

# TOWN OF DARTMOUTH PLANNING BOARD



## MEETING MINUTES

PLANNING BOARD  
JANUARY 23, 2023

### **Present**

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

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*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 (Assessor's Map 89 Lot 8)

Discussion: Ms. O'Grady stated that the office received the arborist's report and photographs. The property is listed as 12 Little River Road by the Assessor's map data, but is posted on the house as 14 Little River Road.

Mr. Timothy Barber, Director of DPW/Tree Warden had conducted a site visit with an arborist, who determined initially that the trees which the owner wants to remove are not dying. The arborist cannot completely verify the condition of the two trees in question because of the time of year. Initially the arborist recommended trimming the branches and the roots, but recommended in the report that it may be best to remove the trees. Ms. O'Grady interprets this as a recommendation to DPW to take down the trees. The owner applied to DPW for removal of the trees. Because it is a designated scenic road, abutter notifications must be sent and a legal notice must be published. Ms. O'Grady went ahead with the notifications, but to date, payment for these processes has not been received. To move ahead, Ms. O'Grady recommended that no approval be made until payment has been received from the applicant.

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The owner, Mr. Richard Creighton, stated that there is damage to the foundation to his house in two areas. He has concern for which party accepts liability for repair of his house. He stated that he does not own the trees; they are on Town property. In regard to paying for the abutters' list, legal notifications, and physical removal of the trees, he noted that across the street from his property, a dead Town-owned tree was removed with no notification and no payment required by the property owner. As he does not own the trees in question which front his own property, he questions why he should have to pay for notifications and removal of the trees. Now, his property is damaged. The trees are 15 feet and 18 feet from his house. One of the trees is 80 feet tall. His concern is with north and north easterly winds which may blow the trees onto his house in a bad storm. A second concern is that underground, his main water line is located between the two root systems of the trees. He is not sure what access to the roots will do to his water main. He stated that these are not small roots; they are up to 18 inches wide. These above and below ground issues are a concerning liability. It is not an aesthetic issue.

Ms. O'Grady stated that concern about Town-owned trees are normally addressed by DPW and/or Eversource. Mr. Barber had assessed the situation and brought in an arborist. The recommendation is now that these two trees, and Ash and an Oak, should be removed. There are other trees planted in the immediate vicinity and a stone wall, complicating the scene. The Town does not have liability for the trees, as per guidance she received from DCR, the state Department of Conservation & Recreation. In good faith, she published the legal advertisement before receiving payment.

Motion- A motion to close the public hearing was made by Mr. Estes, seconded by Mr. Psychopaidas. A roll call vote was unanimously voted and approved 5-0-0.

Mr. Psychopaidas asked, respectfully, if Mr. Creighton is in a position to agree to the payment so that this matter may move forward, with the understanding that these concerns can and should inform future decisions involving Town-owned trees. Mr. Creighton responded that he would like to have time to consider a response. It is more a matter of principal than a financial burden. He doesn't know all the state rules regarding scenic routes and whose responsibility the trees are. In approximately 12 years, the trees have been trimmed only twice and only at his request because the branches are hanging over his roof. He would like to move ahead with the removal project as soon as possible. His steps are up in the air six inches due to the growing roots, and his foundation has a large crack in it. Should he go to the Building Inspector? He does not know what the correct process is or whose responsibility it is.

Mr. Creighton, after consideration, stated that he is more than willing to pay for the outstanding balance to move the project along, but reiterated that it is the principal at stake. Mr. Psychopaidas acknowledged and sympathized with Mr. Creighton and other home owners who might have similar issues. Ms. O'Grady stated that the legal fee is

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\$150.00 for publishing in the *Dartmouth Week* newspaper. This cannot be waived; however the abutter notification fee of \$47.00 could be waived by the Assessor's Office. She is comfortable handling this administratively.

Motion- A motion to allow the trees to be removed by DPW with Ms. O'Grady's administrative management of the legal notice payment was made by Mr. Psychopaidas, seconded by Mr. Estes. 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 office received a new set of plans and comments dated December 28, 2022. She stated that Town Counsel Atty. Brian Cruise had advised that this must be resolved by the end of January 2023 pending litigation in early February 2023.

Mr. Rich Rheaume of Prime Engineering spoke on behalf of the applicant. He stated that all comments have been addressed except for the surveyor's stamped plans. The surveyor will stamp the plans tomorrow and submit them to DPW. The Conservation Commission voted to close the public hearing and issue an Order of Conditions with the understanding that any changes to the plan will be submitted to them. The only change would be to the revision date of the plans, and would require them to re-record the plan. Mr. Rheaume will notify Ms. O'Grady of any changes.

Ms. Sweet pointed out that the agenda lists the project as a 5-lot subdivision, but it has been revised to a 3-lot subdivision. Ms. O'Grady will update the next agenda.

Motion- A motion for a continuance to February 6, 2023 was made by Ms. Sweet, seconded by Mr. O'Neil. A roll call vote was unanimously voted and approved 5-0-0.

### Administrative Items

(3) Gendreau Estates LLC – Surety Issue

Discussion: Ms. O'Grady stated that at the last meeting, Town Counsel Atty. Brian Cruise recommended sending a letter to the bank by January 26, 2023 with input from himself and the Treasurer's office. The letter has been drafted and revised. Ms. O'Grady recommended action tonight to authorize sending the letter which requests taking all the

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funds in the account for repair of the roadways within the subdivision. It was verified that all the lots that have been released were sold, with the majority of them built upon.

Motion- A motion to approve the letter to the bank as written by Town Counsel and the Treasurer's office was made by Mr. Estes, seconded by Mr. Psychopaidas. A roll call vote was unanimously voted and approved 5-0-0.

(4) Endorsement of Approval Not Required (ANR) Plan (PANR-22-10)  
753 Hixville Road (Assessor's Map 192 Lot 67)

Discussion: Ms. O'Grady stated that the street address is correct but the map lot numbers should be listed as 55-5, 55-1, and 56. This ANR is being brought by the owners of Lot 56. Lot 55-5 and 55-1 are proposed to be merged under the same ownership, with additional parcels being added to Lot 56 to address setback issues and a garage placement issue.

Mr. John Romanelli of Zenith Land Surveyors spoke on behalf of the applicant. He stated that the new owners discovered during closing on the property that the garage is not located fully on their property. Their plan includes merging land from three adjoining properties, owned by two separate parties, with Lot 56 so that the garage sits fully within the property boundaries. This is a two-phase project that will keep an existing easement so that there are no landlocked parcels without frontage. All parties have been informed of the process with notification to the Planning Board of the new deeds. Mr. Romanelli will be handling that process. Ms. O'Grady stated that she doesn't have the mylar yet but will receive all documents tomorrow.

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

(5) Chapter 61A Notice of Intent to Sell  
Statutory Notice- 859 Potomska Road (portion of Assessor's Map 24 Lot 87)

Discussion: Ms. O'Grady stated that this is another portion of a larger property already discussed in prior meetings, with land being taken out of Chapter 61A. Ms. O'Grady recommended that the Town not exercise its right of first refusal.

Motion- A motion to send a letter to the Select Board recommending that the Town not exercise its right of first refusal for the land was made by Mr. Psychopaidas, seconded by Ms. Sweet. A roll call vote was unanimously voted and approved 5-0-0.

(6) Chapter 91 Waterways Water-Dependent License (MassDEP 22-WW01-0154-APP)

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10 Water Street (Assessor's Map 117 Lot 10)

Discussion: Ms. O'Grady stated that this project has already been discussed. The proposal went before ConCom and DEP (Mass Department of Environmental Affairs), which requested changes to the plan. ConCom approved the plan. Ms. O'Grady recommended acknowledging receipt of the plan.

Motion- A motion to acknowledge the receipt and send a letter to DEP was made by Mr. O'Neil, seconded by Mr. Psichopaidas. A roll call vote was unanimously voted and approved 5-0-0.

(7) Discussion - Zoning Articles for Spring Town Meeting

Ms. O'Grady stated that the Town Administrator asked if the Planning Board was going to bring any zoning articles to the Spring Town Meeting. She is working with Tighe & Bond on a new zoning map and minor revisions to the bylaw. These are clean-up efforts, not changes in designations. She recommended bringing the revised zoning map and revised bylaws to Spring Town Meeting. Public hearings will have to be held within the next few weeks. Most bylaw language changes happen historically at the Fall Town Meeting but these are small changes that would be good to complete in the Spring.

She asked if members would like to submit bylaw changes for drive-through systems in the Neighborhood business zoning district, or any other changes. She doesn't feel the Site Plan Review is ready, and has not received any draft language from Town Counsel on 55+ housing.

Mr. Melo stated that he would like to see draft language for changes to the Neighborhood business zoning district to not allow drive-throughs for Spring Town Meeting. He acknowledged that Board members may not agree with him. Mr. O'Neil stated that members don't necessarily disagree, but more information is needed. Mr. Melo would like consensus on whether to explore the option. Mr. Psichopaidas would like more information on which residents the Board might be limiting by this proposal; additional research is needed. Mr. Estes stated that he is open to the discussion. Ms. Sweet stated that she is also open for the discussion. Ms. O'Grady will add a discussion to the agenda for the next meeting and do some research on the subject.

Mr. Melo asked Ms. O'Grady to contact the Town Administrator to save two spots on the Spring Town Meeting warrant for the zoning map and accompanying bylaw changes.

(8) Annual Report 2022

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Ms. O'Grady stated that she sent an email to members with a draft report, utilizing a past template. Some of the numbers are correct but many are placeholders. The biggest item will be the Master Plan. She has until the end of January to submit it to the Select Board. She welcomes comments.

#### (9) Minutes – January 9, 2023

Discussion: Ms. O'Grady noted that two minor changes were made to the minutes as submitted.

Motion- A motion to approve the amended minutes of January 9, 2023 was made by Mr. Psychopaidas, seconded by Mr. O'Neil. A roll call vote was unanimously voted and approved 5-0-0.

#### (10) For Your Information/New Business

Zoning Board of Decisions/Legal Ads – The Faunce Corner Road marijuana cultivation project hearing was extended to March 2023.

Subcommittee Reports - Mr. Estes stated that upcoming is the final public hearing for the Open Space & Recreation Committee meeting, followed by a final Board-only meeting on January 25, 2023 at which they will finish the Master Plan chapter.

Mr. Melo stated that he will attend a Soils Board meeting tomorrow to renew permit applications for existing businesses, with nothing new on the agenda.

Chairperson's Report – Mr. Melo already discussed the Neighborhood Business District issue.

Planner's Report - Master Plan – Ms. O'Grady stated that the final draft of the Master Plan is up on the website. There have been no recent comments. As Mr. Estes reported, the Open Space & Recreation chapter will be finalized on January 25, 2023. It will be incorporated in the draft. The draft will be printed in the next few weeks and then presented to the Select Board.

Ms. O'Grady attended the DEP Title V meeting at UMASS Dartmouth. It was well attended. The presentations are posted on the DEP website. There were discussions on how the municipalities could work together to present a united front.

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The new Assistant Planning Director, Mr. Ross Cutty, began work today. He is a recent graduate looking to become a professional in the field. The Town's Human Resources department has put together a comprehensive orientation procedure for new hires. She appreciates the guidance from the Town. She will introduce Mr. Cutty to Town departments including the MIS Department and the Town Administrator's office. She will be bringing him out and around so that he can get a good understanding of some of the projects that the office works on. She welcomed members to stop by to introduce themselves.

#### (11) Adjourn

The next meeting will be held on February 6, 2023. Zoom meetings will be allowed through the end of March 2023, after which it is under the jurisdiction of the Governor to decide.

Motion- A motion to adjourn the meeting at 8:02pm was made by Mr. Estes, seconded by Mr. Psychopaidas. The roll call vote was unanimously voted and approved 5-0-0.

Approved By Dartmouth Planning Board

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Date of Approval: February 6, 2023