

**MINUTES OF PLANNING BOARD PUBLIC HEARING OF APRIL 9, 2012**  
**Five Proposed Zoning Articles to Amend Dartmouth Zoning By-Laws**  
**7:30 p.m., Planning Board's Meeting Room #315, Town Office Building**  
**400 Slocum Road, Dartmouth, MA**

Present:

**Planning Board**

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

**Planning Staff**

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

Ms. Jane Kirby, Principal Clerk for the Zoning Board of Appeals, was present in Ms. Couture's absence.

The Chairman opened the public hearing<sup>1</sup> at 7:30 p.m.

This public hearing was for five proposed zoning articles which would amend the Dartmouth Zoning By-laws. Article A would amend Section 16.105A by increasing the number of days and events per year that Temporary Uses can be held. Article B would amend Sections 33.801 and 34.801 by changing the composition of the Technical Research Group for the Residential and Commercial Wind Turbine By-laws. Article C would amend Section 34.301, 36.200 and 36.300 by prohibiting commercial wind turbines in all zoning districts except General Industrial and Limited Industrial Districts. It would also prohibit use variances for commercial wind turbines in all districts except General and Limited Industrial Districts. Article D would amend Section 37 (Large Scale Photovoltaic Installations) by requiring site plan review, by modifying buffer requirements, by increasing setback requirements, except for industrial zones where setbacks would be reduced, by modifying financial security requirements and modify other requirements of the by-law. Article E would amend Section 37.200 by prohibiting Large-Scale Ground-Mounted Solar Voltaic Installations in all residential zones.

The following people were also present and spoke during this zoning article public hearing:

Deborah Wender, Director of Development  
Robert Michaud, Board of Assessors  
David Brownell, Agricultural Commission  
Karen Pecora, Representing Vanity Fair  
William Trimble, 201 Hixville Road  
Roseanne O'Connell, 252 Smith Neck Road

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<sup>1</sup> For more information, see minutes of the Planning Board's regular meeting of April 9, 2012

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Gloria and Paul Bancroft, 748 Collins Corner Road  
Jane Zimmerman, 42 Naushon Avenue  
Maria Connor, 790 Fisher Road  
Beverly King, 459 Bakerville Road  
Greg Wider, 559 High Hill Road  
Robin Sullivan, 575 High Hill Road  
John Brindisi, 242 Smith Neck Road  
Sean Sullivan, 311 Smith Neck Road  
David and Kathleen Costa  
Elizabeth Gay  
Louanne Pryor  
And numerous other Town residents

Chairman Avila reviewed zoning by-law amendment procedure with the general public as defined by state law. He noted that the Planning Board must make a recommendation on each proposed zoning article, but the recommendations are advisory in nature. He explained that for a zoning article to pass, a 2/3 vote by Town Meeting members is required.

Chairman Avila disclosed that this public hearing was being recorded by a reporter from the Standard-Times.

The Planning Director stated that legal notice was sent on March 15, 2012 to SRPEDD/SEED, DHCD Municipal Zoning and Land Use, the Planning Boards of Fall River, Westport, Freetown, Gosnold, and New Bedford, various Town Boards, and posted in the Town Office Building.

A motion was made by Lorri-Ann Miller, seconded by Joseph Toomey, Jr., and unanimously voted (5-0) to waive the reading of the legal notice, which appeared in The Chronicle on Wednesday, March 21, 2012 and again on Wednesday, March 28, 2012.

The Board addressed each article in the order shown in the advertisement.

### **Article A – Sponsored by the Planning Board**

#### **Would amend Section 16.105A by increasing the number of days and events per year that Temporary Uses can be held**

The Planning Director reviewed the existing by-law and the proposed amended language to the by-law, which would extend the amount of days for temporary uses from 14 to 21 days per year.

Lorri-Ann Miller explained that the increase is to help promote small businesses in the community.

The Chairman asked for public comment.

Karen Pecora, representing Vanity Fair, voiced her support.

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Hearing no further comments, the Chairman proceeded to the second zoning article.

**Article B – Sponsored by the Board of Health and Planning Board**

**Would amend Sections 33.801 and 34.801 by changing the composition of the Technical Research Group for the Residential and Commercial Wind Turbine By-laws**

Joseph Toomey, Jr. disclosed that he is currently a member of the Technical Research Group and asked if he should recuse himself. It was determined to be unnecessary.

Mr. Toomey stated that some of the language in this proposed article seemed ambiguous and suggested using the word “the” rather than “a” for (1) a Town Engineer, and believed the last sentence should not read “staggered three-year terms” but should clearly define the terms of members.

The Chairman asked for public comment.

Hearing no further comments, the Chairman proceeded to the third zoning article.

**Article C – Sponsored by Roseanne O’Connell and others and the Planning Board**

**Would amend Section 34.301, 36.200 and 36.300 by prohibiting commercial wind turbines in all zoning districts except General Industrial and Limited Industrial Districts.**

Correspondence received:

A letter from Sam Hallenbeck to the Planning/Select Board dated 4/5/12 supporting the proposed article.

The Planning Director read the correspondence into the record.

The Chairman asked if Roseanne O’Connell wished to provide comment.

Roseanne O’Connell clarified that citizens of Dartmouth were the sponsors of this article and expressed discomfort in being “singled-out”. She proceeded to review the proposed article for the Board and general public.

The Chairman pointed out that if this article is passed, it would also prevent Board of Appeals special permit or variance relief.

The Chairman asked for public comment.

William Trimble stated his opposition to this proposed article, which in his opinion, would “zone out” wind turbines in Dartmouth if passed. He explained that the General Industrial and Limited Industrial Districts are in the flight path for the New Bedford Airport, and FAA regulations would

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not allow commercial wind turbine heights in these districts.

Elizabeth Day argued that not all industrial zones are in the flight path.

Flight path restrictions were discussed. The Board determined that flight path and surrounding radius information is needed in order to be able to make a recommendation on this article, and asked the Planning Director to do the research and provide the necessary information for the next meeting.

Robert Michaud felt that single-family home taxes were more lucrative than potential wind turbine revenues, and cautioned against "rushing into green energy". He felt that there is a profit to be made by the builders of wind turbines but little benefit for the town.

Gloria Bancroft noted that wind turbines below commercial kilowatt hours would still be allowed in residential districts.

Commercial versus non-commercial wind turbine heights were discussed briefly, as well as of wind turbines on farmland.

The Chairman asked if there were any further comments regarding this article. There were none.

The Chairman proceeded to the fourth zoning article.

#### **Article D – Sponsored by the Select Board**

**Would amend Section 37 (Large Scale Photovoltaic Installations) by requiring site plan review, by modifying buffer requirements, by increasing setback requirements, except for industrial zones where setbacks would be reduced, by modifying financial security requirements and modify other requirements of the by-law.**

Correspondence received:

Section 37 "redline" changes with handwritten revise date 4/9/2012

It was noted that this last version of the amended by-law language was received without enough time to review prior to this hearing.

Deborah Wender was present as a representative for the Select Board and spoke at length on the amended by-law language, addressing questions from both the Board and the general public.

The Chairman asked for public comment.

Greg Wider voiced his support of the proposed article.

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William Trimble stated that the current by-law is adequate. He noted that regardless of the setbacks, land can still be cleared to the property line. He stated that increasing the buffer would diminish available space for installations. He went on to review M.G.L. c. 40A, §3, explaining that it is unlawful to unreasonably regulate photovoltaic installations.

David Brownell supported the proposed article, but cautioned against destroying agricultural land with the installations. He stated that he is against installing these systems on prime farmland.

A lengthy discussion ensued describing the ballast system, and how they are less intrusive on the land than traditional solar farm installations.

Deborah Wender noted that the ballast system requirement is a provision of this proposed amendment to the by-law.

Site Plan Review Authority versus Special Permit Authority was discussed, with the conclusion that these installations are “by right” and therefore a Special Permit would not be appropriate.

Robert Michaud expressed concern with the financial surety language and questioned how anyone could predict costs that far into the future.

The Planning Director reviewed the inflation language in the by-law for Mr. Michaud.

A brief discussion regarding the potential impact of solar farms on property value ensued.

Robin Sullivan stated that solar farms are an industrial business and only profit the landowners and companies, and should only be located in the industrial zone.

The Chairman reminded Mrs. Sullivan that Article E is proposing to prohibit these installations in all residential zones.

The Planning Director proceeded to define and illustrate the Town’s residential zones on the zoning map, noting that solar is currently an allowed use equally in all districts.

Gloria Bancroft, referencing 37.407 of the proposed article, noted that the language states “all transformers and inverters shall be located as far away from residential uses as possible...” and questioned how that would be determined.

Deborah Wender responded that the Site Plan Review Authority would help make that determination.

The Chairman stated that the Planning Board would want to minimize residential impact, but noted that it would be difficult to apply as standard to all parcels and all proposals, as each situation would be unique to the project.

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A lengthy discussion ensued in terms of clear cutting and its impact to the rural character of the Town.

Gloria Bancroft argued that clear cutting is not green and would like to see regulations in place to prevent massive clearing.

Elizabeth Gay thought that regulations are in place which prevent clear cutting such as conservation restrictions, scenic roads, etc.

Deborah Wender stated that developers would still have to follow Town regulations.

Robert Michaud stated that removing acres of forest affects wildlife.

Beverly King explained the long process for reporting and recording observed, endangered wildlife, illustrating how difficult it is to protect species that are threatened and endangered.

At this time, the Chairman asked for Board comment.

The Board discussed natural buffers versus screened buffers, and how there is no room in the proposed article language for the Site Plan Review Authority to make determinations on a case-by-case basis.

John Sousa, referencing 37.309, stated that response time standards needed to be in place and should not be “satisfactory to the appropriate Fire Chief” as that was too vague. He also questioned if the entire community is on board with the Green Communities Act, or if it is just the policy makers.

Lorri-Ann Miller expressed concern with required project documentation being submitted to the Director of Inspectional Services rather than directly to the Site Plan Review Authority, as the site plan review and approval was needed first for a project to move forward.

The Planning Director explained that the Building Department was the designated centralized location, and that site plan review and approval is just part of the process for obtaining the permit, which is issued by the Building Department.

Joseph Toomey questioned the date of applicability (June 5, 2012) and what was protected before and after that date. Referencing 37.200, Mr. Toomey expressed concern with the Aquifer Protection District By-law exemption language.

Kathleen Costa expressed the same concern, and feared that solar panels near the aquifer may contaminate existing wells.

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Robert Michaud submitted correspondence at this time referenced as:

From the Stanford Journal of International Relations  
Entitled: Cleaning Up After clean Energy: Hazardous Waste in the Solar Industry  
By Ishan Nath

He proceeded to discuss how solar panels are considered hazardous waste.

Louanne Pryor cautioned against rushing into green energy and recommended that the Planning Board do their research.

Maria Connor expressed concern with the Town losing rural area.

The Chairman asked if there were any further comments regarding this article. There were none.

The Chairman proceeded to the fifth zoning article.

**Article E – Sponsored by Colleen & Joseph Noseworth and Gloria Bancroft**

**Would amend Section 37.200 by prohibiting Large-Scale Ground-Mounted Solar Voltaic Installations in all residential zones.**

Gloria Bancroft reviewed the proposed article with the Board and general public, and argued that the way the existing by-law is written with “by right” language limits any control the Town may have to regulate solar farms. Mrs. Bancroft listed other communities that prohibited large scale installations in their residential districts.

Mrs. Bancroft emphasized that the existing by-law was written and approved without any real goal, vision or control; and stated that this is not the way for Dartmouth to be “green”. She argued that forested land is green, and illustrated that it is written in the Town’s Master Plan to preserve the rural character of our Town. She questioned how clear cutting forested land to accommodate large scale solar farms preserved the rural character of our Town.

Mrs. Bancroft pointed out that this proposed article is not trying to completely eliminate solar farms from the residential districts, just the large scale installations. Smaller solar farms would still be allowed.

Paul Bancroft stated that the intent of this article is similar to the revised wind turbine by-law article.

Roseanne O’Connell expressed discontent with the existing by-law process and believed that abutter notification for proposed projects would at least give citizens a chance to voice their opinions.

Joseph Toomey stated that he is interested in being “green” but has seen turbines and solar

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panels disappoint as a replacement to oil and natural gas. He stressed that everything needs some control and agreed that residential districts should be protected.

Lorri-Ann Miller stated that in the haste to protect residential districts with this proposed article, the Town as a whole was not protected. She stressed that by removing these types of projects out of the residential zones, it could push them into other vulnerable zones like the Village District or the Maritime Industrial District. She also expressed concern with losing industrial land and the potential for job loss, if large portions of industrial land are used for large solar farms. She felt that other districts should have been included in this article.

Gloria Bancroft expressed that she would love to see a requirement that large companies use local workers to install commercial solar farms in Town.

Chairman Avila agreed that the existing by-law does seem to reverse the vision of the Master Plan.

Robin Sullivan asked what would happen if Articles D or E are not passed at Town Meeting, and the Board responded that the existing by-law would remain as it is.

The Chairman asked if there were any further comments regarding this article. There were none.

The Chairman asked the Planning Director for a recommendation on how to proceed.

The Planning Director recommended that the public portion of the hearing be closed, because the Board received public input at this hearing. He stressed that the Board could still collect information and present any data collected at the next meeting for the public to comment on at the discretion of the Planning Board.

*John Sousa motioned to close the public portion of the hearing, which was duly seconded by Stanley Mickelson and voted (4 yes – 1 no) to close the public portion of the hearing at 11:20 p.m and return to the regular Planning Board meeting.*

*Joseph Toomey voted against closing the public portion of the hearing.*

Respectfully submitted,

Jane Kirby  
Principal Clerk  
Zoning Board of Appeals