items

(1) Approval of Minutes

Regular Meeting of April 9, 2012

A motion was made by Mr. Toomey, duly seconded by Mrs. Miller for discussion, and unanimously voted (5-0) to approve the minutes of the regular meeting of April 9, 2012 as written.

Public Hearing of April 9, 2012 "Zoning Articles for Town Meeting"

A motion was made by Mr. Toomey, duly seconded by Mr. Mickelson for discussion, and unanimously voted (5-0) to approve the minutes of the public hearing of April 9, 2012 "Zoning Articles for Town Meeting" as written.

(2) Invoices

Southcoast Media Group dated April 1, 2012 for \$11.50
re: legal advertising

A motion was made by Mr. Toomey, duly seconded by Mr. Mickelson, and unanimously voted (5-0) to approve payment of the invoice from the Southcoast Media Group dated April 1, 2012 for \$11.20.

(3) Correspondence

Legal Notice from Dartmouth Board of Appeals
Legal Notice from Dartmouth Conservation Commission

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A motion was made by Mrs. Miller, duly seconded by Mr. Toomey, and unanimously voted (5-0) to acknowledge and file the above referenced legal notices.

(4) Approval of Planning Board Meeting Schedule thru June

Discussion commenced on the proposed Planning Board meeting schedule thru June. Board members again discussed the possibility of DCTV filming Planning Board meetings for public viewing. The Planning Board felt that it discusses issues of great interest to the residents of Dartmouth. It was noted that DCTV recently filmed a Board of Appeals meeting in room #315. Planning staff would send a letter to Cynthia Marland, Director of Media, to explore the possibility of having Planning Board meetings filmed in room #315 on Monday nights.

The Board agreed with the following meeting schedule:

Monday, April 23, 2012	-	Regular Meeting/Long Range Planning
Tuesday, April 24, 2012	-	Special Town Meeting
Monday, April 30, 2012	-	NONE
Monday, May 7, 2012	-	Regular Meeting/Long Range Planning
Monday, May 14, 2012	-	NONE
Monday, May 21, 2012	-	Regular Meeting/Long Range Planning
Monday, May 28, 2012	-	NONE (Memorial Day Observed)
Monday, June 4, 2012	-	Regular Meeting/Long Range Planning
Tuesday June 5, 2012	-	Annual Town Meeting
Monday, June 11, 2012	-	NONE
Monday, June 18, 2012	-	Regular Meeting/Long Range Planning
Monday, June 25, 2012	-	NONE

(5) Time extension request on Off-Street Parking Plan for A & A Jewelers

The Planning Director stated that the applicant is asking for another time extension on the Planning Board's deadline for action on the Off-Street Parking Plan for A & A Jewelers.

A motion was made by Mr. Sousa, duly seconded by Mr. Toomey, and unanimously voted (5-0) to grant the time extension request on the deadline for action from April 30, 2012 to July 15, 2012.

(6) Chapter 91 Waterways License Application for William & Julie Booth

The Planning Director reported this waterways license application is seeking permission from the State to construct a walkway, fixed pier, and floating dock on property located at 3 Cedar Avenue owned by William and Julie Booth.

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A motion was made by Mrs. Miller, duly seconded by Mr. Toomey, and unanimously voted (5-0) to authorize the Planning Director to sign the application.

(7) Planning Board's F/Y'12 budget update thru March

The Planning Director noted that the budget is in good shape.

A motion was made by Mr. Sousa, duly seconded by Mrs. Miller, and unanimously voted (5-0) to acknowledge and file the Planning Board's F/Y'12 budget update thru March.

(8) Administrative review of parking lot changes for proposed COA garage

Present: Richard Rheume, Prime Engineering, Inc.

The Planning Director noted that this review concerns the parking lot and access to the new garage for the Council on Aging on Rogers Street. He pointed out that access to the garage will be thru the existing COA parking lot and there are no new curb cuts on Rogers Street. Mr. Perry noted the plan complies with the requirements of Section 16.

Discussion ensued.

A motion was made by Mr. Sousa, duly seconded by Mrs. Miller, and unanimously voted (5-0) to approve the Off-Street Parking Plan entitled "Proposed Garage, Dartmouth Council on Aging, Rogers Street, Dartmouth, MA" for a parking facility to be located at 84 Rogers Street. The parking plan was submitted to the Planning Office on April 9, 2012.

The Plans referred to in this action are listed below:

<u>Title</u>	<u>Sheet</u>	<u>Date</u>
Proposed Garage, Dartmouth Council on Aging	1 of 1	11/02/11 rev. 4/13/12

Approval of this plan does not imply compliance with other Town ordinances, standards, and/or requirements administered by other Town agencies.

(9) Initial review of Preliminary Subdivision Plan entitled "High Hill Development"

Present: Richard Rheume, Prime Engineering, Inc.

The Planning Director stated this Preliminary Plan is for land located on the east side of High Hill Road north of Faunce Corner Road. It shows two lots and two parcels off a proposed turnaround. He noted the plan complies with the zoning requirements for the Single Residence B zoning district, as well as the Subdivision Regulations.

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Discussion ensued.

A motion was made by Mrs. Miller, duly seconded by Mr. Toomey, and unanimously voted (5-0) to approve with modifications the Preliminary Subdivision Plan entitled "High Hill Development" dated March 19, 2012 for property located off High Hill Road. The plan consisting of one sheet was prepared for Peter J. Hawes by Prime Engineering, Inc. and submitted to the Planning Board office on March 19, 2012.

The plan was approved with the following modifications and conditions which should be addressed in a Definitive Subdivision Plan evolving from this Preliminary Plan:

1. The proposed street needs a name and the name must not duplicate or sound like an existing street name.
2. There is an existing catch basin at the northwest corner of High Hill Road and Pine Island Road that drains into the small depression where the proposed detention basin will be located. This catch basin and the existing piping should be shown on the definitive plan and the sizing of the basin should take this additional runoff into account.
3. The proposed detention basin must meet the buffer requirements of Section 3.310g, particularly since it is located close to streets.
4. The Board of Health requires that "No building shall be placed on lots 1 or 2 without the prior written consent of the Board of Health" pursuant to Chapter 41, Section 81U.
5. The developer should be aware of Board of Health Supplemental Regulations and is cautioned that the drainage easement and wetlands may impair the ability to construct a septic system for lots.
6. Notice is given that the Board of Health will not give variances for new construction.
7. To avoid littering caused by inappropriate trash collection and disposal practices, the Board of Health requires that a note be placed on the plan indicating that: "Property owners shall be responsible for their own collection and disposal of trash. Trash may not be placed on a public way other than frontage of the lot where the trash is generated. If, in the future, the Town develops a new policy and procedure this requirement may be modified."
8. The applicant is hereby put on notice that in order to preserve the Single Residence B zoning for this subdivision, a Definitive Subdivision Plan must be submitted and approved by the Planning Board in the time period specified by M.G.L., Chapter 40A, Section 6 (7 months from date of Preliminary Plan submittal).

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Approval of this plan does not imply compliance with other Town ordinances, standards, and/or requirements by other Town agencies.

(10) Rescission and amendment to Definitive Subdivision Plans entitled “Dartmouth Heritage Industrial Park, Sections 1 and 2”

Present: Richard Riccio, Field Engineering, Co., Inc.
Dr. Rahim Aghia, landowner
Jack Arruda, EMI Dartmouth Solar LLC

The Planning Director stated that the owner of the approved Dartmouth Heritage Industrial Park Subdivision Plans (Sections 1 and 2) would like to completely rescind Section 2 of that approval and a portion of Section 1 by rescinding all the side streets and individual lots. Mr. Perry explained that the owner has signed an affidavit stating his total ownership of all the lots and interests in the streets being rescinded. He further provided an explanation as to why he believed no public hearing is necessary.

The Chairman differed with Mr. Perry's opinion citing his reasons to hold a public hearing.

Several Board members commented that this is not the first time the Board has waived the requirement to hold a public hearing and a general discussion ensued.

As a result, a motion was made by Mrs. Miller, duly seconded by Mr. Toomey, and unanimously voted (5-0) to send a letter to Town Counsel requesting his opinion in the matter.

Additionally, the applicant was to provide the necessary paperwork to advertise for a public hearing since it was unknown how Town Counsel would opine and not to delay further the applicant.

(11) Planner's Report

- Signs on Town property

The Planning Director stated the Select Board's office is investigating whether to develop standards for private businesses to allow signs in the Town's right of ways. A group of individuals from the various Town departments met on this to provide advice. The group unanimously felt this should not be allowed.

The Planning Board agreed and asked that a letter be sent to Mr. Cressman informing him that the Planning Board does not recommend any policy or bylaw to allow additional signage in the public right-of-way.

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- Auto repair in aquifer

The Planning Director reported that the person trying to develop the Tech Built property on Route 6 in the Aquifer is still asking to move the non-conforming auto service business across the street to the Tech Built site. He mentioned developing a new business at Tech Built will speed up the hazardous waste cleanup on that site. Staff has consistently recommended against this. The Planning Board agreed.

- South Wharf development

Mr. Perry stated there will be a preliminary meeting with Dave Nolan and his architect to discuss the South Wharf development. The Planning Board was interested in attending that meeting and asked the Planning Director to speak to Town Counsel about the purpose of that meeting and whether the Planning Board should attend.

Appointment

(12) 8:00 P.M. – APPOINTMENT - Rich Landry: Administrative review of Off-Street Parking Plan regarding modifications to the former Saturn Dealership on Faunce Corner Road

Present: Rich Landry, Landry Architects
Attorney John Williams, representing Kia car dealership
Kia car dealership representative

The Planning Director briefed the Board on a proposed Kia car dealership to be located in the former Saturn car dealership on Faunce Corner Road. He said the new dealership would require an addition to the building which affects vehicular flow onsite. He also mentioned that the applicant does not provide the link in a connection between Comfort Lane and Old Faunce Corner Road behind the Texas Roadhouse.

Attorney John Williams, representing the Kia car dealership, gave an overview of the proposal. He spoke about the business owner's association which runs with the land in the plaza and mentioned the principals involved in the new dealership do not want to provide the access road.

Lengthy discussion ensued.

In the end, it was the consensus of the Planning Board that a connection should be shown on any submission of plans for this site.

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Administrative Items

(13) Planning Board Reports with Recommendations to Town Meeting on Articles A thru E

The Chairman commenced with the Town Meeting report for Article E first. This article is going to Special Town Meeting tomorrow evening as result of a citizens' petition. The article seeks to amend Section 37.200 of the Zoning Bylaws by prohibiting large scale solar farms from certain residential districts.

It is noted that Deborah Wender, Director of Development, as well as, many Town residents were present to hear the Board's position on this proposed zoning article.

The Planning Director stated that he had prepared two options for the Board's consideration as there are many arguments for both sides. Mr. Perry mentioned that he recommends the option which is favorable to the article.

Discussion ensued with each Board member voicing their opinion.

Eventually, after much dialogue, a motion was made by Mr. Sousa, duly seconded by Mr. Mickleson, and unanimously (5-0) to approve the following:

Planning Board Report with Recommendation on Article 1
"Prohibit Solar Farms in Residential Districts"
Spring Special Town Meeting, April 24, 2012

The proposed Zoning By-Law amendment was the subject of a public hearing held on April 9, 2012, notice of which was properly published in The Chronicle on March 21, 2012 and March 28, 2012. Notice of the public hearing was also sent to SRPEDD/ SEED; Municipal Zoning and Land Use; the Planning Board's of Fall River, New Bedford, Westport, Freetown, and Gosnold; and posted in the Town Office Building.

Article 1 would amend Section 37.200 of the Zoning By-Laws by prohibiting large scale photovoltaic installations in all residential zones. This article is proposed by concerned citizens of Dartmouth.

After receiving input from the public hearing and follow-up discussions, it would be appropriate at this time to ban large scale solar farms from residential districts. The zoning bylaw to site solar farms in residential districts needs to address issues that the complete ban and a proposed Select Board Annual Town Meeting article do not address. The Planning Board proposes to work on and develop a revised large scale solar farm bylaw and return to Town Meeting this Fall. Approval of Article 1 will ban these large scale facilities until a better solution is found and brought back to Town Meeting for action. In effect, this article allows a temporary moratorium until a revised bylaw for residential districts can be developed.

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The Planning Board would prefer a Special Permit for large scale solar farms in residential districts. The Special Permit could include conditions that address issues raised at the public hearing held on April 9, 2012. Two significant issues raised were the destruction of woodlands and the use of prime agricultural land for large scale solar farms. A Special Permit could restrict use of those lands for solar farms. The Special Permit would also require abutter notification and a public hearing on a large scale solar farm proposal. This was a major concern raised by residents at the public hearing on the zoning article. Requiring a Special Permit in residential zones should not be counter to M.G.L. Chapter 40A, Section 3, since solar farms would still be allowed by-right in industrial and commercial districts and solar farms under 250 kw would still be allowed in all residential districts. It is important to remember that this article is banning large scale commercial solar farms, not solar facilities for most users.

Approval of Article 1 would place a temporary halt on large scale solar farms until the best bylaw for the Town is presented to Town Meeting. If Town Meeting approves Article 1, the Planning Board will present a revised bylaw at the Fall Annual Town Meeting in October.

For the above reasons, the Planning Board voted unanimously to recommend favorably on passage of Article 1.

Next, the Planning Board discussed its recommendation on Article A which would amend Section 16.105A of the Zoning By-Laws by increasing the number of days and events per year that temporary uses can be held.

The Planning Director referenced the letter dated April 20, 2012 from Town Counsel which identifies some wording changes on several of the Town Meeting articles for June.

The Planning Board agreed with Town Counsel's recommended language clarifications and recommended that the revisions be incorporated into the warrant for June Town Meeting. Planning staff would so notify the Select Board and the Town Clerk.

A motion was made by Mrs. Miller, duly seconded by Mr. Mickelson, and unanimously voted (5-0) voted to recommend the following on Article A:

Planning Board Report with Recommendation on Article A
"Temporary Business Uses"
Spring Annual Town Meeting, June 5, 2012

The proposed Zoning By-Law amendment was the subject of a public hearing held on April 9, 2012, notice of which was properly published in The Chronicle on March 21, 2012 and March 28, 2012. Notice of the public hearing was also sent to SRPEDD/ SEED; Municipal Zoning and Land Use; the Planning Board's of Fall River, New Bedford, Westport, Freetown, and Gosnold; and posted in the Town Office Building.

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Article A would amend Section 16.105A of the Zoning By-Laws by increasing the number of days and events per year that temporary uses can be held. Currently, temporary business uses can occupy a premise for one event a year and no more than 14 days. The proposed amendment would increase the number of days to 21 and not more than three separate events. Each event limited to no more than 14 days. Temporary uses, primarily tent sales, help small businesses. Temporary uses will still require a Building Department review to ensure the event does not create safety or traffic problems.

The Planning Board voted unanimously to recommend favorably on passage of Article A.

Next, the Planning Board moved to its recommendation on Article B.

A motion was made by Mr. Sousa, duly seconded by Mrs. Miller, and unanimously voted (5-0) voted to recommend the following on Article B:

Planning Board Report with Recommendation on Article B
“Technical Research Group”
Spring Annual Town Meeting, June 5, 2012

The proposed Zoning By-Law amendment was the subject of a public hearing held on April 9, 2012, notice of which was properly published in The Chronicle on March 21, 2012 and March 28, 2012. Notice of the public hearing was also sent to SRPEDD/ SEED; Municipal Zoning and Land Use; the Planning Board's of Fall River, New Bedford, Westport, Freetown, and Gosnold; and posted in the Town Office Building.

Article B would amend Sections 33.801 and 34.801 of the Zoning By-Laws by changing the composition of the Technical Research Group for the Residential and Commercial Wind Turbine By-Laws. The proposed amendment would increase the number of persons on the Technical Research Group from 5 to 7. The two new members would be a representative from the Board of Health and Board of Assessors. The new members will add additional areas of expertise to the Technical Research Group which is charged with reviewing and making recommendations regarding residential and commercial wind turbine proposals.

The Planning Board voted unanimously to recommend favorably on passage of Article B.

Next the Planning Board discussed its recommendation on Article C.

The proponents for this article were present and voiced no objection to the changes recommended by Town Counsel.

A motion was made by Mr. Sousa, duly seconded by Mr. Toomey, and unanimously voted (5-0) voted to recommend the following on Article C:

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Planning Board Report with Recommendation on Article C “Prohibit Commercial Wind Turbines in Certain Zoning Districts” Spring Annual Town Meeting, June 5, 2012

The proposed Zoning By-Law amendment was the subject of a public hearing held on April 9, 2012, notice of which was properly published in The Chronicle on March 21, 2012 and March 28, 2012. Notice of the public hearing was also sent to SRPEDD/ SEED; Municipal Zoning and Land Use; the Planning Board's of Fall River, New Bedford, Westport, Freetown, and Gosnold; and posted in the Town Office Building.

Article C would amend Sections 34.301, 36.200 and 36.300 of the Zoning By-Laws by prohibiting commercial wind turbines in all zoning districts except Limited and General Industrial Districts. It would also prohibit use variances for commercial wind turbines in all zoning districts except General and Limited Industrial Districts. This article is proposed by concerned citizens of Dartmouth and co-sponsored by the Planning Board. It is a response to the general conclusion that commercial wind turbines are not suited to be constructed in residential districts. Commercial wind turbines because of their large blade size and high tower height adversely affect the character of residential districts. The Dartmouth Master Plan provides guidance regarding the importance of community character. The Master Plan Executive Summary has 10 statements of our vision for the future. Four of those statements refer to community character while not one mentions developing alternate energy facilities.

The Board of Health supports banning commercial wind turbines from residential districts because of concerns regarding potential negative health impacts. The ban on commercial wind turbines greater than 10kw will not prohibit wind turbines of 10kw or under. This will still allow smaller scaled wind turbines for residents and farmers which are the only wind turbines erected to date in the Town. Members of the Agricultural Commission have mentioned that wind turbines under 10kw could meet the needs of most farmers. These smaller turbines minimize impacts on the rural, aesthetic character of the community and are not known to contribute to adverse health issues. During the public hearing on this article, the Planning Board overwhelmingly heard support for this article.

The Planning Board voted unanimously to recommend favorably on passage of Article C.

Lastly, the Planning Board discussed its recommendation on Article D which would amend Section 37 of the Zoning By-Laws by requiring site plan review, by modifying buffer requirements, by increasing setback requirements, except for in industrial zones where setbacks would be reduced, by modifying financial security requirements and by modifying other requirements of the bylaw.

Deborah Wender, Director of Development, was present for the discussion of this proposed zoning article.

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Since this article relates to Section 37 of the Zoning Bylaws and there is another article being presented to Special Town Meeting tomorrow evening which relates to Section 37 of the Zoning Bylaws, the Planning Board felt it was prudent to postpone their recommendation at this time.

A motion was made by Mr. Sousa, duly seconded by Mr. Mickelson, and unanimously voted (5-0) to postpone voting on the Planning Board's Report with Recommendation to Town Meeting on Article D until their next meeting scheduled for May 7, 2012.

(14) For Your Information/New Business

- Letter from Anthony C. Savastano dated April 16, 2012 re: Borrego Solar Farm
- Planning staff timesheets
- Subcommittee Reports

Mr. Toomey mentioned the Planning Board overlooked appointing its representative to the Technical Research Group when the Board voted on its officers and subcommittee representatives. It was also noted the Planning Board needs to appoint an Alternate Planning Board member.

Planning Staff would place both items on the next Planning Board agenda for action.

Mrs. Miller gave an update on SRPEDD projects. Particularly with the Faunce Corner Road I-195 interchange design which is 75% complete and will go out to bid next Spring. Construction will take about 18 months.

A motion was made by Mr. Sousa, duly seconded by Mr. Mickelson, and unanimously voted (5-0) to adjourn this evening's regular meeting at 10:48 p.m.

Respectfully submitted,
Mrs. Joyce J. Couture
Planning Aide