

# TOWN OF DARTMOUTH PLANNING BOARD



## MEETING MINUTES

PLANNING BOARD  
FEBRUARY 6, 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. Town Counsel Atty. Brian Cruise joined the meeting.

### **Continued Public Hearing**

(1) 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 she received revised plans only on Wednesday, which she distributed to DPW on Thursday. There was not enough time for definitive analysis or an update. There are numerous concerns. Street trees are not shown on the revised plans. The information must be accurate on the plans. ConCom's review is contingent upon Planning Board and DPW approval. Ms. O'Grady is comfortable moving ahead administratively but is concerned that steps seem to be taken backwards, with incomplete plans and changes which don't address DPW concerns and a request for one waiver. She is uncertain as to how to proceed.

Atty. Cruise stated that it is the Board's prerogative to move ahead or not. If the plan is approved as stands, it will render the outstanding lawsuit mute and it will be dismissed with prejudice accordingly. If the Board denies the plan or issues another continuance, his presumption is that the lawsuit will move forward accordingly. The court has asked for a meeting of the parties in the lawsuit, an indication that the court may not want to consider another continuation. He advised the Board to decide on the basis of the plan, not the impact on upcoming litigation. His personal observation is that regardless of the time allowed, the plan comes in about four days ahead of time.

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Mr. Melo asked if they vote today to approve the 3-lot subdivision, will the applicant still have to abide by all contingencies set by the Planning Board, ConCom, and DPW. Atty. Cruise replied in the affirmative, that the approval can be made contingent upon fulfillment of all requirements. That is, if the Planning Board feels it has enough information to move ahead or allow another continuance, it is its prerogative; however, he does not think the court will allow any further extensions in the lawsuit. The Board has to approve with sufficiently descriptive plans and provisions that can be met, not simply to allow Ms. O'Grady full discretion. His concern is whether the project will ever actually be done according to the plan of record, or put the Planning Board into a never ending post-approval fight.

Mr. Rich Rheume, PE of Prime Engineering spoke on behalf of the applicant. He stated that standard procedure is for the Board to list specific conditions that the applicant must meet, and the applicant comes back to the Board with final plans when all conditions have been met. Mr. Melo stated that he thought that would happen at tonight's meeting, and had expected it two weeks earlier also. Mr. Rheume stated that when he reviewed the plans, the street trees were shown on the plan and were set to code. Whoever printed out the plan must have shut off that layer of the plan by mistake. Ms. O'Grady stated that the trees were just an example. Contours are missing on some sheets. Labels for easements are not matching up. She is getting frustrated that she has not received a full and up to date package on this project. The subdivision regulations spell out exactly what has to be present on a plan, which Mr. Rheume surely understands.

Ms. Sweet asked why these problems are occurring. Mr. Rheume stated that several personnel left during the project, and new engineers have taken on the project. Ms. Sweet stated that this is the longest running project she can remember. This application was first submitted in October 2021. Mr. Psychopaidas asked if a list of requirements could be developed to come back in two weeks so the burden is not on Ms. O'Grady. Mr. Melo stated that certainly a two-week continuance could happen and may be the best alternative, although it will be costly for the landowner and the Town to proceed with the lawsuit.

Mr. Rheume stated that the Board can vote for Ms. O'Grady to take administrative control on the plan subject to conditions, which she and DPW would have to review and approve and then recommend back to the Board. This is allowed to take months to fulfill. Atty. Cruise stated that this is incorrect; the conditions including deadlines have to be part of the plan as approved. Plans do not come back to the Board once voted. The Board does not sign the plan until a 20-day appeal period is complete. The plan would have to be finalized by the end of the appeal period. The Town will not allow the lawsuit to be dismissed with prejudice if a final plan is not recorded at the end of the 20-day appeal process. He was assured by the land owner's attorney that a final plan would be forthcoming, which it has not. Ms. O'Grady stated that for a continuance, she would need

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fully updated and finalized plans by Friday, February 10, 2023, which would allow her and the DPW ten business days to review the plan for a February 27, 2023 meeting.

Mr. O'Neil stated that they would be setting precedent to allow administrative approval on a plan with so many holes in it. There are multiple changes that need to be made. In the past, they have denied such applications. In his opinion, the Board should deny the application as a "colossal waste of the Town's time" and very expensive for all parties involved. He also asked above the requested waiver.

Mr. Rheume stated that the waiver is in regard to storm water. They have to document the existing rate of flow and make sure that there is no increase in the rate of storm water runoff. The amount should be less at 65%. The applicant is asking for a waiver because although the flow is reduced, it is not quite at the 65% level.

Atty. Cruise stated that this will be the fifth extension of the project, the last being stated by the developer's counsel as due to the engineering firm's employee contracting COVID. Now he is hearing that there are other reasons for the delay. He reiterated that he does not believe the court will allow an extension.

Mr. Psychopaidas asked for advice from Atty. Cruise as to how best to proceed now. Atty. Cruise stated that he can't give that advice; it is up to the Board to decide. Mr. Psychopaidas asked if there is common ground for a resolution within a two-week period. Atty. Cruise stated that the lawsuit is an appeal for a Special Permit; there is no remand of a plan for a subdivision approval. He does not know how tolerant the court will be to allow another extension. The status conference is on February 14, 2023. His only advice to the Board is not to make a decision based on the litigation, but only based on the submitted plan with contingencies as required by the Planning Board and DPW.

Mr. Rheume stated that if a continuance were allowed, he will have perfect plans for the Board on February 27, 2023 so that a vote can be taken. Ms. Sweet asked if Mr. Rheume would be comfortable knowing that the Board will deny the application if the final and complete plans are not submitted to the Planning Board office by Friday, February 10, 2023 for discussion on February 27, 2023. Mr. Rheume stated that he is comfortable with that understanding.

Mr. O'Neil made a motion to close the Public Hearing. Atty. Cruise clarified that if the Public Hearing is closed tonight, Mr. Rheume will not be able to submit any further documentation. The Board would have to vote on what has already been submitted, with whatever conditions the Board may choose to attach. After this explanation, Mr. O'Neil withdrew his motion.

Atty. Cruise stated that if a vote and written decision is made on February 27, 2023, it will not change his requirement to attend the court meeting. The Board could make a motion

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that continues the Public Hearing until February 27, 2023 with the condition that final and complete plans are received by the office no later than February 10, 2023. If the final plans are not received by that date, the Public Hearing is closed. That way, Atty. Cruise would have the information he needs for the meeting. The Board will vote one way or another on February 27, 2023. March 1, 2023 is the final timeline deadline for a vote on the application.

Motion- A motion to continue the Public Hearing to February 27, 2023 with the requirement that the final and complete plans be submitted no later than February 10, 2023, was made by Mr. O'Neil, seconded by Mr. Estes. A roll call vote was unanimously voted and approved 5-0-0.

### Administrative Items

(2) Chapter 61A Notice of Intent to Sell Statutory Notice – 29 Morton Avenue/Old Westport Road (Assessor's Map 156 Lot 67) (Proposed Lots 1, 2, 3, 4, 5, and 6)

Discussion: Ms. O'Grady stated that at the last meeting there was an ANR on this property. The submission was received with a typo in the lot designation and there were other questions. This property is across the street from UMASS Dartmouth, and may have varied usages. Atty. Cruise stated that there is currently an auto body operation on Lot 67. The owners are only getting a Chapter 61A tax break on the portion of the property that does not include the businesses. The plan accurately states the lot numbers, so he has no concern. The plan doesn't show the ANR on the assessor's record. The applicant would still have to submit a plan for a subdivision. Mr. Estes pointed out that this property is located in the Aquifer Protection District, and an auto body shop is prohibited in that district. Atty. Cruise stated that he doesn't know if the business was grandfathered in, but it has no impact on this 61A Notice of Intent. Mr. O'Neil asked if the owners are actively trying to sell the parcel. Atty. Cruise guessed that probably they are intending to sell.

Ms. Sweet stated that the property is an ideal place for senior housing, with utilities and infrastructure all in place. She asked that the recommendation to the Select Board note the possibility. Mr. O'Neil concurred. Atty. Cruise stated that the Select Board has 120 days to decide. This recommendation is only for the proposed six lots, which do not have access to Old Westport Road. He clarified that technically this is six separate notices. The Board can strategically recommend any or all of the lots. Mr. Psichopaidas stated that he would like to take time to identify parcels for comparative purposes in order to make an objective decision. Ms. O'Grady stated that she uses specific criteria when making her recommendation, though she did not include the list this time in the packet. The Town has a confidential list of parcels that might be of interest. Mr. Melo noted that it is the Select Board that makes the decision; the Board only makes a recommendation. Mr. O'Neil stated that he would like the Select Board to scrutinize the property. These parcels are not a black-and-white decision. Mr. Melo concurred.

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Motion- A motion to send a letter to the Select Board recommending that the Town carefully scrutinize Lots 2 and 3 for potential right of first refusal, and not exercise its right of first refusal on Lots 1, 4, 5, and 6 was made by Mr. O'Neil, seconded by Ms. Sweet. A roll call vote was unanimously voted and approved 5-0-0.

(3) Endorsement for Approval Not Required (ANR) Plan (PANR-23-1)  
Faunce Corner Road/Ventura Drive (Assessor's Map 68 Lots 34-1, 34-4, and Assessor's Map 63 Lot 11-14)

Mr. O'Neil and Ms. Sweet recused themselves from the discussion and vote.

Discussion: Ms. O'Grady stated that this is a reconfiguration of an existing plan to expand Lot 34-1 with land from 34-4, and add a portion of Lot 11-14 to Lot 34-4, with the remainder of Lot 11-14 split to make a new lot. All lots will have appropriate frontage. Lots 34-1 and 34-4 are within the Faunce Corner overlay district. A few revisions were made to the plan.

Mr. Kenneth Steen of Steen Realty & Development Corp. spoke about the project. Three existing parcels are being reconfigured to make four parcels.

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 3-0-0.

(4) Draft Zoning Articles for Town Meeting Warrant Discussion  
Potential Planning Board sponsored warrant articles concerning amendments to existing Article 1, Article 2, and Article 14 of the Zoning Bylaw plus the addition of an Independent Senior Residential Development district.

Discussion: Ms. O'Grady stated that with the Board's approval the following will be on the Spring Town Meeting warrant. The deadline for submission of zoning articles to Spring Town Meeting is March 13, 2023. Town Counsel must review articles by March 31, 2023. Public hearings could be held on April 3, 2023 and April 10, 2023. The deadline to submit to the Finance Committee is April 13, 2023.

Article 1: Master Plan. The plan will be finished this month. SRPEDD will provide an overview of the plan to the Board on March 13, 2023.

Article 2: There are a few corrections such as the number of districts, but no change in districts. The changes will be made to the Zoning Map as well the bylaws.

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Article 14: Zoning Bylaw revisions to Neighborhood Business District, whether the Board wishes to add wording regarding drive-throughs. A Public Hearing must be held before Spring Town Meeting. Town Counsel must also vet the wording.

Gendreau Estates surety approval for DPW to use funds for street construction and repair requires Town Meeting approval.

Fall Town Meeting:

Atty. Cruise is working on an Independent Senior Residential Development district bylaw.

Article 5: Use Table - Staff is working on wording that must be vetted by Town Counsel.

Board members agreed to the schedule.

Regarding senior housing, Atty. Cruise explained that it is discrimination to deny housing based on age unless at a certified senior 62+ unit, in which case everyone living in the household must be 62 or older; or at a certified 55+ unit in which case at least one person must be 55 or older. Children can be housed in 55+ housing. There are covenants on the properties, and Zoning could seek judicial enforcement. The Housing Authority may have the authority to question residents about their age. Capacity in the school system may be a factor. Atty. Cruise stated that the Town can't mix and match in the same development as there are different standards and criteria for each type, but both types can be included in a single bylaw. Mr. Melo suggested working on both types of districts. Atty. Cruise suggested trying an overlay district to repurpose properties in a commercial district. The Circuit City/Bed Bath & Beyond buildings come to mind.

Mr. Psichopaidas asked if a Reed Road connection to Faunce Corner Road could be discussed with the DPW. Ms. O'Grady stated that meetings with MassDOT are upcoming, also meetings with Westport may include that topic. Mr. Psichopaidas asked if dedicated access off Route 195 for senior housing is possible. Ms. O'Grady stated that it is unlikely.

(5) Minutes – January 23, 2023

Discussion: None

Motion- A motion to approve the minutes of January 23, 2023 was made by Mr. Estes, seconded by Mr. Psichopaidas. A roll call vote was unanimously voted and approved 5-0-0.

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#### (6) Correspondence

Legal Notices: City of New Bedford, City of Fall River, Town of Freetown, Town of Westport

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

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

Zoning Board of Decisions/Legal Ads – Ms. O'Grady stated that there are legal ads for Willis Street and Paws & Play (variance for setback relief and lot coverage within the Aquifer Protection District, but not including the encroachment on Town land.) Decisions were made on 15 Ledgmt Lane, 51 Sherbrook Road, and 29 Nonquitt Road. The marijuana grow facility hearing is in March 2023.

Subcommittee Reports – Mr. Estes stated that Open Space & Recreation Committee met in January. Ms. O'Grady also attended. SRPEDD presented a final plan, but some changes were requested. SRPEDD is making revisions with additional information. It is the Planning Board's jurisdiction to approve the chapter and recommend it to the Select Board.

Mr. O'Neil viewed a video on a SRPEDD meeting, at which the discussion was on Title V regulations proposed by the Mass DEP. Ms. O'Grady and others helped to provide information to SRPEDD that can be used as a response to Mass DEP. The next meeting is February 22, 2023 to continue the conversation. There is a lot of pressure on Mass DEP to step back. Senator Montigne and Representative Markey are working on the issue. Mr. Estes added that the Select Board discussed that topic and the storm water overflow problem on Dartmouth and New Bedford beaches. Mr. Christopher Michaud, Director of Public Health, put on a good presentation in this regard.

Mr. Melo stated that the Soil Board met to renew permits. Docks & Waterways will meet next week. Ms. O'Grady stated that there is a live presentation by Buzzards Bay Coalition upcoming on Thursday, the topic being the status of Buttonwood Brook watershed issues.

Chairperson's Report – Mr. Melo stated that there seems to be a growing trend in the Town for encroachments on paper streets and Town land. Paper street encroachment enforcement seems to be in no department's domain. Residents are taking advantage of it. Ms. O'Grady stated that issues can be brought to the Select Board. Mr. Melo stated that a Town procedure should be considered. Can paper streets be purchased? Mr. Melo stated that there is confusion on procedures and who actually owns the land. No one is

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paying taxes on paper streets, which is small but important lost revenue for the Town. He would like to see this topic on the agenda in the future.

Planner's Report- Master Plan & Open Space Recreation Plan Updates – Ms. O'Grady stated that the Planning Board will have a presentation by SRPEDD on March 13, 2023. It will be nice when both plans are complete; a fresh start can be made. She is working with Tighe & Bond on the zoning map. The new Assistant Director of Planning, Mr. Ross Cutty, has been wonderful to work with so far. There was a department head meeting today, at which Mr. Michaud spoke about Title V. Mr. Marc Garrett, Environmental Affairs Coordinator spoke about some Conservation Commission changes that are being made. He will be using the digital sign in front of Town Hall for information. The Planning Board could use that message board as well. Ms. O'Grady is meeting with administration on the proposed annual budget on February 16, 2023.

(8) Adjourn

The next meeting will be held on February 27, 2023.

Motion- A motion to adjourn the meeting at 9:10m was made by Mr. O'Neil, seconded by Mr. Estes. 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 23, 2023