

# TOWN OF DARTMOUTH PLANNING BOARD



## MEETING MINUTES

PLANNING BOARD  
FEBRUARY 27, 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 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 3-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 this is a proposal for a reorganized 3-lot subdivision. The office received the plans on February 10, 2023 with time to review them. DPW submitted comments. The proposed revisions are achievable. She is comfortable taking administrative management of the project if the Board so chooses.

Atty. Kerry Ryan stated that Mr. Rich Rheume, PE of Prime Engineering was expected to attend the meeting and speak on behalf of the applicant; however, he was not yet present due to technology issues. The owner, Mr. Brian Storrs, was present.

Atty. Cruise stated that with Mr. Rheume's absence, the Board could take additional comments or close the Public Hearing.

Ms. Sweet would like a stop sign at the end of Silver Maple Drive where it intersects Jason Drive. Ms. O'Grady recommended adding it to the list of conditions for the Certificate of Action. She checked, and found the signage is on the plan.

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Mr. O'Neil asked if Ms. O'Grady received any additional information on the drainage calculation. Ms. O'Grady stated that she didn't receive anything.

Mr. Rheume joined the meeting. He stated that Dartmouth has a requirement that the developed portion of the site provides no more than 65% of the peak flow of water on the site prior to development. In the proposed design, water flows from the roofs, common driveways and proposed roadways into the detention basin, meeting the requirement. They are providing less than the 65%, shown in the drainage report chart, for the full range of storms. Ms. O'Grady stated that DPW does not accept this formulation; the applicant will have to comply with DPW's comments regardless of Mr. Rheume's opinion. Mr. Rheume stated that the developed portion is mitigated to 65%, and they do not mitigate the wetland or undeveloped parts of the property.

Mr. O'Neil stated that the largest bone of contention is the attenuation, and perhaps the applicant should apply for a waiver. Mr. Rheume stated that they do not need a waiver; the flow down-gradient to the detention basin will be at 65% of what is occurring there now, with no change to the undeveloped portions of the property. Ms. O'Grady stated that there will have to be some modifications of the plan to meet the standard. Administratively, Ms. O'Grady will not sign off on it until all standards have been met. Mr. O'Neil stated that the applicant should be aware that the engineer will have to make changes.

Ms. Sweet stated that changing roadways and soil conditions can make a problem for the abutting properties. Some, though not all, development can cause problems for undeveloped land. Mr. Rheume stated that he hasn't had that problem in the past, though he knows of some engineers who have experienced it. Sometimes groundwater levels will change, but he firmly believes that it will not happen in this case. Ms. Sweet stated that it remains a concern for her. Mr. O'Neil concurred that if it doesn't meet the standards, it will have to change in order to be approved.

Atty. Cruise stated that the Board should decide firstly if they agree with DPW's interpretation of the drainage calculations. Mr. O'Neil stated that the analysis and interpretation should already have happened. His understanding is that the entire portion of the property is in play for the application, not only the proposed developed portion.

Mr. Melo stated that the Board never goes against the DPW's comments and recommendations as they are the experts, but Ms. O'Grady has stated that she is comfortable handling the project administratively after the engineer and DPW reconcile the differences. Ms. O'Grady stated that the caveat is that she will support the DPW. Mr. Gus Raposo, the Town's drainage consultant, will have to review the plans again because with changes in the drainage, the project will have to go back to the Conservation Commission for approval. Mr. O'Neil asked why the Board would approve this when it doesn't meet the standard after so many rounds of review. This does not make sense to

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him. A DPW regulation change is a whole different issue, but he does not want to set a precedent of voting to approve a project that doesn't comply with all requirements.

Mr. Estes stated that this is not a new issue; Mr. Rheume has known about it for quite some time. Mr. Rheume responded that he only received the specific comments on the prior Friday. Ms. O'Grady stated that the same comments were listed on the November and December 2022 letters to the engineer. There is a difference of opinion that will have to be resolved with the DPW. Mr. Rheume stated that the only way of resolving the issue is to have the drainage redesigned so that the entire site meets the 65% standard.

Atty. Cruise stated that the issue is not changing the regulations, but the interpretation of the regulations which is the prevue of the Board. The Board cannot simply affirm the implementation of the regulation because the DPW says so; it must do its own determination to interpret the regulation.

Ms. Sweet stated that she is apprehensive about moving ahead; how much more time should be spent on this? Mr. Melo stated that if the issues cannot be resolved, the plot of land stays as is and the project cannot be completed.

Mr. Psychopaidas stated that he doesn't have the knowledge or capacity to override DPW as it relates to this matter. He asked the Board members if there is a prior interpretation of the regulation or a past example where the DPW's interpretation of the regulation has been overridden. Ms. O'Grady stated that she has not seen anything. Mr. Rheume stated that the Town had a hydrologist consultant, Mr. Mike Hurley, who recommended that past subdivision problems be compensated for by requiring a 65% or less peak discharge for new development disruptions with down-gradient of the detention basin as a first design point, and with a second design point of water flowing naturally in the undeveloped portion. Mr. Rheume is comfortable going back to the DPW with the discussion of whether a 65% or less discharge rate is required for the entire property. Mr. Estes stated his opinion that the time for this conversation has come and gone; it isn't a new issue. Ms. Sweet concurred.

Atty. Ryan stated that he understands the Board's frustration and anger, but neither he nor the owner can do anything to change the past. They wish to move forward. Ms. O'Grady has stated that she can handle this administratively and will not overrule DPW. If there were an approval subject to dealing to DPW's satisfaction, it would be a path forward that would make sense.

There were no comments from the public.

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

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Mr. O'Neil stated that he does not want the project to go back and forth in perpetuity. The applicant has put in a great deal of time and energy, for which he has sympathy. The Board cannot set a precedent that allows for lingering projects and approvals without meeting all requirements. There has to be some kind of time constraint. He is torn as to how to proceed. Mr. Melo asked if the Board could grant Ms. O'Grady time certain to work out the details. Atty. Cruise stated that the Board could put in a time frame for completion. Mr. Melo stated that the applicant has already reduced the development from five to three house lots at the Board's suggestion. This was a large concession for the owner. A 45-day constraint of time within an approval could solve the problem.

Atty. Cruise stated that under this scenario of approval with time constraint, if the applicant did not come back within 45 days showing that they had complied with the conditions, they would never get the endorsement of the plan. The Board would not have denied the plan, which they seem hesitant to do. This may be a workable approach, though the applicant has the right to appeal both a denial and a time constraint condition. To go ahead with this, Atty. Cruise stated that the language would have to be clear that any changes to the drainage to satisfy DPW could not have any material effect on the subdivision itself. Any alterations would mean that the applicant would have to return to the Board. Mr. O'Neil stated that he can't see how this drainage redesign would not materially impact the plans. Atty. Cruise responded that this large piece of post-approval is greater than the Board usually allows. Mr. Estes stated that administrative management is usually crossing the t's and dotting the i's, and only for projects that are essentially ready to go. This redesign goes far beyond in scope.

Ms. Sweet stated that the detention pond will have to be made larger, and it would change the plan. Atty. Cruise stated that it is anticipated that the detention basin will increase in size, but what other unanticipated changes or secondary cascades will occur in the redesign? The Board will have to be comfortable with these unknown consequences. Ms. Sweet stated that she is not comfortable with that level of uncertainty.

Mr. Psychopaidas stated that the goal is to close the gap to make the plan successful. What amount of extended time would be enough, and is it possible to give an extension? Atty. Cruise stated that the Board has already closed the Public Hearing. The Board would have to reopen it and consider a time extension. Mr. Psychopaidas stated that he doesn't want to kick the project to the DPW or Ms. O'Grady. He doesn't want to pass the buck. He would like to give the applicant one more try.

Atty. Cruise stated that there is a timeline deadline; Ms. O'Grady concurred that it is March 1, 2023. Mr. Rheume stated that the applicant would agree to an extension. Ms. O'Grady reminded him that the parties would have to resolve the issue during that time. Mr. O'Neil stated that an extension would only keep bringing the project back. Atty. Cruise stated that the Board would need to specify by how much the drainage plan would increase in order to receive approval, and to keep an approval from being nebulous.

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Mr. O'Neil asked if the proposal is denied, can the applicant submit. Atty. Cruise stated that the applicant can always reapply.

Motion- A motion to deny the application due to noncompliance of drainage requirements was made by Mr. O'Neil, seconded by Mr. Estes.

During the vote, Mr. Psychopaidas asked if this denial is based on the Board's knowledgeable interpretation of the drainage regulation, or based on the opinion of the Board. Mr. Melo stated that it is based on the difference of opinion of interpretation of the regulation between the DPW based on past practice and the applicant. Atty. Cruise stated that the Board does have the prerogative to override the DPW's opinion and come to its own interpretation of the regulation, if it so chooses. Mr. Psychopaidas stated that with all due respect to the applicant, he does not have the knowledge to override DPW's determination, and will join other members in voting for a denial. A roll call vote was voted and approved 4-0-1, with Mr. Melo voting no.

Atty. Cruise left the meeting, and will return for the warrant articles discussion.

### Administrative Items

(2) Site Plan Review- Eversource (PSPR-23-1) 441 High Hill Road (Assessor's Map 80 Lot 2)

Discussion: Ms. O'Grady stated that this project is for an electrical switching substation. Atty. Joshua Lee Smith of Bowditch & Dewey spoke on behalf of the applicant. He presented a plan for upgrades to an existing unmanned switching station. Mr. Anthony Blum of Eversource presented a PowerPoint to explain transmission systems. Atty. Smith showed an aerial view of the 6-acre site, the majority of it woodlands and some wetlands. It is intersected with transmission rights-of-way. There are support structures to carry the loads to switching stations. The site is in a Residential B zoning district, with the nearest house being over 300 feet away. There are two older switching stations on the property; the proposed station will be located between the two and will replace the older equipment. Storm water drainage has been discussed with the DPW, and all comments have been incorporated.

Mr. Tim Grace of Tighe & Bond is the Engineer-of-Record for this project. He stated that there is an up-gradient wetland that overflows into and floods the substation area even in minor storm events. The proposed approach to mitigate the flooding is to capture the water with catch basins. Swales will send the water to a storm water treatment unit and

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then to a detention basin. The basin is designed to be oversized to mitigate flooding. The system complies with all requirements.

Atty. Smith stated that the yard is  $\frac{3}{4}$  inch gravel stone and will be enclosed with chain link fencing. The gravel is considered pervious and allows water to flow through it. It is directly on the subgrade with no lining. Employees will be coming to the station for testing but there will be no routine traffic. The only new lighting fixtures will be task lights, manually turned on and off only when necessary. The applicant met with the technical reviewers to discuss design elements. The buildings will be approximately 12 feet in height with footprints of 825 square feet and 525 square feet.

Mr. Estes asked about the water treatment plan. Atty. Smith stated that there is a proprietary water treatment plan that will be managed by Eversource once the construction project is complete. Inspection data on the water treatment plan goes to the state. Inspections are required twice per year and after major storm events. If the Town would like the information, it can be forwarded to them.

Mr. Estes stated that a western portion of the property is located in the Aquifer Protection District. He asked what is going to be contained within the two new buildings. Ms. Donna Pico, Eversource substation Design Engineer, stated that the control house will contain relay panels. In the separate battery hut, 125-volt batteries will be contained on a seismically-qualified rack with enough volume to contain any battery spillage. The batteries are made of lead calcium with diluted sulphuric acid. The new control house requires a DC battery source; the existing batteries are insufficient. There will be hydrogen sensing, exhaust fans, fire alarms and an alarm system. Are these facilities hardened? Ms. Pico stated that there are no transformers in this facility, so they are not a target for vandalism or terrorism. The batteries will allow for redundant systems and are sized for 8 to 10 hours of use. The enclosures and equipment do not add noise.

Ms. O'Grady stated that ConCom will be meeting with the applicant for an Order of Conditions. Records will have to be changed at the Assessor's office for company name changes. She stated that the project complies with all requirements.

Motion- A motion to approve the application as presented was made by Mr. O'Neil, seconded by Mr. Estes. A roll call vote was unanimously voted and approved 5-0-0.

(3) Lichen Lane- Time Extension Request (Assessor's Map 8 Lots 1, 1-1, 1-2)

Discussion: Ms. O'Grady stated that this project had 18 months to complete, and needs some extra time. She recommended an additional six months extension.

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Mr. Sopa, the owner, stated that everyone involved in the project got COVID which delayed it. Only the paving is left, which should be done in the spring.

Motion- A motion to approve a six-month timeline extension was made by Mr. Estes, seconded by Mr. Psychopaidas. A roll call vote was unanimously voted and approved 5-0-0.

(4) Approval Not Required- 219 Jordan Road (PANR-23-2) 219 Jordan Road (Assessor's Map 6 Lot 3)

Discussion: Ms. O'Grady stated that this ANR is for an estate lot and three additional lots. The documents are all ready for signing. She recommended approval of the ANR.

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.

(5) Approval Not Required- 2 Clarks Cove Drive (PANR-23-3) 2 Clarks Cove Drive (Assessor's Map 123 Lot 152-21)

Discussion: Ms. O'Grady stated that this ANR is a simple subdivision of a lot into two parcels. There is required frontage on a paper street and both parcels meet all zoning requirements. She recommended approval of the ANR.

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

(6) Draft Zoning Articles for Town Meeting Warrant Discussion - Potential Planning Board sponsored warrant articles

Discussion: Ms. O'Grady stated that there are four zoning articles for Spring Town Meeting approval. The Public Hearing will be held on March 13, 2023. Atty. Cruise has not yet commented on the articles as he was away from his desk last week. The articles are in regard to the Master Plan, Zoning, Use Table and definitions, and a District change.

The fifth item is the surety for the Gendreau properties. Ms. O'Grady is working on the language with DPW and the Treasurer's office. One of the smaller roadways may not be developed, so the total surety amount may be enough to cover the remainder of the work.

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Atty. Cruise joined the meeting. He stated that he will be providing written comments for the four articles, to be reviewed at the meeting next week. He stated that the surety article is a DPW appropriation article, not a Planning article. He will be reviewing that language as well once a draft is completed. He left the meeting.

(7) Minutes – February 6, 2023

Discussion: None

Motion- A motion to approve the minutes of February 6, 2023 was made by Mr. Psychopaidas, seconded by Mr. O’Neil. A roll call vote was unanimously voted and approved 5-0-0.

(8) Correspondence

Legal Notices: City of New Bedford, 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.

Mr. Melo pointed out that the Faunce Corner Road meeting will be held in the Select Board room on Thursday.

(9) For Your Information/New Business

Zoning Board Decisions/Legal Ads – The meeting for the marijuana facility on Old Fall River Road will be held on March 8, 2023.

Subcommittee Reports – Ms. O’Grady stated that she attended a SRPEDD meeting. Mr. O’Neil will resend to her a note about lighting and safety issues at the Westport line on Route 6. Ms. O’Grady stated that she was contacted by Westport’s new Planner. There is some work proposed but she doesn’t have the details. The Open Space and Recreation plan is coming to a completion. Mr. Estes also sits on that committee. SRPEDD was scheduled to present it briefly to the Select Board tonight. SRPEDD will be giving a presentation on the Open Space & Recreation chapter, Chapter 61A, and the Master Plan in general to the Planning Board soon; members will be given notice as to when that presentation will occur.

Chairperson’s Report – Mr. Melo stated that he is concerned with the private access to the Town website. Now that he is able to be logged in, he finds that he cannot find the Planning Board’s older information. Ms. O’Grady isn’t sure what has happened and will



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follow up. There will be major revisions to the page with many items missing. Mr. O'Neil was able to get access to the website at first, but then his validation disappeared. Ms. O'Grady will discuss the problems with the IT Department. Mr. Estes also is not having success with signing in.

Planner's Report- Ms. O'Grady stated that Mr. Timothy Barber, Director of Public Works, invited Ms. O'Grady to attend a design Public Hearing on March 9, 2023. She conversed with Mass DOT District on the 747 and 757 State Road access/egress road for the marijuana grow facility. There may be some modifications to the roadway design; one problem is that there is an opening in the median which does not line up properly. An occupancy permit cannot be approved until Mass DOT approves the access/egress. Unfortunately the applicant did not move forward in a timely way for the Mass DOT permit, so it is still pending.

Ms. O'Grady stated that she will be out of the office on Wednesday through Friday of this week. The Assistant Planning Director will take care of signing documents that needs to take place.

Mr. Melo's Internet access was lost and he left the meeting. Mr. O'Neil presided.

(10) Adjourn

Motion- A motion to adjourn the meeting at 9:20m was made by Ms. Sweet, seconded by Mr. Estes. The roll call vote was unanimously voted and approved 4-0-0.

The next meeting will be held on March 13, 2023.

Approved By Dartmouth Planning Board:

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Date of Approval: March 13, 2023