



**MINUTES OF PLANNING BOARD CONTINUED PUBLIC HEARING
for Zoning Articles F and G for Fall Town Meeting
September 22, 2014 (Original public hearing date 8/25/14)
Planning Board's Meeting Room #315
Town Office Building, 400 Slocum Road, Dartmouth, MA**

Planning Board

Mr. Joel Avila, Chairman
Mr. Joseph Toomey, Vice Chairman
Mrs. Lorri-Ann Miller, Clerk
Mr. John V. Sousa
Mr. Kevin A. Melo

Planning Staff

Mr. Donald A. Perry, Planning Director
Ms. Jane Kirby, Planning Aide

Chairman Avila opened the continued public hearing¹ at 7:40 p.m. with all Planning Board members and Planning Staff present.

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Also Present:

Anthony C. Savastano, Town Counsel
Gloria Bancroft, SouthCoast Alliance for a Cleaner Tomorrow (ScACT)
Members of the general public

This hearing concerns the following zoning articles, which would amend the Dartmouth Zoning Bylaws:

Article F would amend the zoning bylaws by adding a new Section 24, which would regulate contaminated fill.

Article G would amend Section 16 of the zoning bylaws by including Bicycle Parking Guidelines and Design Standards.

Chairman Avila proceeded to review public hearing procedure in detail.

No new correspondence was received.

Chairman Avila explained that Article F would not be ready in time for Fall Town Meeting and allowed Town Counsel to elaborate.

Attorney Savastano stated at the public hearing of August 25, 2014 that he could produce a draft "Contaminated Bylaw" for Board review in time for Fall Town Meeting. He determined that experts needed to be involved in order to give a detailed definition for "contaminated soils" if the Planning Board wanted to prohibit

¹ For more information, see minutes of the Planning Board's regular meeting of September 22, 2014



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the importation of contaminated soils through a zoning bylaw. He noted that the Board of Health is working on regulating contaminated soils as a public health issue. He stated that if the Board of Health's regulations didn't address the issues adequately, the Planning Board could revisit a zoning bylaw at that point.

Chairman Avila wondered if there are broader objectives beyond public health that can be addressed through the zoning bylaw process, or if the two Boards were looking at the same concerns, which is public health. He was seeking input from audience, Planning Board, and Staff.

Town Counsel advised that experts need to be solicited to help both Boards understand the comprehensive nature of soils.

Chairman Avila invited public comment.

Gloria Bancroft stated that public health is of the utmost importance, and that we need to educate ourselves as a community, not just through Board of Health. She noted that the Soils Board does not have the jurisdiction to regulate incoming fill and believed that this issue should continue to be investigated. She stressed that it makes sense for the community to do the research to determine what the fill soils are and what the potential, harmful impact could be. She hoped that this bylaw will be ready for Spring Town Meeting.

Chairman Avila invited Board questions and comments.

Planning Board member Joseph Toomey mentioned that he has a NIOSH (National Institute of Occupational Safety and Health) book which talks about low, moderate, and high dangers to public health regarding materials. He questioned if the bylaw could "speak to" the effects of contaminants rather than trying to define what contaminated is.

Attorney Savastano stated that a Zoning Enforcement Officer could not enforce "effects".

Mr. Toomey explained that he meant, for example, that if asbestos is placed within 50 feet of a well that within a year you get an effect that is moderate to the health conditions of people impacted by the well.

Attorney Savastano stated that the Planning Board cannot regulate in the same way as the Board of Health; reminding the Board that zoning bylaws either define allowed uses, prohibited uses, or allowed uses through the Special Permit process. He continued to stress that experts needed to be involved in this process. Chairman Avila agreed that the advice of technical experts is needed.



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The Board questioned if the Planning Board and Board of Health could have joint meetings on this topic, and use the same experts to save the Town money.

Attorney Savastano recommended the Boards remain separate and independent to avoid the appearance of impropriety. He felt that the same technical experts could be utilized by both Boards independently. He explained that the levels of contaminants, and a clear definition of what contaminated means, is needed to determine how to move forward with this issue. He stressed that at this time, the bylaw is not ready for Town Meeting and strongly advised withdrawing the article.

Chairman Avila summarized by saying that Town Counsel is questioning if there are Planning Objectives beyond the public health issues the Board of Health will be addressing, advising the Planning Board to get better educated with the subject if it wants to move forward with a zoning bylaw. He listed what the zoning bylaw should address; the soils testing process, and the enforcement provisions that would need to be stated in a zoning bylaw.

Gloria Bancroft reminded the Planning Board that numerous communities have an Earth Filling Bylaws; with some bylaws being very simple. She stressed that simple language should be looked at as well, so that the Town could have something in the bylaws that will protect people from contaminated soils. She asked the Planning Board to look at what is currently allowed in Town, since damaging soils are allowed by right.

Attorney Savastano reminded the Planning Board that the Board of Health has the strongest interest in protecting public health and is currently working on regulating contaminated soils; which is why he asked the Planning Board if there was another objective beyond the public health issue so as to not have a duplicative purpose.

The Board agreed that the Board of Health has more expertise and more power to protect public health.

Chairman Avila invited final comments. No further comments were received.

Chairman Avila addressed Article G at this time.

No new correspondence was received.

The Planning Director reminded the Board that Alan Heureux submitted a revised version of the article, which the Planning Board adopted on September 8, 2014.



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Chairman Avila invited public comment. No comments were received.

A motion was made by John Sousa, duly seconded by Kevin Melo, and unanimously voted (5-0) to close the public hearing at 8:33 p.m. and resume the Planning Board's regular meeting.

Respectfully submitted,
Jane Kirby
Planning Aide

APPROVED BY:
The Dartmouth Planning Board



