

**MINUTES OF PLANNING BOARD PUBLIC HEARING OF JANUARY 7, 2013**  
**Repetitive Petition for No Fossil Fuel, Fisher Road, to go before the Board of Appeals before 2 years have elapsed from the date of action by Board of Appeals Room #315, Town Office Building, 400 Slocum Road**

RECEIVED  
2013 JAN 29 A 10:40  
DARTMOUTH TOWN CLERK

**Planning Board Members**

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 opened at 7:30 p.m. the public hearing<sup>1</sup> concerning a request to determine if the Planning Board should give its consent in order to allow the petition of Mary O'Donnell representing No Fossil Fuel, 54 Grove Street, Kingston, MA 02364 to go before the Dartmouth Board of Appeals to amend condition #12 of Variance Decision #2012-11 granted by the Dartmouth Zoning Board of Appeals, before two years have elapsed from the date of action by the Board of Appeals. The condition affects property owned by Philip DeMoranville located on Fisher Road, Assessor's Map 32, Lot 54; Map 37, Lots 37, 39, 40 and 41; and Map 33, Lot 71.

Four regular Planning Board members and Planning staff were sitting for this petition request. As a direct abutter to the proposal, Mr. Sousa recused himself from participating in this public hearing.

The Chairman provided procedural information for the general public.

A motion was made by Mrs. Miller, seconded by Mr. Mickelson for discussion, and unanimously voted (4-0), to waive the reading of the legal notice, which appeared in The Chronicle on Wednesday, December 19, 2012, and again on Wednesday, December 26, 2012.

The Planning Director stated the application for the Repetitive Petition was officially logged on December 12, 2012. Mr. Perry proceeded to read the following correspondence into the record:

- Letter from Thomas Hardman, Site Design Engineering dated Dec. 11, 2012

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<sup>1</sup> For more information, see minutes of the Planning Board's regular meeting of January 7, 2013

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Mr. Perry referenced the site plans displayed on the wall. He identified the proposed area of the subject property to be used for the solar panel array and also the parcel of land proposed to be donated as Conservation land.

Attorney Brian Cruise, Associate Town Counsel, provided a procedural explanation on why the applicant needed to get permission from the Planning Board by Repetitive Petition to go before the Dartmouth Board of Appeals to amend condition #12 of the variance decision #2012-11.

The Chairman asked if the applicant or his representative would like to speak.

Attorney John Yunits, representing No Fossil Fuel, presented historical background information on the original variance request and its approval, the 27 acre parcel to be used for the proposed solar array, the land owner's objection to the variance decision with respect to condition #12 since it was never intended to restrict the entire 174 acre site, an interim litigation filing, an agreed upon out of court settlement with the plaintiffs on that litigation, and a subsequent amendment approval by the Board of Appeals which included a condition requiring that the applicant file a Repetitive Petition with the Planning Board. Lastly, Attorney Yunits stressed that the amendment approval by the Board of Appeals was the right decision, limiting ZBA project approval to the solar array, and allowing Mr. DeMoranville to continue operating his other existing businesses as it was originally intended.

Thomas Hardman (Site Design Engineering) representing No Fossil Fuel, provided an overview of the site, pointing out the specific land Mr. DeMoranville has agreed to donate to the Town and how it connects to land currently owned by the Town.

The Chairman called for comments and/or questions from the public.

There were none.

The Chairman asked if the Planning Board had any comments or questions.

Mrs. Miller explained it is the responsibility of the Planning Board to determine whether specific and material changes have been presented this evening. It is her opinion there has been substantial change with the land being donated to the Town for conservation purposes and the Board should approve this Repetitive Petition.

Attorney Yunits responded to several questions from Mr. Toomey, providing more detail on the proposed location of the solar panel array, the location of the existing cranberry bogs, and the gravel pit locations. He further clarified that even though the solar panel operation is being sold, the land will still be owned by Mr. DeMoranville, and both Mr. DeMoranville and No Fossil Fuel will be responsible for the maintenance of the solar array site. He noted that should for any reason the solar panels become obsolete, it will be their responsibility to remove those solar panels. He briefly described the energy agreement with NSTAR. Timelines on the Board of Appeals process and approval were clarified.

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Mr. Hardman elaborated on the location of the proposed conservation land as it relates to the location of the solar farm. He also spoke about the Board of Appeals process and their decision, mentioning that when the conditions were identified at the meeting he never heard a restriction being placed on the entire 170+ acres.

The Chairman noted that he had procedural concerns with this application. He felt the process for this Repetitive Petition was backwards, asking the Planning Board to give its consent to something that has already happened in the Board of Appeals.

Attorney Yunits said he wished he could provide one legal gem to clarify the issue but he has never seen this process done this way before. He noted they were hoping to do a simple modification through the Zoning Board of Appeals but it was not meant to be. Attorney Yunits stressed the Board of Appeals request was always for 27 acres of the site, it was never intended to restrict anything more. We have collaborated with Attorney Cruise for a solution and now my client is looking to move forward with this.

Upon inquiry from Mr. Avila, Attorney Yunits explained the reasons and intent of the proposed land donation and also confirmed that the amendment does not affect any of the conditions of the solar project at all, just conditions placed on the land around it being used for gravel removal and cranberry bogs. The amendment reinstates Mr. DeMoranville's rights to expand those uses if he so chooses.

The Chairman asked if anyone would like to provide final comment.

Mr. Mickelson stated he agrees with Mrs. Miller's viewpoint and recommended the Planning Board vote favorably on this request.


Both Attorney Yunits and Mr. Hardman responded to Mr. Toomey's concerns and questions with respect to condition #12 of the variance decision #2012-11 and the location of the nearby rifle range.

Hearing no further questions, Mr. Perry recommended the Planning Board close this evening's public hearing.

In a roll call vote, a motion was made by Mr. Mickelson, duly seconded by Mr. Toomey, and unanimously voted to close this evening's public hearing at 8:07 p.m.

Stanley Mickelson – yes; Lorri-Ann Miller – yes; Joseph Toomey, Jr. – yes; Joel Avila – yes.

**APPROVED BY:**  
**The Dartmouth Planning Board**

  
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Respectfully submitted,  
Joyce J. Couture  
Planning Aide