

Approved 2/26/2020

TOWN CLERK



# Town of Duxbury Massachusetts Planning Board

2020 FEB 27 PM 1:31

DUXBURY, MASS.

## Minutes 2/12/20

The Planning Board met on February 12, 2020 at 7:15 PM at the Duxbury Town Hall, 878 Tremont Street, Mural Room, lower level.

Present: Scott Casagrande; Chairman, Brian Glennon II; Vice-Chairman, David Uitti; Clerk, John Bear, Cynthia Ladd Fiorini, and George Wadsworth.

Absent: Jennifer Turcotte.

Staff: Valerie Massard; Planning Director and Emily Hadley; Administrative Assistant.

Mr. Casagrande called the meeting to order at 7:20 PM.

## OPEN FORUM

Mr. Glennon said that in looking at the invoice from Amory Engineers for Dogwood Drive he was troubled when he read through the notes. It said that pipe runs were not originally installed correctly and it seems like there was back and forth between the developer and the reviewing engineer, Pat Brennan. He said that the lots are already being advertised for sale online. He also said that in the previous meeting he expressed that the road was muddy and a tire wash was a condition of the covenant for that project. He said he has concerns about the developer. Ms. Massard said the developer has not established that there is adequate water pressure at each lot, she expressed her concerns and has documented that he was advised of the need to establish this or in the alternative install municipal water (typically municipal water would be installed with the roadway).

Mr. Glennon said that the Town should keep as much documentation of their concerns as possible. Mr. Casagrande said that the Board appreciates the extra efforts of Mr. Brennan in his engineering reviews. Mr. Bear asked what the Board could do about the issues, since the invoice was for work that was done in January. Ms. Massard said that work could be halted. Ms. Ladd Fiorini asked if it is okay for him to advertise the lots for sale. Ms. Massard said that advertising is allowed, but he is not allowed to convey anything. Mr. Glennon said that the Board/Town should not have to catch these mistakes, the developer should do everything the correctly from the start. Ms. Massard noted that the developer's engineer also has concerns about the project, as documented in Mr. Brennan's report.

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Ms. Ladd Fiorini said that the Community Preservation Committee (CPC) had a public meeting about the Town Meeting articles that have passed through the Committee. She said that there was a large crowd and the articles were well-received. She said they also discussed the citizen's petition to raise the surcharge to three percent, which was also well-received.

Ms. Ladd Fiorini read aloud a resolve to honor John P. Bear, who is stepping down from the Planning Board when his term expires. Mr. Bear served on the Planning Board from 2004 to 2020, served as designee to the CPC, and served on the Economic Advisory Committee, of which he was Chairman from 2011 to 2017.

Motion: Mr. Glennon made a motion to approve the resolution. Ms. Ladd Fiorini provided a second.

Vote: 4-0, Mr. Uitti was not yet at the meeting and Mr. Bear abstained.

Mr. Bear thanked the Board.

Mr. Casagrande said that he is glad the Board completed the Comprehensive Plan while Mr. Bear was still on the Planning Board, and thanked Mr. Bear for all of his hard work.

Ms. Sarah "Sally" Wilson, 120 Bay Road, asked if the lots have been released for sale at the Dogwood Drive subdivision that was discussed earlier. The Board responded that they are not released. Ms. Wilson said that the Board has that to its advantage.

Mr. Keith McDonald said that he has lived in Town for 10 years and just put his papers in to serve on the Planning Board, so he was there to observe a Planning Board meeting for the first time.

Ms. Massard asked the Board to consider discussing agenda item C before starting the public hearing. No one objected.

\*Some agenda items were taken out of order during the meeting. These minutes reflect the items in the order they were reviewed at the meeting.

## **DISCUSSION: MILLBROOK PARKING**

Ms. Massard said that the Millbrook area has been increasingly successful over the years and it has helped make Duxbury a more vibrant community. She explained that sometimes there are issues with parking, and sometimes people need to park in unstriped but legal parking spots on

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the street. Ms. Massard said that when the administrative site plan review (ASPR) was approved, the language used in regards to parking is vague and can be interpreted both ways to mean that individuals can and cannot park on the street. This has resulted in some confusion as legally, on-street parking is allowed.

Ms. Massard said that she and Mr. Michael Juliano, the developer, have met with Highway Safety Committee and DPW and no traffic or public safety concerns were brought forward. She requested that the Planning Board express support of the on-street parking. Ms. Massard said that the goal is to have a vibrant business district with safe parking.

Ms. Massard said that the request of the Board is that they clarify the wording on the ASPR decision to more clearly state that on-street parking is allowed. Mr. Casagrande asked if parking is legal on the street and if it was causing any safety issues. Ms. Massard confirmed that on-street parking is legal on that street and there are no safety concerns.

Mr. Bear said that the Board already did a site plan review and reviewing public roads is not part of their review process so, the Board will not have to undo anything they have done, since the parking was already legal and would remain legal. Mr. Casagrande said that any clarification should be limited to parking on-site only.

Motion: Mr. Uitti made a motion to reaffirm that on-street parking is allowed and does not place any restrictions on the site plan.

Mr. Glennon said that the Sidewalk and Bike Path Committee have wanted to put a sidewalk at the site, and asked if the parking is within the Town's right-of-way. Ms. Massard confirmed that is true on Mr. Juliano's side of the street.

Ms. Massard told the Board that Duxbury has just become a Complete Streets community, which will allow the Town to be granted money from the State to build sidewalks. She said that the hope is the money can be used to build a sidewalk on the other side of Railroad Ave. Mr. Glennon asked for confirmation that the parking is not anything that could be a sidewalk and Ms. Massard confirmed.

Mr. Glennon asked if the overflow parking at the Duxplex is not being used any more. Mr. Juliano said that it is not something that is sustainable. Mr. Walsh, the owner of the Duxplex has plans to subdivide further and the tenants of his business use the parking there. Mr. Juliano also said that the right-of-way goes off the edge of the pavement, parking is only allowed on one side currently and it does not encroach onto where a sidewalk could be built on Town property.

Mr. Juliano said that there are 90 parking spaces and 60+ people need to park at his office throughout the day. He said that when the Oysterman is at full capacity, there are not enough spaces and it hurts the businesses in the area.

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Mr. Glennon said that he does not see an issue with the on-street parking. He asked if it is worthwhile to have some municipal signage or striping so there is no confusion. Ms. Massard said that it was discussed, but the Highway Safety Committee and DPW do not think it is appropriate right now.

Motion: Mr. Uitti renewed his motion. Mr. Glennon provided a second.

Vote: 6-0, unanimous.

## **PUBLIC HEARINGS, 2020 ANNUAL TOWN MEETING ARTICLES; ZONING RECODIFICATION**

Motion: Ms. Ladd Fiorini made a motion to waive the reading of the public hearing notice. Mr. Bear provided a second.

Vote: 6-0, unanimous.

Motion: Mr. Glennon made a motion to open the public hearings. Ms. Ladd Fiorini provided a second.

Vote: 6-0, unanimous.

The public hearings were opened at 7:48 PM.

Ms. Massard said that there are two Zoning Recodification articles on the warrant for the 2020 Annual Town Meeting. She said that the Town has spent a significant amount of time looking at the Zoning Bylaws, and the Zoning Bylaw Review Committee, of which Mr. Casagrande and Mr. Wadsworth were members, came out with a detailed report in 2012 (which is on the Town's website). This report described hundreds of issues with the Zoning Bylaws. Ms. Massard said that the Zoning Bylaw Review Committee attempted to tackle the issues, but the articles got IP'd at Town Meeting in 2016, so the group disbanded and gave the responsibility to the Planning Board. Town Meeting is funding this process.

Ms. Massard said that the Town has been working with K.P. Law (Amy Kwesell), and in dialogue with Town Counsel, it is not feasible to do all of the changes at one time. Town Counsel suggests that the Town do what other communities do, implementing a use table and cleaning up repetitive and confusing language to make it more concise. She said that the way the Bylaw is written today, someone has to flip back and forth through many pages to find what they are looking for. Town Counsel prepared a use table, which was reviewed with the Planning Board, Planning Director and the Building Commissioner.

Ms. Massard explained that the language for each zone was lifted out of the Zoning Bylaws and put into the proposed use table (Attachment A). After everything was put in the table, minor edits

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were made to wording of uses, to address uses in terms that are used today. She explained that the table will make things easier for applicants and staff, and gets rid of duplication.

Mr. Glennon said that the use table is straight forward and in line with other communities in Massachusetts. Mr. Casagrande said that the Comprehensive Plan will give some guidance once the Board starts reviewing policies of the Bylaw, but this is the best way to start Zoning Recodification, making the bylaw more streamlined before any policy discussions are started, rather than attempting to do everything all at once. Ms. Massard agreed that the Board can only do so much at one time, as the Board has about 5 to 7 zoning articles at Town Meeting each year. Mr. Uitti said that he is sure the use table has been vetted and re-vetted by Town Counsel. Mr. Bear said that the most difficult part will be explaining everything in five minutes at Town Meeting, and finding a way to convey that it is all housekeeping.

Ms. Massard noted that she will be holding Planning Hours at the Senior Center on Mondays from 9 AM to 11 AM leading up to Town Meeting and beyond, and anyone can come talk about any questions they have about zoning or any other article on the Town Meeting warrant. Mr. Glennon said that zoning is hard enough to interpret and any way the Board can make things easier for the reader is time and effort well-spent.

Mr. Wadsworth said that the zoning bylaws are set up so that any uses in business districts are subject to a special permit public hearing. He said that the proposed use chart seems to make some uses allowable by-right that should require a special permit. Mr. Uitti said that the NB-light, NB1 and NB2 districts all have footnotes 1 and 2, and the footnotes say that the use is subject to special permits.

Ms. Kwesell said that the explanation goes back to what the Planning Director and Planning Board Chair had said earlier, that any future policy changes cannot be made until the use chart is in effect. She explained that she had cut and paste the uses out of the Zoning Bylaw into the use table, and she had strict instructions from the Planning Director to not change anything that would change the uses. Ms. Kwesell said that the use chart is a reflection of the Bylaw as it stands today.

Mr. Glennon said that he can see that in the table, some of the uses are represented with an SP and others are represented by a Y. He asked Mr. Wadsworth if he thinks that certain uses should be represented by an SP instead of a Y. Mr. Wadsworth agreed and said that he assumed that the Y represents a use that is allowable by-right.

Mr. Glennon said that the use chart puts the uses into an easier to read format that shows how the Bylaw currently reads. Mr. Casagrande said that some of the mistakes stick out in the use chart more than when it is hidden in the Bylaw. Ms. Ladd Fiorini said that as the Bylaw is currently written, the reader is pointed to multiple different sections when trying to find information about a particular zone.

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Mr. Jim Lampert, 148 Washington Street, said that he thinks the public will interpret the use chart to mean that certain uses are allowable by-right when they are only allowable by special permit and urged the Board to change the chart. Mr. Lampert disagreed with Town Counsel and the Planning Board's interpretation of what uses are allowable by-right and by special permit.

Ms. Kwesell said that the Bylaw is like a layer cake, starting with Residential Compatibility district and moving up to higher intensity districts, more uses are allowable by-right as you go up to a higher district. Mr. Glennon said that his approach to Zoning law was an inverse triangle, with more restrictive uses on the bottom and as you go up the triangle they become less restrictive, some uses that are below are allowable with fewer restrictions.

Mr. Lampert provided the Board with a page from the 1997 Bylaw that he says created what is now Section 421.

Mr. Uitti said that he can see how uses listed as Y could be ambiguous since there are other uses listed as SP, but the fact that there are footnotes is important and they cannot just be dismissed.

Mr. Uitti suggested that Ms. Kwesell and Ms. Massard change uses that require a special permit to SP instead of Y. Ms. Kwesell said that there are some uses that require a particular special permit, so it would have to be represented by a different symbol. Mr. Uitti also suggested AR symbol for uses that are allowable by-right.

Ms. Kwesell said that one of the benefits of creating a use table is that new uses can just be added to the use chart when they come up, while in the alternative, multiple sections of the current Bylaw would have to be changed when a new use is added. She said that one negative thing about the use table is that it is not flexible, but zoning is not meant to be flexible.

Mr. Uitti said that these changes will make clear what is allowable by-right and what is allowable by special permit. Mr. Bear said that these changes will not change the table itself, but will make it easier to read.

Mr. Lampert said that not all of the districts are listed in the chart and that some of the uses are outdated. Mr. Lampert said that he believes the Board should fix everything wrong with the Bylaw before bringing it to Town Meeting. Ms. Massard said that they had discussed that it is not feasible to fix everything at once in October when the draft use table came out. Mr. Uitti said that the creation of the use table is to save people time and so they understand what is currently in the Bylaws, with the understanding that the uses will be changed in the future.

Mr. Lampert said he will not vote against the article at Town Meeting solely because all of the issues in the Bylaw have not been fixed.

Ms. Sarah Wilson, 120 Bay Road, said that she was upset when the use table originally came out of the Bylaws. She said she was happy when she heard the use table would be implemented again because it makes using the Zoning Bylaws much easier.

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Ms. Wilson said that she agrees with Mr. Lampert about how the proposed use table reads. She said she has written down several comments about the use table. Mr. Uitti asked if she could provide the Planning Board with her written comments and she agreed.

Ms. Wilson said that it is her opinion that the Board should work on the use table over the next year and bring it to Annual Town Meeting next year.

Ms. Massard suggested that the Board continue the public hearings for the two articles to February 26, 2020 at 7:30 PM.

Motion: Mr. Bear made a motion to continue the public hearing to February 26, 2020 at 7:30 PM. Ms. Ladd Fiorini provided a second.

Vote: 6-0, unanimous.

### LITTLETOWN WAY SUBDIVISION

Ms. Massard said that the landscaper confirmed that the fee for the performance guarantee has been paid, and the amounts in the accounts for the subdivision have been provided to the Board. Mr. Glennon said that at the last meeting, the Board accepted the as-built plan and moved the issue of releasing the funds to this meeting.

Motion: Ms. Ladd Fiorini made a motion to release the funds in the performance bond, in the amount of \$48,911.97, and to release the funds in the escrow account, in the amount of \$2,771.34, for the Littleton Way subdivision to the proponent. Mr. Uitti provided a second.

Vote: 6-0, unanimous.

### NASH ROAD SUBDIVISION

The applicant proposes an 18 month extension for completion of the roadway.

Mr. Casagrande said that there is one lot that has not been sold. Mr. Uitti said that there will be heavy equipment running through the property, so it is a reasonable suggestion to hold off the top-coat until the large-scale work on the houses is complete. Mr. Glennon asked if not finishing the roadway is harmful to the people already living there or poses a safety concern. Mr. Casagrande and Ms. Massard concurred that this is not a safety concern and will allow the base coat to settle and is a common practice.

Motion: Ms. Ladd Fiorini made a motion to provide an 18 month extension for completion of the roadway. Mr. Uitti provided a second.

Vote: 6-0, unanimous.

## **PRESENTATION: MS4 GENERAL BYLAW AMENDMENTS ON 2020 ANNUAL TOWN MEETING WARRANT**

Ms. Massard explained that there are two chapters proposed to go into the general bylaw that are evolving from federal regulations for Stormwater permits, regarding Stormwater language and illicit discharge language. She said that the Conservation Commission voted in favor of both of the articles. She said that many communities already have it in place and the Town was hoping to bring it Town Meeting last year. She said that there will be no additional permitting as designed into the Bylaw, but there will be additional Stormwater review during the building permitting process if the Stormwater Bylaw is triggered.

Ms. Massard said that in the recent past, as an example, there was a group of homes that filled significant areas on their lots to drain flood water into public way as a reaction to a flooding event. It was determined that a new drainage pipe with a larger capacity had to be installed by the homeowners to prevent flooding of the public way as a result of their actions, and the Town was fortunate to make this assessment while the work was being undertaken, as only one of the homeowners needed a building permit. We have some conflicts between abutters when regrading alters the Stormwater drainage. Mr. Glennon said that it is not a theoretical set of regulations; it is something that is already happening.

Motion: Mr. Glennon made a motion to recommend favorably the two 2020 Annual Town Meeting MS4 general bylaw amendments. Mr. Uitti provided a second.

Vote: 6-0, unanimous.

## **OTHER BUSINESS**

### *Minutes*

Motion: Mr. Glennon made a motion to approve the minutes for January 22, 2020 as written. Ms. Ladd Fiorini provided a second.

Vote: 5-0, Mr. Uitti abstained due to absence from January 22<sup>nd</sup> meeting.

### *Engineering Invoices*

Motion: Mr. Glennon made a motion to approve invoice number 15301C from Amory Engineers, P.C. for Dogwood Drive dated February 3, 2020. Ms. Ladd Fiorini provided a second.

Vote: 6-0, unanimous.



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*KP Law, P.C. Invoice*

Motion: Mr. Uitti made a motion to approve invoice number 124235 from KP Law, P.C. for Zoning Recodification and dated January 24, 2020. Ms. Ladd Fiorini provided a second.

Vote: 6-0, unanimous.

**ADJOURNMENT**

Motion: Mr. Uitti made a motion to adjourn at 9:53 PM. Ms. Ladd Fiorini provided a second.

Vote: 6-0, unanimous.

*The next Planning Board meeting will take place on February 26, 2020 at 7:15 PM at the Duxbury Town Hall, 878 Tremont Street, Mural Room, lower level.*

Materials reviewed at the meeting:

- Public Hearing Notice
- Warrant Language - Zoning Recodification Articles
- Attachment A: Proposed Use Table
- Attachment B: Zoning Bylaws Administrative Cleanup and Zoning Maps
- Correspondence: Funds in Littleton Way Accounts
- Planning Department Memo RE: Millbrook - ASPR Condition - On-Street Parking
- Highway Safety Committee Letter of Support - Parking Millbrook Business Area
- Nash Road Subdivision - Request for 18 Month Extension for Roadway Completion
- Stormwater Flyer
- Minutes 1/22/2020
- Amory Invoice #15301C
- KP Law, P.C. Invoice #124235

