

**Planning Board  
Lakeville, Massachusetts  
Minutes of Meeting  
April 21, 2022  
Remote meeting**

On April 21, 2022, the Planning Board held a remote meeting. It was called to order by Chairman Knox at 5:30 p.m. LakeCam was recording, and it was streaming on Facebook Live.

**Members present:**

Mark Knox, Chair; Peter Conroy, Vice-Chair; Michele MacEachern, Jack Lynch, Nora Cline

**Others present:**

Attorney Amy Kwesell, Town Counsel; Marc Resnick, Town Planner; John Jenkins, Ann Marie Sherrick, Heather Bodwell, Brian Fedy, Martin Schwalm, Susan Spieler, Kolleen Carchio, Hilary Wood, and Susan Aukstikalnis; residents

**Agenda item #1**

Mr. Knox read this item into the record. It was an explanation of how the provisions of Chapter 20 of the Acts of 2021 allowed the Board to continue to meet remotely.

**Discussion concerning the removal of Section 7.9 Development Opportunity (DO) District from the Lakeville Zoning By-law, the Board's vote of April 14, 2022, and any other action relating to this section**

Mr. Knox said the first item on the agenda is the discussion concerning the removal of Section 7.9, the DO District, the Board's vote of April 14, 2022, and any other action related to it. He believed this item had not been properly put on the agenda and voted on at their April 14, 2022, meeting. This has been placed on the agenda to ratify that vote. To summarize, on April 14, 2022, Ms. MacEachern made a motion to eliminate the DO District; it was seconded by Ms. Cline; and there was a majority vote to post for a public hearing to continue that action. He then asked Atty. Kwesell to weigh in on this action tonight and if anything else was required to make this action correct.

Atty. Kwesell replied because the subject was not on the agenda for April 14<sup>th</sup>, it was put on tonight's agenda. The Board will discuss a zoning amendment to remove the DO District. In her opinion, any defect that happened on April 14<sup>th</sup> by taking a vote that was not on the agenda is being corrected tonight. Anything that happened that night will become null and void because of the properly noticed meeting of tonight. Mr. Knox then asked for a brief summary of what the Planning Board's actions should be to carry this out.

Atty. Kwesell responded they have Town Meeting on May 16, 2022. That Warrant has opened and closed so no action that is voted on tonight will be taken up at that meeting. A public hearing would have to be held to get onto the fall Town Meeting. It appears that the fall special Town Meeting is in November, usually the second or third week. The Board will vote to make this an Article for the fall Town Meeting and submit it to the Select Board pursuant to the General By-law, Section 2, which requires that any Article that goes on the Warrant has to be put on by the Select Board.

Atty. Kwesell continued Mass General Laws, Chapter 40A, Section 5, requires the Select Board to then send the Article to the Planning Board. The Board then has 65 days to hold a public hearing. It must be advertised for two weeks, and then the hearing can be held. Once the hearing is closed, the Planning Board has to make its report in 21 days. If a report is not made in 21 days, Town Meeting can still act on the Article. However, any Planning Board recommendation is only good for six months. She thought it would be alright, but they needed to take that time frame into consideration.

Atty. Kwesell then explained the impact of this proposed zoning amendment. She advised it becomes effective when it is voted by Town Meeting, but it also has to be reviewed and approved by the Attorney General, so there is a disconnect between the two statutes. The way that has been interpreted is that the zoning amendment becomes effective upon the Town Meeting vote and anything that is done between that vote and the Attorney General approving that amendment is done at the person's own risk. They also have vested rights which are called freezes. Vested rights are anyone that has a Special Permit or a Building Permit prior to the first public hearing notice of the Chapter 40A, Section 5, Planning Board public hearing; the zoning amendment will not affect them. The freeze protection refers to anyone that files a preliminary subdivision plan for a parcel of land. If they file that prior to the vote of Town Meeting, and then within seven months file a definitive subdivision plan, they are then protected for eight years. That freeze applies to use, dimensions, etc. Atty. Kwesell said that if someone files an ANR plan under Chapter 41, Section 81P, prior to Town Meeting, the use only is protected for three years.

Mr. Knox said that Ms. MacEachern had made a motion at the April 14<sup>th</sup> meeting. He asked her if she would like to make that motion again. Ms. MacEachern then made a motion to ratify the vote taken from April 14, 2022, for the Planning Board to hold a public hearing in regards to the removal of the Development Opportunities District. Ms. Cline seconded the motion. Atty. Kwesell noted that the motion was satisfactory and the next step would be to send that Article to the Select Board to be put on the fall Town Meeting Warrant. Mr. Resnick then read the proposed Article into the record as follows: "to see if the Town will vote to remove in its entirety Section 7.9, Development Opportunities, the DO District from the Town of Lakeville Zoning by-law or take any other action thereto." Atty. Kwesell said that sounded fine. The Board of Selectmen would then send it back to the Planning Board where they will have to make a recommendation on it. She noted that sometimes during that process, there are some adjustments.

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

**Discussion concerning possible changes the Lakeville Planning Board Rules and Regulations relating to the Development Opportunities District**

Mr. Knox said he would like to discuss amending the dimensional requirements on the DO District. He noted this was actually in the DO District language under 7.9.6E, which he then read into the record. He asked Atty. Kwesell if they had the same right to amend those with the same 48-hour notice for a public meeting. Atty. Kwesell said that would be yes, so whatever process they were enacted under, would be the same process to amend them. Mr. Knox said they had adopted the dimensional requirements for industrial zoning.

He would move the Planning Board lower the lot coverage to 25% to mirror the residential lot coverage; to remove the ability for density bonuses which are part of their by-laws; to increase the setbacks to 200 feet; to increase the noise and visual buffering to 200 feet. Members then discussed if the 25% amount for lot coverage was appropriate. Mr. Knox advised that they could not change these rules and regulations to make a lot unbuildable. Atty. Kwesell then stated that nothing they were doing tonight would impact the hospital project, but they could not make rules and regulations to stop a project. In Court, that would not be considered reasonable.

Atty. Kwesell said the DO District allows a minimum of 25 acres so they have to consider any property that has 25 acres, but they could not base their regulations on a project that might be coming in front of them. Ms. Cline asked if changing it to 25% would be acceptable as that was also the coverage for residential. Atty. Kwesell replied that she thought that was a reasonable relation and if going lower than that, they would need to have some type of support.

Mr. Conroy asked for clarification regarding the noise and visual buffering. Would that begin at 200 feet? Mr. Knox said his understanding would be it is from the outer perimeter lot line where it would abut an adjacent property; and they would be required to have 200 feet of buffering into their own property from the lot line in. Mr. Resnick said they had talked about maybe in the summer spending some time looking at the DO District zoning and the rules and regulations and then identifying locations where it would be deemed more acceptable to have industrial development. Even though they were proposing some changes tonight, he felt it would be wise to continue to look this over during the summer to see if they could refine the DO District. With the limited amount of land, long term, they probably didn't want to have such a small use of land in appropriate areas as it was overly strict. In inappropriate areas, it would be fine.

Mr. Knox asked Atty. Kwesell if on some of these regulations the Planning Board would have the ability to waive or re-amend them to favor a project that was thought to be appropriate. Atty. Kwesell replied, in her opinion, they had the ability to waive and/or amend them. Mr. Knox said to Mr. Resnick's point, this could be revisited and improved upon, and he would be open to listening to that. For tonight, unless the Board had a different intention, he would continue upon this path and not eliminate what they were doing just to hold off until summer to make a different change. Mr. Conroy said that he did agree.

Mr. Knox then made a motion, seconded by Mr. Conroy, to amend the dimensional requirements of the DO District in which they would lower the lot coverage to 25%; remove the ability to have density bonuses; increase setbacks to 200 feet; and increase buffering to 200 feet.

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

Mr. Knox noted that they had a lot of the public here so he would welcome any comments at this time. No one spoke.

Ms. Cline felt this was an important step to take. She believed that they needed to be as transparent as possible with updates in the meetings to let the public know how it is progressing. Mr. Knox said that he would also hope that they have a lot of attendance.

### Next meeting

Mr. Knox then announced the next meeting is scheduled for April 28, 2022, at 7:00 p.m.

Ms. MacEachern asked when the public hearing would be posted. Mr. Resnick said that it will probably be by the end of next week. Atty. Kwesell noted that it would first have to go to the Select Board under their by-law and the statute. The Select Board will then send it back to the Planning Board.

Mr. Resnick added that their next meeting would be at the Library. The public hearings have been re-noticed and re-scheduled for Thursday, May 12<sup>th</sup> at the Police Station.

Mr. John Jenkins then asked if the changes to the DO District that they were proposing to implement now or shortly would become effective for the purchase and sale and the requested DO District of the Lakeville Country Club? Atty. Kwesell said that is not as clear as the Zoning. If a preliminary subdivision plan has been filed, whatever property is shown on that plan is entitled to an eight-year freeze with regard to the zoning by-law's use and dimensional requirements. Their by-law allows them to enact rules and regulations that affect dimensional requirements so it would be most likely that the dimensional changes made tonight would not affect them because it all ties back to the bylaw that allows them to make those changes. That bylaw was frozen as of the day that they filed that preliminary subdivision plan with the Town Clerk.

Ms. MacEachern asked if the Site Plan was filed by the current owner and not the potential buyer does it freeze the zone for the seller and the buyer. Atty. Kwesell replied it is the property that is subject to the freeze, not who files it. It is the zoning and whatever is in the zoning bylaw as of the day that they filed the plan with the Town Clerk. Ms. MacEachern asked if the Town has to recognize that Preliminary Plan, could they also recognize that the current owner is changing the use of the property from Chapter 61 protection and move forward with a fair market assessment. Atty. Kwesell replied Chapter 61A and any kind of value of the land has nothing to do with the zoning. If a preliminary plan has been filed, the zoning is frozen the date they filed it with the Town Clerk. The statute says that within seven months they have to file a definitive sub division plan. As to ownership, the right of first refusal, and the 61A tax, none of that impacts Chapter 40A, Section 6 which allows for this freeze, in her opinion.

Ms. MacEachern asked if there was any case law in regards to this. Atty. Kwesell replied the only case she could reference was where the Planning Board alleged that a preliminary plan that was filed was not adequate. The Court held that the preliminary plan is exactly that. It's preliminary and so it can be pretty bare bones. She did not know of any reason why 61A or right of first refusal would come in because ownership does not have any impact on zoning.

Ms. Kolleen Carchio asked if they could give them the date the preliminary plan was filed. Mr. Resnick replied it was filed two days ago. Atty. Kwesell responded a definitive subdivision plan would have to be filed within seven months of the date it was filed. Ms. Carchio said that would be November 19<sup>th</sup>. She asked if the preliminary plan was available for public access. Mr. Resnick said it was in the Planning office at Town Hall.

### **Adjourn**

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

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

Meeting adjourned at 6:16.