

**Planning Board
Lakeville, Massachusetts
Minutes of Meeting
April 29, 2021
Remote meeting**

On April 29, 2021, the Planning Board held a remote meeting. It was called to order by Chairman Knox at 7:00 p.m. LakeCam was recording, and it was streaming on Facebook Live.

Members present:

Mark Knox, Chair; Barbara Mancovsky, Vice-Chair; Peter Conroy, Michel MacEachern, Jack Lynch

Others present:

Amy Kwesell, Town Counsel; The McNeil Family, John Jenkins, Tom Cirignano, Susan Spieler, Pat Wrenn, Annmaire Sherrick, Steve Sherrick, Heather Bodwell

Agenda item #1

Mr. Knox read this item into the record. It was an explanation of the Governor's Order Suspending Certain Provisions of the Open Meeting Law related to the 2020 novel Coronavirus outbreak emergency which was why the Board was meeting remotely.

Public hearing – To amend the Zoning By-Law Section 6.7.2, Site Plan Review Procedure-Business or Industrial by deleting the existing text and replacing it with additional guidelines to determine what circumstances will require Site Plan Review by the Planning Board

Mr. Knox opened the public hearing at 7:00 p.m. and read the public notice into the record. He advised this was more of a housekeeping issue that had been brought to the Planning Board's attention to better clarify how Site Plan Review was triggered. He thought it was a good improvement, and it had been drafted by Town Counsel based on their comments. He fully supported this change. He asked if anyone present would like to speak to it. No one spoke

Mr. Knox made a motion, seconded by Ms. Mancovsky, to recommend approval of the Site Plan Review Zoning Bylaw amendment at Town Meeting.

Roll Call Vote: Ms. Mancovsky-Aye, Mr. Conroy-Aye, Ms. MacEachern-Aye, Mr. Lynch-Aye, Mr. Knox-Aye

The hearing closed at 7:07.

Public hearing – To amend the Zoning By-Law Section 3.2.3, The Floodplain Protection District, and Section 7.1 Floodplain District Regulations, with respect to making various updates, deletions, and additions.

Mr. Knox opened the public hearing at 7:08 p.m. and read the public notice into the record. He advised this is a housekeeping item that the Federal and State Governments have put in front of them to make sure that everybody has flood insurance. It is a requirement to update the flood maps. There was no further discussion.

Ms. Mancovsky made a motion, seconded by Ms. MacEachern, to recommend approval of the aforementioned Floodplain Zoning Bylaw amendment at Town Meeting.

Roll Call Vote: Ms. Mancovsky-Aye, Mr. Conroy-Aye, Ms. MacEachern-Aye, Mr. Lynch-Aye, Mr. Knox-Aye

The hearing closed at 7:12.

Public hearing – To amend the Zoning By-Law Section 7.9, Subsections 7.9.1-7.9.6 with respect to removing in its entirety the Development Opportunities District Bylaw.

Mr. Knox opened the public hearing at 7:12 p.m. and read the public notice into the record. He advised as this was a citizens petition, he would like anyone present to speak to this proposed change. Mr. John Jenkins stated he did not think anyone had any comments on this other than it was written and submitted. He did not think this was a meeting where you would go in and defend or explain the change. Mr. Knox said when you propose a bylaw change, it is wise to have Planning Board support. They would expect someone to want to lobby for the change or speak to why.

Mr. Knox advised that Town Counsel had been asked for some feedback in regards to this. He thinks he understands why this change has been proposed, and it was strictly for 43 Main Street. It could also be fear that the Town will be riddled with warehouses if this bylaw stays in place. Town Counsel had opined that deletion of the Development Opportunities District could result in less economic development and uncontrolled growth on larger land parcels in Town. He asked again for someone to speak to this.

Mr. Jenkins said the general feeling was the D.O.D. sets up a situation where a group of five people, without a vote of the Town, can allow anything that they deem acceptable. They feel to have a law on the books like this is not appropriate for the Town, and is not the way for the Town to grow. It takes away all of the feedback from the town residents, and public opinion is not considered unless it's a legal issue. They think when you get into properties and developments of this size, it should be the residents of the Town to vote it in.

Ms. Mancovsky then responded. She stated when she first came into this position, she had a lot of opinions on how things should be done but as she learned, she found that often times there were very good reasons why things she might have suggested didn't make sense. She didn't think

anybody disagrees but there was a reason why this was put in place. She didn't know that they should be throwing this away altogether and repealing it in its entirety. If the intention is to improve the citizens input and not have it be monitored by a Board, then that would involve removing regulation 7.9.3.1 and instead of having the Planning Board as the Special Permit Granting Authority (SPGA), it would be something that would have to go to Town Meeting, or to a couple of Boards, etc. That would be up for discussion. She thought that instead of repealing it in its entirety perhaps there is a modification that would be more amicable.

Mr. Knox advised they had received a letter from Brad and Lois Nelson from 51 Harcourt Avenue. They were in opposition to the Development Opportunities District. He noted for the record that they did have within their packet the signature page from the petitioners, as well as, the petition for insertion of their warrant article. He also wanted to mention one of their concerns with the repeal of the Development Opportunities District is that when it eliminates that section from the bylaw it potentially exposes 43 Main Street to not go through the Planning Board, the SPGA, and could eliminate those rules and regulations. If that property undergoes a change, it would become pre-existing, non-conforming and the abutters could become more at risk of not being protected by a Special Permit, and also the potential of an entirely different Board and no Development Opportunities District to refer back to. He would like the petitioners present to come back to work with them for the annual fall town meeting to rewrite the bylaw to either make it a small overlay zone, to keep it in place to protect 43 Main Street with the Special Permit and/or slightly expand it for some economic development in Town but not Town wide.

Mr. Jenkins asked if he was suggesting they pull the Article from the Town Warrant, see if they can work something out, and then submit it for a fall town meeting. Mr. Knox said he would like them to work with them and have the Planning Board submit the Warrant Article. Ms. MacEachern said she had been told that a lot of the business and industrial zoned areas in Lakeville are already full. They don't have a lot of space left for that sort of development. She said that they must keep in mind that if they do away with the D.O.D. that opens the door for large developments of residential units. Her concern is if this is done without something else in its place to manage that growth. She said they could work on where this could apply and previously the Planning Board had discussed having it designated in certain areas close to highway on and off ramps so there wouldn't be a big impact on the rest of the Town.

Ms. Pat Wrenn said what bothers her with the D.O.D. is that it is on any parcel that is 25 acres or more. She stated that when they tried to change the zoning from business to industrial that as an abutter, she was notified. She, with several of her neighbors, were able to go to Town Meeting and express why they didn't feel those 100 acres behind her were good for industrial zoning. She liked the way that residents could have input. That is needed from residents and abutters when you are changing a zone. She felt the D.O.D. is taking that away from them.

Ms. Heather Bodwell then asked Ms. MacEachern, for the record, if she was no longer in favor of the D.O.D. elimination. Ms. MacEachern replied she was not saying she was against doing away with it all together, and has considered both options of keeping it in place in certain areas or doing away with it all together. She feels to allow for these large parcels to continue to be developed as only residential will be a strain on the Town. She explained when you have those 25 acres in a residential area, you only need 70,000 square feet, and that is a house lot. She sees both sides, but

it is a tough thing to do away with it all together and not have a limit to the number of new constructions. It needs to be done in conjunction with that.

Ms. Mancovsky clarified that with most of the housing development they are referring to, they can't control it. She wants people to understand, as a municipality, you don't have as much control over that type of development and furthermore the Governor has recently made some changes as part of the Housing Choice Act. A simple majority is all that's required to change the underlying zoning instead of the previous two thirds majority. She thought the pressure to develop high density housing like apartments and condominiums, in particular, is what is going to be happening. She noted that if retail, or mixed use, had appeared in front of them for 43 Main Street, they would have welcomed that. It would have made the whole decision much easier, but that business opportunity wasn't available for the developers and wasn't presented. It's the market that is deciding what is presented to them.

Mr. Jenkins said that he believed Ms. Mancovsky was accurate in her statement. It is a market driven activity now. That reinforces why there should be more controls over the development of a particular area than to just five people in Town. There should be significant Town input. He was under the impression that the D.O.D. bylaw has never really been exercised until now. Mr. Knox said he would like to see all of them come back to the Planning Board to work together. He only wanted to protect the Special Permit for 43 Main Street. If the only resolution is to create an overlay district that only protected 43 Main Street, he would be fine with it.

Ms. Annmarie Sherrick asked if that would be considered spot zoning. Mr. Knox said that may be the only 25 acres parcel that covers that zoning block. Ms. Sherrick said it had been said if that hadn't been a blighted property, that never would have gone in. Mr. Knox said he never said it never would have, but he thought that was a big deciding factor. He clarified that any other property would not have had the detriment the hospital property has.

Ms. Bodwell said if they pulled the D.O.D. petition and amended it to just put on a few properties around Town, it could be by law every time a D.O.D. is placed and then put on the Zoning Map, it comes to Town vote. Mr. Knox said that he would look to Counsel for an opinion on that. Mr. Knox then read several comments from residents on Facebook. A comment from Ms. Katie Goodfellow, Town Moderator, indicated the Article could not be removed from the Warrant, but a motion may be made to table the question which will postpone it. Ms. Lillian Drane, Town Clerk, made a similar comment regarding the postponement of an Article. Atty. Kwesell, Town Counsel, then entered the meeting.

Ms. Bodwell then asked if they were to place the D.O.D. just on the hospital property and adjacent parcels wouldn't that need to go to a Town vote. Atty. Kwesell said that is a bylaw change which is proposed right now and would have to go to a Town vote. Mr. Knox asked if that type of change would be amenable. Ms. Bodwell said probably not, but she wanted to clarify that the Planning Board could not just place the D.O.D. on a particular parcel. Atty. Kwesell said that was correct. Mr. Knox said to work with the residents and choose maybe two zoning overlay areas. Then there will be specific zones shown on the zoning map in order to locate them for clarity. That would also be a zoning bylaw change that would go to Town Meeting. Ms. MacEachern noted that the

Board had been having discussions for some time about the locations of where they could limit this.

Mr. Jenkins asked if from their comments he could draw the conclusion that once the Rhino project is completed and installed the pressure for a lot of housing will go away. Ms. Mancovsky said that it would not go away, and she expected it to grow. Mr. Jenkins then asked if the Planning Board had to vote in this public meeting, if they are for or against an Article that's on the Town Warrant. Atty. Kwesell replied they were dealing with somewhat conflicting statutes here. Chapter 40A, Section 5 requires that the Planning Board make a recommendation on a zoning amendment. That recommendation goes to Town Meeting. If the Planning Board does not make a recommendation after 21 days, the Article can go to Town Meeting without a recommendation from the Planning Board. However, because Town Meeting is May 10th, they don't have 21 days, so if the Planning Board does not make a recommendation technically this Article cannot be enacted. This is a citizen's petition so under Chapter 39 of the General Laws meaning it goes on the Warrant the way it is presented at the Town Clerk's office. They are not allowed to change it in any way, shape, or form. The Article will be at Town Meeting but whether it can be enacted or not without the Planning Board's recommendation would be a decision made by the Attorney General under Chapter 40, Section 32.

Mr. Knox asked if there was any further discussion from Planning Board members. Ms. Mancovsky was open to having discussions at Town Meeting. She was sure there would be members present who can talk to why they voted in favor of this in 2012, so they could have a better understanding of this. They can also debate the risk of giving up the Special Permitting process which is a concern to her. Mr. Conroy said that he agreed with Ms. Mancovsky. As a Planning Board member, he would not be in favor of this Warrant as written. At this time, he was afraid of the ramifications of deleting the District in its entirety. He would like to see them work on this during the summer and prepare for the fall meeting, if that was workable.

Mr. Knox asked Mr. Jenkins if he would be willing to come in and work with the Planning Board if they proposed a bylaw change rather than elimination. The Board would not make a recommendation on this at this time. Mr. Jenkins thought it would make more sense for the benefit of the Town if they suggested that it be continued and not voted on until the fall. If the Planning Board were to say they approve that action and want to work on this further over the summer, he thought that would be a great way to go. Mr. Knox replied they would appreciate them working with the Board and look forward to it.

Mr. Knox then made a motion to not make a recommendation on this proposed bylaw change. Atty Kwesell said the motion would be that you are not going to make a recommendation on this bylaw amendment due to the fact that you are planning on working with the public to come up with a different zoning amendment for the fall. Mr. Knox then adopted that for his motion. Ms. Mancovsky seconded it.

Roll Call Vote: Ms. Mancovsky-Aye, Mr. Conroy-Aye, Ms. MacEachern-Aye, Mr. Lynch-Aye, Mr. Knox-Aye

Mr. Knox reminded Mr. Jenkins that someone would have to read the motion at Town Meeting on behalf of the citizens and then they would make the motion, with the Planning Board's support, to table until the fall Town Meeting.

Ms. Spieler asked if anyone can make the motion to postpone, or does it have to be her since she turned in the citizens petition. Atty. Kwesell replied if she is at Town Meeting, it should be her. If she is not at Town Meeting, she can designate someone to do it. If she is uncomfortable, she could have a designee. Atty. Kwesell said it could also be presented to the moderator ahead of time that it is going to be tabled until the fall, but they should check with the moderator to see how she wants it done.

Ms. Pat Wren asked if the D.O.D. stayed in place until the fall, what happens if another Special Permit comes up within that time for another parcel of land. Atty. Kwesell replied the D.O.D. applies to any parcel that is 25 acres or more and it only allows certain uses. It's a Special Permit by the Planning Board and the timeline with that is you have to hold a hearing within 65 days. That hearing goes for as long as it takes the Planning Board to get as much information as they need so they can make a decision. When the hearing is closed, there are then 90 days to issue a decision. This is different from 43D which was what the hospital property was under and which does not happen often. As the hospital was a blighted property, it was an expedited permitting process. If a project came in after May 10th and it was a large project, this Planning Board is going to do their due diligence and hire a peer reviewer, do studies, and most likely there would not be anything issued before the fall, but she did not think that would happen.

The hearing closed at 7:59.

New Business – Master Plan Implementation Committee

Mr. Lynch advised at the last meeting the D.O.D. was discussed. There were numerous comments made by the members that it was too vague, residents did not understand the implications when it was implemented and what it was supposed to accomplish. The implications and the goals of the D.O.D. were not clearly articulated up front to the residents and to many members of the different Boards. A recommendation was made by one of the members that it be modified. The Chairman said that it couldn't be modified but either had to be approved or repealed. Mr. Lynch was not sure if that was accurate.

Mr. Lynch advised the second half of the meeting focused on the Master Plan matrix. The main points after that was how to disseminate to the residents of the Town the different projects that all the different Boards within the Town were working on. One recommendation was a stuffer in the real estate tax bill. Finally, Mr. Dixon had advised that he had accepted Representative Orrall's offer to speak at an upcoming meeting but a date had not yet been identified.

New Business – Right to Farm Bylaw

Mr. Knox advised he had spoken to Mr. Jared Darling regarding this. He sits on the Agricultural Commission and is in full support of the proposed bylaw. He also talked to the Building Commissioner regarding his concern of people doing agricultural things that were unreasonable on small lots, for example, a horse on a property in Clark Shores. However, he was advised there are specific Board of Health regulations in place that would not allow something like that. There is also a general bylaw that would cover anything that is noxious or a nuisance. Although that is a little bit ambiguous or subjective, there are things in place within the bylaws to protect abutters and also regulate what people could do within the Right to Farm Bylaw. He was not opposed, but would like to hear comments from others.

Ms. Mancovsky then spoke to a situation in her own subdivision development. At that time when she looked into the bylaws, it was a gray area. She noted her subdivision was not built with covenants. Developments that have covenants or a rule book to play by are much stronger than relying on just the bylaw on its own. Ms. MacEachern said she had done some research to make sure that it was consistent with what else is out there for Right to Farm Bylaws. She did find that Stowe had almost the same language with some minor changes. She was in favor of the proposed bylaw, except for the one section that referred to pesticides as she was concerned that could go into the water system. Mr. Knox noted that in speaking with different cranberry bog farmers, everything they use now for herbicides and pesticides is organic.

Mr. Conroy was also in favor and thought it was good for the Town. He found as he read through it to be very informative. Ms. Mancovsky said it did fit in nicely with their model for resiliency and how much of a priority that is for their community. She was also in favor. Mr. Knox noted they did not have to make a recommendation, but he had wanted some discussion regarding it. He supported it as well, and if anybody wanted to speak on behalf of it outside of the Planning Board, he would urge them to do so.

Next meeting

Mr. Knox advised the next meeting is scheduled for May 13, 2021, at 7:00 p.m.

Adjourn

Mr. Knox made a motion, seconded by Ms. Mancovsky, to adjourn the meeting.

Roll Call Vote: Ms. Mancovsky-Aye, Mr. Conroy-Aye, Ms. MacEachern-Aye, Mr. Lynch-Aye, Mr. Knox-Aye

Meeting adjourned at 8:19.