

Board of Selectmen
Meeting Minutes of March 28, 2023
Town Hall, Douglas G. Willett Board of Selectmen's Chamber, First Floor

Present: Joseph DiRocco, Jr., Vice-Chairman, Jennifer Kopcinski, Clerk, Tony Archinski, Member, Heather Santiago-Hutchings, Member, Ann Vandal, Town Manager, Victor Garofalo, Assistant Town Manager, Attorney Karis North and Recording Secretary Shannon Rowe

Absent: Alison Genest, Chairman

Mr. DiRocco called the meeting to order at 7:00 p.m.

The Pledge of Allegiance was recited followed by a moment of silence being observed for those serving in our Military and those who have given the ultimate sacrifice.

TOWN MANAGER'S REPORT – Mrs. Vandal stated that the Town Election will be held on May 6, 2023 with no contested races. Mrs. Vandal discussed the June Town Meeting and the Board possibly having an additional meeting in May to review the Zoning By-Law Warrant Articles. Mrs. Vandal discussed last night's Tri-Board Meeting and the State's increase in net school spending. Mrs. Vandal stated that FY24 is in good shape but FY25 will be challenging with significant deficits in the future. Mrs. Vandal discussed State Aid, income and tax collections. Mrs. Vandal stated that they would be providing a projection schedule at the next Tri-Board Meeting. Mrs. Vandal stated that Karis North, Town Counsel, will be discussing 40B projects at tonight's meeting and they have hired a consultant to look at the Town's affordable housing numbers. Mrs. Vandal stated that they should have information from the consultant within two months. Mrs. Vandal discussed the re-development of the Town's Website and stated that the IT Department will review the re-development with the Board at their April 11th meeting. Mrs. Vandal discussed the maintenance projects, monument work, etc., at Veteran's Memorial Park. Mrs. Vandal discussed the fixing of the benches, ADA accessibility and ordering concrete slabs for the Park. Mrs. Vandal discussed doing their best to reach out to families, companies, etc., in regards to the donated bricks and benches.

Mr. DiRocco asked about the increase in net school spending? Mrs. Vandal discussed the formula for net school spending, which requires additional revenue and stated that they are carefully looking at things.

Mr. DiRocco asked if the DATV budget has been received? Mr. Garofalo stated that they did receive DATV's budget after the last meeting, which is slightly higher than last year. Mr. Garofalo stated that they still have not received DATV's reserve fund numbers and asked if the Board would like DATV to come into a meeting? Mrs. Vandal discussed DATV's budget process. Mr. Garofalo discussed the PEG Access State requirements.

Mr. Archinski discussed DATV and some confusion with what rate payers pay into. Mr. Garofalo explained that the franchise fees are the fees that they are discussing.

(Board of Selectmen Meeting Minutes of March 28, 2023)

Mrs. Santiago-Hutchings asked if the payment is specified in the Contract? Mr. Garofalo explained that even if it is not in the Contract, it is still a State rule.

Mr. DiRocco suggested reaching out to DATV again and if no response, the Board will have them attend a meeting.

FIRE CHIEF'S REPORT:

Chief Patterson thanked the Town Manager for filling in for his February report as they were called to a working fire.

Chief Patterson reviewed his Fire Chief's Report dated March 2023 with the Board. Chief Patterson stated that they responded to 288 emergency calls in February, had three recent fires, have received the long-awaited delivery of their rescue boats, completed additional training, Engine 1 has returned from its refurbishment and is now lettered Engine 5, the new Civil Service list is due to be released in April, training this month has been focused on Active Shooter Hostile Environment Response (ASHER) and Captain Michael Cunha just completed an Active Attack Integrated Response Program.

Mr. DiRocco asked about the fire issues with lithium batteries. Chief Patterson discussed lithium batteries and the challenges moving forward as these batteries are the primary type of rechargeable batteries.

Mr. Archinski stated that at last night's Tri-Board Meeting, they had a solar energy presentation and asked if there are any issues with solar panels? Chief Patterson discussed the issues with solar panels from a fire perspective and discussed proper installation and maintenance.

Mrs. Santiago-Hutchings commented that the Fire Department's training is commendable.

COMMUNITY CALENDAR: - Mr. DiRocco read the information in the Community Calendar.

PUBLIC HEARING:

* 7:20 p.m. - Dish Wireless, LLC, 76 Pleasant Street – Requesting a Special Permit to install telecommunications equipment to an existing smokestack – Mr. DiRocco read the public hearing notice advertised in the Lowell Sun. Mr. Daniel Gagne from Network Building Consulting, representing the applicant, appeared before the Board to request a Special Permit to install telecommunications equipment to an existing smokestack at 76 Pleasant Street. Mr. Gagne discussed the 5G expansion with Dish Wireless and the FCC appointing additional carriers with Dish Wireless being the fourth carrier. Mr. Gagne stated that Sprint and T-Mobile have merged and there are currently three antennas where Sprint was on the existing smokestack. Mr. Gagne discussed how the installation process would work.

(Board of Selectmen Meeting Minutes of March 28, 2023)

Mr. Archinski asked if they would be taking down any equipment? Mr. Gagne stated that the equipment is already gone and there is nothing on the top level of the smokestack. Mr. Gagne discussed the structural analysis on the smokestack.

Mr. Archinski asked about transmitting? Mr. Gagne explained that they abide by all FCC guidelines.

No abutters spoke in favor or in opposition of the public hearing.

Motion made by Mr. Archinski to Close the Public Hearing. Motion seconded by Mrs. Kopcinski. Motion passed unanimously. Motion made by Mr. Archinski to Approve the Special Permit. Motion seconded by Mrs. Kopcinski. Motion passed unanimously.

AGENDA ITEMS:

* Town Counsel – Review and Discuss Open Meeting Law Complaint filed by Justin George on March 15, 2023 – Attorney Karis North reviewed how the process works when an Open Meeting Law Complaint is filed. Attorney North reviewed the exhibits and draft response prepared by Attorney Deluca dated March 29, 2023 to Mr. George. Attorney North explained that the letter is asking the Attorney General’s Office to decline the review of the complaint.

Mr. Archinski stated that he does not recall previous Executive Session Agenda’s being that specific and asked if something has changed? Attorney North discussed there not being the same level of specificity in the past as now. Attorney North discussed personnel and litigation being different matters.

Mrs. Kopcinski questioned if the specific wording is recommended or required? Attorney North stated highly recommended.

Motion made by Mr. Archinski to recommend sending the letter prepared by Attorney Deluca. Motion seconded by Mrs. Kopcinski. Motion passed unanimously.

* Attorney Melissa Robbins – Review, Discuss and Vote on Signing the Grant of Restriction Limiting Discharge of Dredged and Fill Material for Berube Lane, LLC, 250 & 286 Wheeler Road – Mr. Brian Lussier, the applicant, appeared before the Board to request the approval and signing of the Grant of Restriction Limiting Discharge of Dredged and Fill Material for Berube Lane, LLC, 250 & 286 Wheeler Road. Mr. Lussier explained that this Department of Environmental Protection form is part of the Order of Condition approved by the Conservation Commission. Mr. Lussier stated that he had to agree that no more wetland filing would take place on the property.

Motion made by Mr. Archinski to Approve and Sign the Grant of Restriction Limiting Discharge of Dredged and Fill Material for Berube Lane, LLC, 250 & 286 Wheeler Road. Motion seconded by Mrs. Kopcinski. Motion passed unanimously.

(Board of Selectmen Meeting Minutes of March 28, 2023)

* Dracut Tire Shop, Inc., 1269 Lakeview Avenue – Requesting to Transfer Special Permit #93-1 – Light Vehicle Sales-25 Vehicles to Emil Zeaiter, President /Owner, Dracut Tire Shop, Inc. – Mr. Emil Zeaiter, the applicant, appeared before the Board and explained that the corporate structure of Dracut Tire Shop, Inc., has changed and he is now the president/owner and is requesting the transfer of the Special Permit for light vehicle sales into his name.

Motion made by Mr. Archinski to Approve the Transfer of Special Permit #93-1 – Light Vehicle Sales-25 Vehicles to Emil Zeaiter, President /Owner, Dracut Tire Shop, Inc. Motion seconded by Mrs. Santiago-Hutchings. Motion passed unanimously.

* Attorney Karis North, Murphy, Hesse, Toomey & Lehane, LLP – Discuss 40B Development Process – Attorney Karis North provided a brief history of her background along with her experience with the 40B process. Attorney North stated that she is the top 40B Attorney within her Firm and has worked on a fair amount of small and large 40B projects. Attorney North stated that she is a good advocate for the Town and has great relationships with fellow 40B Attorney's. Attorney North reviewed the Comprehensive Permit Law, MGL Chapter 40B Section 20-23. Attorney North discussed how the 40B process works, including Safe Harbors and explained that the Zoning Board of Appeals (ZBA) has the authority to issue the 40B. Attorney North explained that the applicant has to receive project eligibility from the State first, then files the 40B application with the ZBA. Attorney North explained that once the application is filed, the ZBA has 180 days to approve and 40 days to render their decision or an automatic approval happens. Attorney North stated that technical assistance is provided to the Town through peer reviews. Attorney North stated that DHCD also has technical consultants and legal assistance. Attorney North stated that the ZBA reviews the application within public hearings then is conditioned and permitted. Attorney North stated that once permitted, there is a twenty-day appeal period.

Alison Manugian, Community Development Director, stated that there have been no applications submitted as of yet. Mrs. Manugian stated that once an application is received it will be reviewed.

Attorney North explained that 300 units is the largest number that can be used without triggering a Safe Harbor revision.

Mrs. Kopcinski asked about the 10% affordable housing percentage or 1 ½% of general land area and Public Safety Law? Attorney North reviewed the Public Safety Law.

Mrs. Kopcinski asked what about the impact to the school system, public safety, etc.? Attorney North stated that those are Municipal Services that the Community has to provide. Attorney North discussed LIP projects being friendly 40B's.

(Board of Selectmen Meeting Minutes of March 28, 2023)

Mr. Archinski stated that he was happy to hear that a land consultant was being hired to evaluate the numbers and asked if Attorney North has ever heard of a revenge 40B and who would she get direction from when negotiating with the applicant? Attorney North stated that the ZBA is usually on the same page with the Town, Board of Selectmen, etc. Attorney North discussed having to do the homework and having a strategy.

Mr. Archinski asked what about Government input? Attorney North stated that the application would go out to Board's for their input.

Mr. Archinski asked about the impact to Town services if all of the proposed 40B applications come down the pike? Attorney North stated that there is some consideration for that.

Mrs. Santiago-Hutchings asked if there are grounds, could the ZBA reject the application? Attorney North explained that there are very few grounds to reject an application.

Mrs. Santiago-Hutchings asked about impact fees and can they be negotiated? Attorney North discussed if that was part of the project and would be on the builder.

Mrs. Santiago-Hutchings discussed the 1 ½% of land and asked if that was only buildable land? Attorney North discussed how the percentage is figured and what is exempted.

Mrs. Kopcinski asked if the land consultant would use GIS when figuring the Town's percentage? Mrs. Manugian stated yes.

Mr. Archinski asked about counting public housing in the affordable housing numbers? Attorney North stated that is based on subsidiary.

Mr. Archinski asked if Attorney North could provide the Board with copies of Communities that have won 40B appeals and if any Communities are suing the HAC.

Mrs. Santiago-Hutchings and Attorney North discussed Inclusionary Zoning. Mrs. Manugian stated that the Affordable Housing Partnership is currently talking about Inclusionary Zoning.

Mrs. Santiago-Hutchings asked who handles negotiating with the applicant when they are in front of the ZBA? Attorney North stated usually Town Counsel.

Mr. Dana Taplin, appeared before the Board and discussed a snapshot at 1 ½% when a 40B application is filed and Affordable Housing numbers. Attorney North discussed regulatory Safe Harbors and the affordable housing numbers being unlikely to be met. Mr. Taplin asked if abutting Town's have any rights? Attorney North stated that abutting Towns have the same rights as abutters.

(Board of Selectmen Meeting Minutes of March 28, 2023)

Ms. Linda Hayes appeared before the Board and asked about financial help by the developer in regards to bonds, etc.? Attorney North explained that the applicant files a Pro-forma statement when they apply with the State and there may be bond requirements.

Ms. Hayes asked about abutting Town's and their public safety issues. Attorney North explained that abutting Town's could speak and comment as abutters.

Mr. DiRocco thanked Attorney North for coming to tonight's meeting and explaining the 40B process to them.

Mrs. Manugian stated that a handout has been posted on the Town's Website in regards to the 40B process.

ADJOURNMENT:

Mr. DiRocco stated that Chairman Genest is coming along and hoping to be back soon.

Motion made by Mr. Archinski to Adjourn the Meeting. Motion seconded by Mrs. Santiago-Hutchings. Motion passed unanimously.

The meeting adjourned at 8:48 p.m.

BOARD OF SELECTMEN

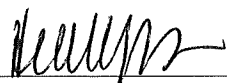
ABSENT

Alison Genest, Chairman


Joseph DiRocco, Jr., Vice-Chairman


Jennifer Kopcinski, Clerk

Tony Archinski, Member


Heather Santiago-Hutchings, Member