

**Planning Board  
Lakeville, Massachusetts  
Minutes of Meeting  
Thursday, May 26, 2022**

On May 26, 2022, the Planning Board held a meeting at the Lakeville Police Station. The meeting was called to order by Chairman Knox at 7:00 p.m. LakeCam was making a video recording of the meeting.

**Members present:**

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

**Others attending:**

Marc Resnick, Town Planner

**Preliminary Plan – 44 Clear Pond Road – Derek Maksy – applicant**

Mr. Knox advised a plan had been provided. This plan had been sent to Town Counsel, and they had received comments back from Counsel. It appears that the plan does not meet the requirements to be a subdivision because it does not show the requirement for lots. Mr. Resnick added a subdivision is defined as two or more building lots, but a preliminary plan can be amended at any time.

Mr. Rick Friberg from TEC was present. He advised he was representing the applicant for 44 Clear Pond Road. He stated that a preliminary plan is a starting point for discussion about a subdivision. It is an opportunity to meet with the Town and talk with staff in order to get feedback on any items that might come up, either technical or other issues within the Subdivision Control Law, that have to be addressed prior to being able to move into the Definitive Subdivision stage of a project. The subdivision plan that was submitted proposes two parcels; a right of way parcel and the remainder of the parcel which is the remainder of the Lakeville Country Club. These items come up and sometimes the Planning Board will get comments back from other departments.

The Planning Board through these discussions has the ability to work with the applicant to amend the plan to bring it into compliance to subdivision control as part of the preliminary filing. The Board can then approve the plan as it is; it can approve as amended; or it can disapprove of the plan. The applicant has the ability to adjust the plan to bring it into conformance and without prejudice. They provide the plan not as a refiling but as a resubmission and the disapproval is revoked or withdrawn. The plan then moves forward toward the Definitive Subdivision plan stage.

Mr. Friberg then stated many Towns do not look favorably on a cul-de-sac or an additional dead-end street. Often times, they create issues for emergency response personnel and cause dead-ended utilities. One proposal that would remedy that would be to propose a through street that went from

a Clear Pond driveway and instead of ending at a cul-de-sac continued through to Harcourt. That would create a right of way and the creation of two developable lots. Alternatively, if the Board is okay with the idea of a cul-de-sac, then the exact plan that was submitted with the right of way and adding the red lot line that subdivides the solar lot from the balance of the lot creates a right of way lot, a development lot, and a development lot. In his opinion, the alternatives he has shown them would bring it into conformance with subdivision control law and the Town regulations. He noted they would also be legal lots, with the appropriate amount of frontage and lot area.

He advised this is the preliminary stage, and it makes sure the line drawing exercise is at least started the right way. A preliminary plan is not an approval of any development. There are no buildings shown on the plan. It is lot lines on a piece of paper. Mr. Knox asked why this plan was being submitted. Mr. Friberg replied the plan is a lot protection for a zoning freeze. Mr. Knox said it is his understanding the applicant has a purchase and sales to sell the property so why would he do this. Mr. Friberg said that it is a landowner's right to be able to maintain the value of their property and more restrictive zoning is less valuable than less restrictive zoning. The landowner is within his right to file this preliminary plan. It is a sub dividable parcel. and there are certain protections afforded by pursuing a subdivision on the lot.

Ms. MacEachern said in reading the P & S, it states there wasn't to be any zoning moves taken by the seller so it is confusing why he is doing this. Mr. Friberg said that he was not a party to the Purchase and Sales agreement. He was a civil engineer hired to put together a preliminary plan. There is no change in zoning requested by the applicant or the sub-divider in this case, but rather a land owner pursuing what they are legally entitled to do. Mr. Conroy asked with the pending removal of this property from 61A, wouldn't that put this on hold until that was remedied? Mr. Friberg said there are statutory requirements about time frames that are associated with this. The ideal scenario would be that this meeting would not happen until after the Town ballot, but there is a 45-day clock that starts from when the preliminary plan is filed that dictates when this hearing occurs. Mr. Knox added that it is also his understanding that there is no constructive approval if the Planning Board fails to act. Mr. Friberg said that was exactly right. If there is no action taken, you are then free to proceed with the Definitive Subdivision Plan which has a time clock of seven months from the submission of the preliminary plan. The date that plan would have to be filed by would be November 19, 2022.

Mr. Lynch asked if the Board should ask the owner of the property to come in and explain the purpose of this plan. Mr. Knox replied the purpose of this plan is to freeze the zoning. There is no requirement the owner needs to be present, and he has hired somebody to represent him. Mr. Knox asked Mr. Resnick with the two plans they have been presented; the cul de sac with a division of a lot line or an actual through street, would he make a recommendation or not. Mr. Resnick replied there are two things to consider. The first is you have to consider this within 45 days, but you don't have to make a decision within 45 days. This can be continued until another meeting date. He would suggest that because this is a commercially zoned property and it is used commercially, not to impact the Harcourt Street neighbors with additional traffic.

Mr. Friberg said they had felt similarly, and that was why they wanted to show the two different options. Mr. Knox then opened the hearing up to public comment. Mr. Jim Marra of 15 Pheasant Run asked how the property was currently zoned, and if they wanted to put in a residential

development. Mr. Knox replied it was zoned business. All they were looking at was the subdivision of the land. They were not looking at a change in the zoning. Mr. Marra said he thought this was a residential plan. Mr. Resnick explained that you can subdivide commercial property. Mr. Marra then discussed the Development Opportunity District (DOD.) He was not sure why the Town was entertaining this plan when they were still in litigation over this District.

A moratorium was then discussed. Mr. Resnick said that you can pass a moratorium on the implementation of certain types of zoning, or the application for certain permits, as you craft a bylaw to implement that certain use at Town Meeting. This isn't really what they are talking about here. The DOD allows multiple types of uses so he was not sure if it would be appropriate to put a moratorium on new filings for the DOD. He would have to do further research to see if that would be a legal option. Regarding the applicability of the DOD in scattered places around Town, it is similar to those other types of uses where you have an Overlay District that might also have other standards that must be met. It is not on any one parcel, but might be able to be located in a particular district or in multiple districts within the community. After discussion, Mr. Marra said that you should be able to put a freeze until this DOD has been clarified by a Town vote. He felt it was unnecessary for the Town to be going through this, where they are using the DOD which is the subject of two lawsuits in land court, and now another one. Even if it is approved, they are looking at another lawsuit.

Mr. Marra then discussed Overlay Districts, and noted the Judge had been concerned about applying this DOD Overlay to every piece of property in the Town of Lakeville. Mr. Knox replied that the DOD was designed as an Overlay over the whole Town, and that is how it is written. It does not show on the Zoning map, but they have another zone, the Water Resource Protection District, that is the same thing. It is over the entire Town, and also does not show on the Zoning map. He noted that tonight they were here looking at a subdivision and not the DOD. Mr. Marra said that in regards to the Water Resource Protection District, it does indicate in the bylaw that it is considered to be superimposed over the entire town. He felt because of the ongoing and potentially additional litigation, they need to revisit what they are doing with the DOD. Mr. Marra said he wanted the record to reflect, they are trying to use the DOD again, and the Town is going to get into another situation.

Ms. MacEachern asked if they could continue, and get further information regarding a moratorium. Mr. Resnick said that even if you could put a moratorium on an Overlay District, it is a regular Article that has to go to Town Meeting. The Planning Board has already submitted an Article to remove the DOD, and they will be holding a public hearing probably in June or July. The Board has talked about modifying the DOD or the Overlay District and trying to work on something similar, but in the second version having it be more targeted. After further discussion regarding the DOD, Mr. Marra said that he did not believe the offer received was a bona fide offer, because it depends on a zoning change. He then thanked the Board

Mr. Knox said he believed the Planning Board had the opportunity to continue this hearing. Mr. Friberg said it is his understanding that within 45 days they are supposed to get a determination; whether that is approved as is, approved as amended, or disapproved. Mr. Resnick replied the

Board needs to consider it, but not necessarily make a decision. Mr. Friberg suggested granting an extension to a date certain of the 45 days, perhaps to a meeting in July if that is amenable to the Board.

Mr. Friberg asked if there was any additional detail the Board would want to see in advance of that meeting. Mr. Knox said they needed more time for Counsel to review. He would like to get comments back for any other changes or deficiencies within a couple of weeks. Mr. Resnick said as long as it complies with the definition of a subdivision and the zoning requirements, then what has been submitted meets most of the other technical items. He would forward it when it was received.

Mr. Knox made a motion, seconded by Ms. MacEachern, that the Planning Board continue this hearing until July 14, 2022, at 7:00 p.m. The **vote** was **unanimous for**.

Select Board member, Lorraine Carbonni, then approached the Board. She asked what date the preliminary plan had been received by the Town Clerk. Mr. Friberg advised it was April 19, 2022. 45 days from that would be June 3, 2022. She was concerned that because it was under the subdivision control law, a decision would have to be rendered back to the applicant within that 45-day period. Mr. Resnick replied the statute says the Board needs to consider it, but they do not need to make a decision within the 45 days. They have had an initial meeting with the applicant's representative to consider it. They have gotten feedback, and they have continued it to a date certain by mutual agreement.

Mr. Knox said in addition, he spoke earlier to the Zoning Enforcement Officer, and he concurred with what had been discussed earlier in the presentation. Even if the Planning Board denied what was here, that does not negate that the plan was put in on April 19, 2022, which means the clock has started for seven months from the submission date. The Planning Board also has no penalty if they do not act, and there is no constructive approval. Ms. Carbonni noted that she just wanted that clear for the record. Mr. Knox said he appreciated her bringing it up for clarification.

**Site Plan Review – 156 Rhode Island Road, continued – T. Sikorski Realty, LLC – applicant**

Mr. Resnick advised correspondence had been received that requested a continuance until their next meeting.

Mr. Knox made a motion, seconded by Ms. MacEachern, to continue the Site Plan Review for 156 Rhode Island Road until June 9, 2022, at 7:00 p.m. The **vote** was **unanimous for**.

**Site Plan Review – 2 Bedford Street, continued - Thomas J. Parenteau of PBT Real Estate- applicant**

Mr. Thomas Parenteau and Atty. Jilian Morton were present. Atty. Morton said they were here tonight to present their revised plan. The engineer was not present, but she would review his comments as well as the items that had been brought up by the Town Planner. She began by going

through some of the changes that had been made. She advised there had been an issue with the retaining wall, which has since been removed. This improved the flow of the lot. They were also able to make a lot of the adjustments regarding access to the site, as they did not want any sort of traffic or hazards so some parking spaces have been moved. Some of the comments were notations that needed to be added to the plan.

Atty. Morton said she recently received a comment from the Planner in regards to the dumpster location which she believed was to be in the back on the revised plan. The idea was to move it so it would be more convenient for a restaurant space. The intention would be to fence it in. She would confirm all of this with the engineer. Another note was to replace the paper bark maple trees with native species. She asked if there was anything in particular the Planning Board would like to see. Mr. Knox said they would like to see native species, but they would not hold them to anything other than if the location requires a tree that grows in a certain fashion to allow visibility beneath and does not affect vehicle lines of sight.

Atty. Morton stated at the north entrance, the item where one way do not enter is painted on the pavement, curbing around the patio area should be extended to narrow that drive width was a pretty reasonable request. The last item the use of reclaimed for all the parking lot base material is usually not recommended. They also had no issue with that. Mr. Resnick said if they did half gravel and half the reclaimed as the subgrade, that would be good and probably use up most of that material. Mr. Knox said an additional concern would be if they were using what is on the site currently, is the intent to process it on site? They would then have to have dust controls and additional measures related to that.

Mr. Resnick said it appears that the concerns have been addressed by the applicant. Mr. Knox said he believed that this is actually two lots. It is 2 and 4 Bedford Street, but the plan only references 2 Bedford Street. Is there a reason for that, as he felt lot 4 should be referenced on the plan? Atty. Morton said she did not have the title in front of her, but it could just be a notation regarding that on the deed. Mr. Knox asked if that could be added on the plan. Atty. Morton said they could do that, and she would double check on the title to see how it is held. She believed it was under one deed under the Realty Trust by the LLC. Mr. Knox said the other item was they have plenty of frontage here, but they continue to show the old buildings like it is a pre-existing, non-conforming requirement. Those buildings have been gone for approximately two years. Is there a reason for that? Atty. Morton replied she thought it was just helpful for the zoning compliance table where they have the required, existing, and the proposed. It can be removed if that was the preference.

Mr. Knox noted there had also been a comment from the Board of Health regarding an existing well and having it properly decommissioned. Mr. Parenteau said they do have approval for Taunton water. Mr. Knox said he understood that, but the existing well would still need to be decommissioned properly so nothing could enter into the aquifer. Mr. Knox asked for any additional questions. Mr. Conroy would like to see a rendering of the building.

Mr. Resnick noted that the comment letter does refer to some architectural drawings being amended to show a stone front, other types of siding, etc. However, it was not in this set of drawings, and it was never received. Mr. Parenteau said that it hadn't been done as they wanted to first make sure there weren't any other changes that would be necessary. Mr. Conroy said this is proposed, it's not a density bonus. Mr. Knox said they can't approve tonight based on the changes they need to see and the architectural drawings. They will need to continue for at least one more meeting. When they get on that next agenda, they should have those architectural drawings as well as the minorly amended Site Plan.

Mr. Resnick then went through the previous comments regarding the drawings. Mr. MacEachern said the last plan had mentioned there was refrigeration planned. Atty. Morton replied there would be no cold storage at this facility. Ms. MacEachern said that it also states light manufacturing. Atty. Morton said there will not be manufacturing of anything there. Atty. Morton said they are still developing the site and there will be space for other tenants, but things are still not certain. As they move forward, if they have to go in front of the Board again for something more particular, it would happen at that point.

Mr. Knox made a motion, seconded by Ms. MacEachern, to continue the 2-4 Bedford Street Site Plan Review until June 9, 2022, at 7:00 p.m. The **vote** was **unanimous for**.

### **Approve Meeting Minutes**

Mr. Knox made a motion, seconded by Ms. MacEachern, to approve the Minutes from the March 10, 2022, meeting. The **vote** was **unanimous for**.

### **Review correspondence**

There was no correspondence to review.

### **Old Business**

Mr. Resnick distributed handbooks to Mr. Knox and Mr. Conroy.

Ms. MacEachern would like an update of where the appeal for the Lakeville Hospital currently stands. Mr. Resnick said that he had not received any official update. Town Counsel is monitoring the situation, but not actively defending it as the applicant is. There was a hearing, but he was not aware of any details.

### **New Business**

Ms. MacEachern also asked about the status of a feasibility study for a new Town Hall/Fire Station. Mr. Resnick replied that he was not currently involved in that study, but he could find out and give her an update at their next meeting.

### **Next meeting**

The next meeting is scheduled for June 9, 2022, at 7:00 p.m.

### **Adjourn**

Mr. Knox made a motion, seconded by Mr. Lynch, to adjourn the meeting. The **vote** was **unanimous for**.

Meeting adjourned at 8:11.