

MINUTES OF REGULAR PLANNING BOARD MEETING OF JANUARY 7, 2013
Planning Board's Meeting Room #315, Town Office Building
400 Slocum Road, Dartmouth, MA

RECEIVED
2013 JAN 29 A 10:40
DARTMOUTH TOWN CLERK

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 four Planning Board members and Planning staff present. Mr. Toomey arrived a few minutes late at 7:04 p.m.

Administrative Items

(1) Approval of Minutes

Regular Meeting of December 17, 2012

A motion was made by Mr. Sousa, duly seconded by Mrs. Miller for discussion, and unanimously voted (4-0) to approve the minutes of the regular meeting of December 17, 2012 as written and the minutes of the public hearing of December 17, 2012 "Definitive Plan entitled Hixville Estates" as written.

(2) Invoices

Wolters Kluwer Law & Business dated December 13, 2012 for \$320.00
re: Handbook of Massachusetts Land Use and Planning Law

A motion was made by Mr. Sousa, duly seconded by Mr. Mickelson, and unanimously voted (4-0) to approve the voucher for Wolters Kluwer Law & Business dated December 13, 2012 in the amount of \$320.00.

(3) Correspondence

Legal Notices from City of Fall River
Legal Notices from Dartmouth Board of Appeals
Letter from the Director of Inspectional Services re: Definition of signage

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Discussion on the letter from Paul Murphy, the Director of Inspectional Services, was deferred until later in the meeting so Mr. Toomey could participate.

A motion was made by Mr. Mickelson, duly seconded by Mr. Sousa for discussion, and unanimously voted (4-0) to acknowledge and file the above referenced legal notices.

Mr. Toomey arrived at this time being 7:04 p.m.

(4) Endorsement of Approval Not Required (ANR) Plans

John A. Webster et al Swift Road dated December 10, 2012

The Planning Director stated that this ANR plan is for property located on the south side of Swift Road near the cul-de-sac. It does not create any new buildable lots but transfers land between abutting lots. Mr. Perry noted one lot receives additional frontage while the other lot maintains the minimum frontage required by zoning.

Brief discussion ensued.

A motion was made by Mr. Sousa, duly seconded by Mrs. Miller, and unanimously voted (5-0) to endorse the ANR plan for John A. Webster et al dated December 10, 2012 for property located on the south side of Swift Road.

(5) Update on Planning Board's F/Y'13 budget through November

A motion was made by Mr. Sousa, duly seconded by Mr. Toomey, and unanimously voted (5-0) to acknowledge and file the Planning Board's F/Y'13 budget update thru November.

(6) Endorsement of Definitive OSRD Subdivision Plan entitled "King Meadow Preserve"

The Planning Director reported that the plans have been revised in accordance with the certificate of action. He said all the legal documents are in order. He recommended the Planning Board endorse the plan.

A motion was made by Mr. Sousa, duly seconded by Mrs. Miller, and unanimously voted (5-0) to endorse the Definitive OSRD Subdivision Plan entitled "King Meadow Preserve".

(7) Correspondence

Letter from the Director of Inspectional Services re: Definition of signage

Discussion ensued on the letter from Paul Murphy, Director of Inspectional Services, which offers the Planning Board ideas on addressing recent signage concerns raised by many residents of the Town. As a result, it was suggested that Mr. Murphy be invited to the next Planning Board meeting to discuss various options with him.

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(8) Time extension request on deadline to complete required improvements in the "Riverside Woods" Subdivision

The Planning Director noted the developer is requesting a 1-year extension to complete improvements in the Riverside Woods Subdivision. He noted a signoff signature has been submitted from most of the current lot owners.

A motion was made by Mr. Sousa, duly seconded by Mrs. Miller, and unanimously voted (5-0) to extend the deadline to complete required improvements in the Definitive Subdivision Plan entitled the "Riverside Woods" from February 22, 2013 to February 22, 2014.

Public Hearing

(9) 7:15 P.M. – PUBLIC HEARING - Request by PAL Realty Trust to rescind two lots and a street in an approved Definitive Subdivision Plan entitled "White Tail Run" for land located on the east side of High Hill Road

A motion was made by Mr. Sousa, duly seconded by Mr. Toomey, and unanimously voted (5-0), to recess the Planning Board's regular meeting at 7:20 p.m. in order to go into a public hearing¹ concerning a request by PAL Realty Trust to rescind two lots and a street in an approved Definitive Subdivision Plan entitled "White Tail Run" for land located on the east side of High Hill Road.

The regular meeting resumed at 7:25 p.m.

Administrative Items

(10) Action on request by PAL Realty Trust to rescind two lots and a street in an approved Definitive Subdivision Plan entitled "White Tail Run"

For those present, the Planning Director read the draft certificate of action which had been prepared for the Board's consideration.

A motion was made by Mrs. Miller, duly seconded by Mr. Sousa, and unanimously voted (5-0) to rescind the approved Definitive Subdivision Plan entitled "White Tail Run" dated May 21, 2009 which was approved by the Planning Board on August 10, 2009 and referred to in a Certificate of Action dated August 11, 2009.

The Board determined that the owner of all the lots and the street affected by the amendment (PAL Realty Trust), signed an affidavit attesting the same and agreed with the proposed rescission of the plan.

This rescission does not take effect until 20 days have elapsed from the date of filing this certificate with the Town Clerk and there is no appeal.

¹ For more information, see minutes of Planning Board's Public Hearing of Jan. 7, 2013 "White Tail Run"

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Public Hearing

- (11) **7:30 P.M. – PUBLIC HEARING - Repetitive Petition of No Fossil Fuel to go before the Dartmouth Board of Appeals before two years have elapsed to amend condition #12 of Variance Decision #2012-11 for 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**

At this time, Board member John Sousa announced that as a direct abutter, he would be recusing himself from participating in the public hearing.

In a roll call vote, a motion was made by Mrs. Miller, duly seconded by Mr. Mickelson, and unanimously voted (4-0), to recess the Planning Board's regular meeting at 7:30 p.m. in order to go into a public hearing² concerning a Repetitive Petition of No Fossil Fuel to go before the Dartmouth Board of Appeals before two years have elapsed to amend condition #12 of Variance Decision #2012-11 for property owned by Philip DeMoranville located on Fisher Road.

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

The regular meeting resumed at 8:07 p.m.

Administrative Items

- (12) **Action on Repetitive Petition to allow No Fossil Fuel to go before the Dartmouth Board of Appeals to amend condition #12 of Variance Decision #2012-11 for 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**

Present: Attorney Brian Cruise, Associate Town Counsel
Attorney John Yunits, representing No Fossil Fuel
Thomas Hardman, Site Design Engineering

Planning Board member, John Sousa, being a direct abutter to the subject property, recused himself from voting on this request.

Prior to taking a vote, Mr. Toomey asked if he could discuss in open session the legal opinion from Town Counsel which was in the Board's packets.

Attorney Cruise asked how the material was placed in the packet.

² For more information, see minutes of Planning Board's Public Hearing of Jan. 7, 2013 "Repetitive Petition of No Fossil Fuel"

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Planning Staff noted the letters were separated within the packet and labeled "For Your Information Only" with the wording highlighted that it is privileged and confidential attorney-client communication.

With that said, Attorney Cruise confirmed that it is still confidential and not part of an open meeting request, the Planning Board would need to vote to allow it to be put into the public record. Otherwise, the Planning Board would need to go into Executive Session to discuss it and maintain the confidentiality.

In the end, it was the consensus of all the Board members that there was no need to go into Executive Session.

The Planning Director stated that it is his opinion that specific and material changes were addressed regarding concerns of the Board of Appeals in condition #12 of variance decision #2012-11. He recommended the Planning Board grant consent to allow the Board of Appeals to amend the variance.

A motion was made by Mrs. Miller to grant consent to amend condition #12 of Variance Condition #2012-11 in accordance with the draft certificate.

At this time Mr. Perry was asked to read a portion of the draft certificate prepared for the Planning Board's consideration which included the following findings:

- 1. The proposed lease area for the solar farm is limited to 31.6 +/- acres of the total 174.2 +/- acres identified as the subject parcels.*
- 2. The Board of Appeals determined in Variance Decision #2012-11 that a Special Permit granted in 1976 for the subject parcels would permit gravel removal and cranberry bog operations and allow the complete stripping of all trees from the subject parcels. Consequently, Condition #12 was intended to address the removal of trees in approving the proposed solar panel array.*
- 3. Philip DeMoranville, the owner of the property, now has offered to donate and convey to the Dartmouth Natural Resources Trust (DNRT) for conservation purposes, the parcel that is identified on Town Assessor's Map 42 as Lot 30 which consists of 26 acres. This area being conserved is roughly equivalent to the area of land being developed as a solar farm. This parcel is contiguous to other parcels that are owned by the Dartmouth Conservation Commission.*
- 4. Ensuring the conservation of the parcel being donated compensates for any potential destruction of land on the subject parcels through the stripping of trees for the solar farm.*

In conclusion, the Planning Board believes the requirements for granting a Repetitive Petition under M.G.L., Chapter 40A, Section 16 have been met. The Planning Board hereby gives its consent to allow the applicant to amend condition #12 of Variance

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Case #2012-11 with the Board of Appeals before two years have elapsed since the unfavorable decision of the Board of Appeals.

The motion was duly seconded by Mr. Mickelson, and so voted in a roll call vote: Stanley Mickelson – yes; Lorri-Ann Miller – yes; Joseph Toomey, Jr. – no; Joel Avila – yes.

The motion failed because one of the four voting members of the Planning Board did not vote favorably. The vote on this Repetitive Petition requires a super majority vote of the Planning Board (4 out of 5).

Associate Town Counsel Brian Cruise recommended that the Planning Board should give a reason for its decision. He stated there is not much case law that exists on this. There is one Appeals Court case that cites that approval or denial is within the Planning Board's discretion, so essentially any reason can be given. Attorney Cruise recommended that some reason should be given, otherwise if the decision were appealed, the decision could be considered arbitrary and capricious if no reason was given.

The Chairman expressed concern that since only one member of the Planning Board had voted not to grant consent how would the Planning Board come up with a reason for its denial.

Mr. Toomey volunteered and said he was prepared to give a reason for not granting consent. Mr. Toomey gave the following reasons for his negative vote:

Under Item 4. of the draft certificate prepared by the Planning Director, Mr. Toomey referenced the wording – "Ensuring the conservation of the parcel being donated compensates for any potential destruction of land on the subject parcel through the stripping of trees for the solar farm."

He stated that he was concerned with the interaction of the cranberry bogs and the license to use pesticides within the law that Mr. DeMoranville holds as a permit, his gravel pit, and his history of using explosives to loosen up the gravel which is within the law, and the interaction of those two activities with the solar panels, including beside that, the proximity of the gun range.

Mr. Toomey continued saying the solar panels are going to certainly cause more sheeting action of the water and he has read detailed information in the package he received about the soils and how the water tables close to the surface and the stone and everything, the bedrock is very close to the surface, it is a very specific situation.

The interaction between the solar panels and the cranberry bogs and the gravel pit, he believes item #12 is right on target and he supports that and he does not support relaxing that, for the betterment and long range operation, for both the proponent and for the Town.

Planning Staff was instructed to notify the applicant that the Planning Board did not grant consent and attach the meeting minutes to the letter which explains the reason consent was not given.

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Administrative Items

(13) Planner's Report

- New Aquifer Map

The Planning Director stated that the Water Department delivered a new aquifer map with a request to place it on the next Town Meeting for adoption. The new map shows the revised areas 1 and 2 for the new wells located south of State Road on the former Panelli property.

- U-Mass off campus housing

Mr. Perry informed the Board that Vision Development is looking into developing off-campus student housing at the Pine Hill Sand and Gravel Company on Old Westport Road. He noted this is the same company that was previously looking at the property across from the U-Mass campus on Old Westport Road. A meeting with the Planning Board to discuss this proposal will be scheduled soon.

(14) For Your Information/New Business

- PPA decision on application of Midway Realty, LLC
- Subcommittee Reports
- Board of Appeals decisions
- Planning Director's review for Board of Appeals
- Planning staff timesheets

Mr. Toomey reminded the Board that there is a workshop being held this Thursday, January 10th at U-Mass Dartmouth, regarding solar panels. He encouraged Board members to attend if they were able.

Mr. Mickelson, the Planning Board's representative on the Lincoln Park Plan Approval Authority, reported on a recent approval of the detailed plans for an apartment building and conceptual plans for more apartments and retail development.

Mr. Toomey provided updates on the Subcommittees: Soils Board, Municipal Facilities, and Technical Research Group.

The Chairman instructed Mr. Perry to send a letter to the Select Board regarding the Planning Board's recently approved priority list. Mr. Perry was to apprise the Select Board that Paul Murphy, the Director of Inspectional Services, would be appearing before the Planning Board to discuss "signs" which is the second item on the priority list.

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(15) Long Range Planning – Discussion of Dartmouth Street/Bliss Corner zoning

The remainder of the meeting was dedicated to discussing the proposed Dartmouth Street/Bliss Corner zoning. The Planning Director introduced the concept of an overlay district for this area as a more acceptable means of accomplishing the economic development goals of the district. He noted a significant benefit of the overlay district is that all rights under the existing zoning remain the same. The mixed use overlay district would also be permissive rather than restrictive. It would allow greater uses and benefits than the current zoning allows and is not a restrictive overlay like the Aquifer Overlay.

Some Board members were concerned that the overlay district did not address concerns of taking residential areas out of the business zones.

After discussion, it was a general consensus that the rezoning could be accomplished in three parts: one overlay district for the large retailers on Dartmouth Street which includes Benny's and Big Value Outlet; one overlay district for the existing mixed use areas of small businesses and homes along the main streets; and finally, identifying wholly residential neighborhoods such as the Moonshine Corner area of Russells Mills Road that should be taken out of the business zone and made residential.

A motion was made by Mr. Sousa, duly seconded by Mr. Toomey, and unanimously voted (5-0) to adjourn this evening's regular meeting at 9:20 p.m.

Respectfully submitted,
Joyce J. Couture
Planning Aide

APPROVED BY:
The Dartmouth Planning Board



