

TOWN OF DARTMOUTH PLANNING BOARD



MEETING MINUTES

PLANNING BOARD
JANUARY 9, 2023

Present

Kevin Melo, Chair
Christopher O'Neil, Vice Chair
Margaret Sweet, Clerk
Kevin Estes
Nicholas Psichopaidas
Christine O'Grady, AICP – Planning Director

As the Town Office Building has limited capacity for public meetings due to the Governor's ban on public gatherings during the COVID-19 emergency, this public meeting will instead be held remotely through the Zoom application with live interaction by the public using the Join Zoom Meeting login information provided on each agenda.

Chairman Melo opened the Board's regular meeting at 7:00 pm. A roll call was taken.

Motion- A motion to recess the regular meeting and open a Public Hearing was made by Mr. O'Neil, seconded by Mr. Estes. A roll call vote was unanimously voted and approved 5-0-0.

Public Hearing

(1) Scenic Road Request – Tree Removal/Replacement Stonewall Repair (PRTS-22-2)
12 Little River Road (Tax Assessor Information and online application identifies the property number as 12 and the house has the number 14) (Assessor's Map 89 Lot 8)

Discussion: Ms. O'Grady stated that she has not yet received the professional arborist's report, so no decision can be made at tonight's meeting. Mr. Timothy Barber, Director of DPW/Tree Warden conducted a site visit with an arborist, who determined that the trees which the owner wants to remove are not dying. The house and stone wall are set very close to the right of way. The arborist indicated that his report will recommend trimming the trees and possibly the roots but not removing them.

Unfortunately, the property owner is concerned with the process and has decided not to pay for the legal ad or the abutter notification. Ms. O'Grady had made an executive decision, due to the timing of the holiday season, to publish the ad first without receiving payment. She will not make this mistake again, submitting legal ads for publication on good faith, as neither Planning nor DPW has a budget for legal ads. She recommended a continuance to January 23, 2023.

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Motion- A motion to continue to January 23, 2023 was made by Mr. O'Neil, seconded by Mr. Psychopaidas. A roll call vote was unanimously voted and approved 5-0-0.

Continued Public Hearing

(2) Definitive Subdivision Plan entitled "Windsong Acres" Proposed 5-lot subdivision off of Jason Dr. (Assessor's Map 125 Lots 19, 19-1 19-2, 19-3, 19-4, 19-5, 19-6, and 19-7)

Discussion: Ms. O'Grady stated that the applicant's engineer requested via email a continuance to the first meeting in February. She reminded the Board that there is a court deadline of February 1, 2023 on the matter. The matter can only be continued to January 23, 2023 in order to meet the timeline extension unless a new timeline extension is authorized. She noted that the Conservation Commission is meeting tomorrow and is awaiting the Board's decision before moving ahead. The last document she received from the applicant was dated November 28, 2022. She heard that there were other documents submitted in December but she did not receive them.

Town Counsel Atty. Brian Cruise joined the meeting. He stated that there is a February 1, 2023 filing deadline for related litigation. There have been four continuances issued so far; the court has set this matter for a status conference on February 13, 2023. He was reticent to recommend any more continuances; however, Windsong Acres' counsel has stated that the reason for the requested continuance is COVID-related. For that reason, Atty. Cruise is recommending a Planning Board continuance to February 6, 2023 with the Public Hearing to be closed on that date. He will then be able to relay definitive details to the court on February 13, 2023 even if the Board has not made its final determination. He does not want to push the litigation past February 20, 2023.

Mr. Rich Rheume of Prime Engineering spoke on behalf of the applicant. He stated that a document submitted on December 28, 2022 was a memo to ConCom signed by Mr. Gus Raposo, drainage consultant. Ms. O'Grady stated that she did not receive that memo. Mr. Rheume responded that he was unaware of that; he will forward it to her as soon as possible. There are revisions on the drainage plan dated December 8, 2022 which Ms. O'Grady stated that she also did not receive. Later, Ms. O'Grady retracted her statement, finding an email to her attention dated December 12, 2022. However, she does not have the December 28, 2022 memo. The application with all the accompanying documentation is not listed online because the filing was done so long ago.

Mr. Rheume stated that the applicant is responding to the memo diligently, but the employee doing the work is out sick with COVID, and that is why they've had to request the extension and continuance. Ideally, they would revise the plans and calculations and submit to DPW, which would review and submit comments; however this is not practical

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with only seven or eight business days for submission for the January 23, 2023 meeting. Mr. O'Neil stated that he would like to see the matter resolved as quickly as possible.

Atty. Cruise stated that the Board could hold a Special Hearing on February 13, 2023, but this would not be necessary as long as it is agreed that the Public Hearing would be closed no later than February 6, 2023. A written decision does not have to be made by the Planning Board by that date, but Atty. Cruise needs definitive details by February 13, 2023 in order to satisfy the court. A March 1, 2023 timeline extension would be appropriate. The Board can vote on the same day the project is presented, but it is not recommended.

Motion- A motion for a timeline extension to March 1, 2023 and a continuance to January 23, 2023 was made by Mr. O'Neil, seconded by Ms. Sweet. A roll call vote was unanimously voted and approved 5-0-0.

Administrative Items

(3) Endorsement of Approval Not Required (ANR) Plan (PANR-22-11)
Morton Ave / Old Westport Rd (Assessor's Map 156 Lot 67)

Discussion: Ms. O'Grady stated that she still needs a CAD drawing, but otherwise the ANR is eligible for endorsement. It is within the Aquifer Protection Zone with lot coverage requirements. Both lots have adequate frontage.

Mr. Steve Gioiosa, PE of SITEC/CEC spoke on behalf of the applicant. He stated that this is a family transfer within a 13-acre property to separate out a 2-acre parcel. He will download the CAD drawing to the Town's server tonight.

Motion- A motion to approve an ANR was made by Ms. Sweet, seconded by Mr. Psychopaidas. A roll call vote was unanimously voted and approved 5-0-0.

(4) Gendreau Estates LLC – Surety Issue

Discussion: Ms. O'Grady stated that this 29 lot subdivision was approved in 2006-2007, but construction was not started until 2016. There have been some lot releases, the most recent last year. All but two buildable lots have been released. There are five roadways within the subdivision. There is a Letter of Credit associated with the project held with Rockland Trust for \$450,000 to complete the roadways. The Town Treasurer received notice that this Letter of Credit is due to expire on January 26, 2023. Town Counsel asked about deadlines in the file: Ms. O'Grady could not find details even to determine if

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released lots have been sold. To clarify, this is not a performance bond; it is a Letter of Credit which must comply with different regulations under the bylaw.

Atty. Cruise stated that six lots were released in February 2022. The Board chose to release these lots with a surety that unfortunately was insufficient. The original roadways are incomplete and now require resurfacing. The original performance covenant has standard language that calls for completion of improvements within 18 months of a lot release, or the Town can release the surety. The issue is that the bank Letter of Credit has a one-year expiration date, which is a shorter timeframe than what is allowed within the bylaws. Bylaws specify that a surety credit must be for 19 months. The Letter of Credit should have included a deadline that matches the 18 month improvement period, but it does not. Meanwhile, the developer has not done any improvements in this past year and has not indicated a plan for improvements. The Town can write a letter to the bank stating that the developer is not acting in good faith, being clear that while the credit is expiring, the 18-month period has not. Technically there is no violation currently. The bank may choose, or not, to allow the Town to release the surety guarantee.

Ms. Sweet asked what would happen next. Atty. Cruise stated that the end result may be that the developer would lose the right to develop the two lots and would lose the value of improving and selling them. The Town would not own the lots. The developer may decide, or not, that walking away is the best financial alternative. If the lots are abandoned with taxes unpaid, then the Town could take them. Mr. O'Neil asked if a Mechanic's lien can be put on the project; Atty. Cruise stated no.

The Letter of Credit typically goes directly to the Town Treasurer. Perhaps the Treasurer's office should be notified that any Letter of Credit must be in compliance with the bylaws which state the surety is for at least 19 months. Ms. O'Grady will inform the Treasurer. Mr. Estes asked if the credit could be turned into an escrow account for use over the next several months. Ms. O'Grady stated that Mr. Gary Carreiro, Interim Treasurer, advised her that in other towns, a Planning Board could open up a separate account for this purpose. Atty. Cruise responded that by statute, for amounts above \$100,000, an approval must be voted by Town Meeting. He stated that in this case, Town Meeting approval would be necessary. Ms. O'Grady will contact the Treasurer regarding writing a letter to Rockland Bank with input from Town Counsel and the Treasurer.

Mr. O'Neil asked why the Board last year released eight lots without enough surety. Atty. Cruise stated that the amount is not the real problem right now, it is the timeframe. He believes that the Treasurer's office probably communicated that surety had been received, but didn't know about the timeframe issue. He cleared up a misconception that the Town holds surety so that it can be used to force the sale of the lots, and can use the money for the DPW to finish the construction. This is not correct; rather, releasing the surety becomes a financial cost/benefit issue for the developer because it takes away the right to develop the lot and be able to sell the improved lot. The lots can't be released

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until the roadways are complete. The Town cannot take the lots. The developer could sell the lots to a bank or another developer who would have to fix the roads, but cannot sell the lots individually.

Atty. Cruise stated a possible argument could be made that the release of the lots by the Planning Board last year was invalid because the Letter of Credit expiration date does not comply with the bylaws. The Board was not made aware of this problem and voted with incorrect information, making the vote null and void. The problem is that the developer has already sold most of the lots; the case would then extend to and involve individual home owners who bought into the subdivision in good faith. A title search would only show a lot release but not necessarily that the lot had been sold or the common work completed.

What is the incentive for the bank to issue the check to the Town? Atty. Cruise stated that the issue is whether the developer is in violation. Has the developer failed to complete the work? Nothing has been accomplished with the common infrastructure in 2022, and is unlikely to be completed during these winter months. Ms. Sweet suggested that perhaps the Town should not accept Letters of Credit, and only accept performance bonds. Atty. Cruise stated that the Town cannot choose which method of performance guarantees is offered. The bank is under no obligation to match the Town's bylaws; however, the Town can reject the bank agreement if it is not in compliance.

Ms. O'Grady stated that no complaints have been received by homeowners within the subdivision. She pointed out that there are other cases of older developments with Letters of Credit on file which will need to be addressed.

Ms. Sweet asked if the Town could take the lots by eminent domain. Atty. Cruise stated yes, but then the profit would go to the developer who would then have no obligation to finish the roadwork. It would probably be simpler and cheaper for the Town to accept the roadways as public roads and finish the work itself. There may not be a Home Owners Association in effect yet depending upon how many lots have been sold, which is yet to be determined. Ms. O'Grady stated that there has been little communication with the developer. Atty. Cruise stated that if the bank releases the funds, they must be used to finish the project; they cannot be saved or turned over to the General Fund. Again, this would require a vote of Town Meeting. The DPW would do the work, and the developer would still own the two lots but have to find other funding to develop them. The Planning Board could work with the DPW to prioritize the work.

Atty. Cruise stated that some towns are including inflation estimates or recalculations in their performance bonds. This may be considered for the future.

In summary, Atty. Cruise recommended sending a letter to the bank by January 26, 2023 with input from himself and the Treasurer's office. Technically, the letter should come from

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the Treasurer's office. He suggested that for the future, the Treasurer should be informed of Letter of Credit and performance bond regulations, and that the Planning Board should receive a copy of surety notes prior to voting to release lots. He reiterated that it is no one's fault, but moving forward, all parties should be aware of the requirements. Members agreed that this has been an education.

(5) Annual Report 2022 – Ms. O'Grady stated that with all the unusual work in the past week, she has not completed a draft of the report. She will send a draft via email to members for discussion at the next meeting.

(6) FY2024 Budget – Ms. O'Grady stated that the budget is required to be level-funded. The Town is making an offer to a candidate for the Assistant Director position at Grade 8, Step 1. She will send a draft budget via email to members.

(7) Minutes – December 12, 2022

Discussion: None

Motion- A motion to approve the minutes of December 12, 2022 was made by Ms. Sweet, seconded by Mr. O'Neil. A roll call vote was unanimously voted and approved 5-0-0.

(8) Correspondence

Legal Notices: Town of Westport, City of Fall River
Town Election Information

Discussion: Ms. O'Grady stated that the Town Clerk sent a notice about Board member reelections.

Motion- A motion to acknowledge and file correspondence was made by Mr. O'Neil, seconded by Ms. Sweet. The roll call was unanimously voted and approved 5-0-0.

(9) For Your Information/New Business

Zoning Board of Decisions/Legal Ads - None

Subcommittee Reports – Ms. Sweet reported that she attended a Community Preservation Committee meeting at which Mr. Michael Gagne of Partners in Housing, a nonprofit corporation, spoke about the need for 55+ housing in Dartmouth. Perhaps

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zoning bylaws need to be changed to provide more elderly housing. Ms. O'Grady stated that she could speak with Town Counsel about bylaws changes. The Hathaway Road project didn't go through because the property is zoned as Single Family Residential. Ms. Sweet stated that there are several categories for elderly housing, each with its own regulations. There is not as much funding for elderly housing construction as for 40B or other lower-income housing. Ms. O'Grady stated that there are no 55+ or 65+ projects in the works, but there is a meeting next week for an Assisted Living project near Reed Road. There has been no news on the Hawthorne Country Club property. Mr. Melo stated that the cost of goods and building make these projects prohibitive, but the projects are needed. Mr. Estes concurred. Ms. Sweet may make some contacts with developers as a real estate agent. Mr. Psichopaidas asked if the goal is to make comprehensive changes to zoning bylaws for all types of elderly housing, or only for 55+. Ms. O'Grady responded that initially, the concern is for 55+ development but that may be only the beginning.

Chairperson's Report - Mr. Melo asked if Ms. O'Grady had received any additional comments on the Master Plan. She stated that she received comments from a private citizen about east/west connections across the Town to relieve congestion on State Road. There are already a few lines in the Master Plan draft relating to this issue.

Planner's Report - Outstanding Project Updates – Ms. O'Grady stated that many processes are changing in the Town as new employees arrive. There is a lot of interaction between departments. She will bring surety issues and other outstanding issues to the Board's attention. She is learning more about the detailed specifics of projects, and is working with the Town Administrator to fine-tune the processes. Street acceptances come to Town Meeting with frustration on the part of subdivision homeowners who thought the Town would back their roadways against developer default. There are many pieces that must be understood and clarified. Another example is stone walls on scenic roads in subdivisions; more clear communication is important. It is in the best interest of the Town to provide communication. There are a number of projects on hold. She would like residents and Board members to know that the Planning Board is not intentionally holding anyone up; if there are a few departments with similar concerns on a particular project, developer, or engineer, there is usually a good reason. Many projects go through easily. Department heads bend over backwards to help the process be the best it can be. Circumventing the process will have no benefit. The online portal has much information, and if one follows the steps, the process can be quick and relatively easy.

Update on Master Plan - Ms. O'Grady stated that Mr. Cody Haddad, Assistant Town Administrator, is working on finalizing the Open Space and Recreation chapter of the Master Plan before his employment with the Town ends on Friday. There is a workshop scheduled for Thursday night. She will send out details to any interested member. The final meeting is January 25, 2023. The Town Administrator will take over the oversight of

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the Master Plan when Mr. Haddad leaves. SRPEDD is hoping to print out the full plan within a few weeks. Ms. O'Grady stated that she has asked department heads to look at their pertinent chapters and provide input one more time. She asked Board members if they have time to look once more at the plan. Federal and state funding relies heavily on coordination with a good plan.

(9) Adjourn

The next meeting will be held on January 23, 2023.

Motion- A motion to adjourn the meeting at 9:00pm was made by Ms. Sweet, seconded by Mr. O'Neil. The roll call vote was unanimously voted and approved 5-0-0.

Approved By Dartmouth Planning Board
Date of Approval: January 23, 2023