

TOWN OF STOW
PLANNING BOARD

Minutes of the September 12, 2023, Planning Board Meeting

Planning Board members present: Lori Clark, Nancy Arsenault, Margaret Costello, Karen Kelleher,
Debbie Woods (voting associate)

Planning Board Member absent: John Colonna-Romano

Lori Clark called the meeting to order at 7:00pm.

Public Hearing: Town Meeting Citizens Petition for “Firearms Business Zoning” pending the future drafting of said bylaw

Present: Roy Miller, petitioner; James Salvie, Town Moderator

Lori Clark opened the public hearing at 7:00pm.

Lori Clark explained the procedure of the public hearing. She asked the public attending the meeting if there are any questions about the procedure. There were no questions.

Karen Kelleher motioned to waive the reading of the Notice of Public Hearing.

Margaret Costello seconded.

Roll Call Vote: Lori Clark - **Yea**; Nancy Arsenault - **Yea**; Margaret Costello - **Yea**; Karen Kelleher - **Yea**.

Lori Clark asked members of the Board and Planning Department Staff to introduce themselves to the public. Members and Staff introduced themselves. Lori Clark invited Roy Miller, petitioner, to present to the Board.

Roy Miller began his presentation to the Board with sharing the language of petition, which is listed as Article 17 of the September 18, 2023, Special Town Meeting Warrant.

Roy Miller presented background information on his intention of the petition. He stated that there is not a section in the Zoning Bylaw that regulates firearms; he noted that other towns in Massachusetts have adopted bylaws, such as the Town of Littleton, that have restricted firearms sales and manufacturing. He presented the content of Littleton’s Zoning Bylaw including location requirements, termination of permits, and how it does not limit the number of establishments.

Roy Miller presented questions he has been asked related to his petition. He stated he has been asked questions related to the timing of the petition, the action of the Board, the signal it may send to firearm manufactures, and past firearm businesses in Stow. He provided answers to the questions stating that he believes that the timing can have impact, the Board has not taken action as it is busy with other initiatives, firearm manufacturers will know the Town takes it seriously, and it will prevent exploitation of loopholes that previous firearm retailers used.

Roy Miller stated he had considered copying the Littleton’s Zoning Bylaw, but he was under a time limit and viewed petitioning that bylaw as disruptive.

Roy Miller presented the principle of S.M.A.R.T. Criteria (Specific, Measurable, Assignable, Realistic, Time-bound Criteria) and how it relates to his petition. He stated that his petition meets all the criteria, except being time-bound. As it did not meet the criteria, Roy Miller presented an amendment that requires a section to be completed for consideration by the 2024 Annual Town Meeting.

Roy Miller concluded his presentation by providing his thoughts on what a future Bylaw could consider like the total number of permits allowed to be issued in Stow and preventing the transfer of permits when there is a change in ownership.

Lori Clark informed the public present at the public hearing that the inclusion of Roy Miller's amendment at Town Meeting is the decision of the Town Moderator. Lori Clark invited James Salvie to make comments.

James Salvie began by thanking Roy Miller for providing an amendment to him in advance of the Special Town Meeting. He stated that Article 17 in the Meeting Warrant cannot be amended, but Roy Miller can make a motion at the Special Town Meeting that includes his amendment.

James Salvie stated that Article 17 is a nonbinding resolution. Roy Miller asked if the Article is not binding because it does not have a time bound. James Salvie responded that the warrant is an instruction for the Planning Board to consider firearms business zoning and report back on its consideration. He furthered his explanation that Town Meeting is the legislative branch of the local government, and the Planning Board is part of the executive branch; he stated that Town Meeting can refer an issue to the Board but cannot force the Board to act in a particular way.

Lori Clark asked for comments from Town Counsel. Valerie Oorthuys presented on behalf of Counsel. She stated that Counsel also interprets Article 17 as a nonbinding resolution. She stated that Counsel has advised the Board to not support Article 17 as it lacks specificity and would not make any specific changes to the Bylaw. She advised Roy Miller to meet with James Salvie to discuss the motion he will make at Town Meeting.

Alison Doucette, 30 Cross Street, asked how to find out which boards are elected and which are Appointed. Valerie Oorthuys responded that many boards in town are appointed, and she listed off the boards that are elected.

Lori Clark asked for comments and questions from the Board. Nancy Arsenault acknowledged the work Roy Miller put into his petition. She asked for clarification from James Salvie regarding if it is allowed for a town employee to write the language for a Town Meeting motion for a citizen's petition. James Salvie stated that he will not write language for Roy Miller, but he will explain options for Roy Miller to consider. He furthered this by stating moderators have traditionally worked with citizens who submit a citizen's petitions prior to Town Meeting to help the citizens present what they are trying to do.

Karen Kelleher agreed with James Salvie and Town Counsel that Article 17 is nonbinding. She acknowledged Town Counsel's opinion to not support Article 17. She added that she is supportive of the intent to have a bylaw added.

Debbie Woods asked James Salvie how a citizen's petition could be amended without having the citizens who signed the original petition resign for the amendment. James Salvie stated that Article 17 is not being amended. He stated that the warrant serves as a warning to the voters of the items that will be voted on at a Town Meeting. He stated that voters do not vote on the articles in the warrant; instead, they vote on the motions made at a Town Meeting. He noted that motions can vary from articles, but the motion must be within scope of the article (meaning it needs to be similar, but not exact).

Lori Clark stated that the Planning Board has previously considered zoning amendments for regulating firearms land uses; however, regulating firearm land uses through zoning was interpreted as being against state law. She noted that specific land uses, like the sales of marijuana and alcohol, are regulated through other higher governing bodies. She stated that other than specific items regulated by the other governing bodies, the Planning Board cannot ban specific use.

Lori Clark stated that there has been changes in other towns over the regulation of firearms land uses, like in the Town of Littleton. She stated that their firearms land use regulations have been approved by the Attorney General; this can provide guidance for Stow.

Lori Clark believes that the Board has interest in regulating firearm land uses. She stated that the petition is vague and acts as an instruction for the Board to work on. Lori Clark noted that zoning changes are not applicable to applications that are in progress.

Lori Clark asked for public comment.

Helen Ham, 21 Cross Street, stated that she is frustrated that the zoning changes will not apply to applications in progress. She stated that the next Town Meeting is far away in time, and because of that, there could be damage to the Town. Lori Clark responded that a Special Permit that involves firearm manufacturing and that the application will not be impacted by a future zoning amendment. She stated that the Board can impose lawful condition in the Special Permit.

Alison Doucette, 30 Cross Street, asked if the Board can limit the number of establishments of one type of business. Lori Clark deferred to Valerie Oorthuys. Valerie Oorthuys stated that there is nothing in the present Bylaw that can limit the number of any particular type of business, but it can be considered in a future Bylaw amendment.

Helen Ham, 21 Cross Street, asked if there can be limits of validity on a Special Permit. Valerie Oorthuys responded that it is possible with future bylaw changes. She encouraged the public to ask questions related to the content of the citizen's petition.

Linda Hathaway, Town Clerk, informed the public that the processes of amending a zoning bylaw is regulated in Massachusetts General Law Chapter 40A. She encouraged the public to read the law to become familiar with the process.

Linda Hathaway, 74 Crescent Street, stated that it would have been more effective if a bylaw amendment was petitioned instead of the way it was drafted.

Alison Doucette, 30 Cross Street, asked questions about structure of local government regarding:

- The role of the Planning Board

- The role of the Zoning Board of Appeals
- Zoning enforcement

Lori Clark and Karen Kelleher provided guidance to Alison Doucette regarding these topics and recommended her to review the Zoning Bylaw.

Allison Doucette, 30 Cross Street, read a General Bylaw and asked if it was the Zoning Bylaw. Lori Clark stated that the bylaw she read is a General Bylaw which is under the purview of the Select Board. She clarified that the Zoning Bylaw regulates land use.

Roy Miller acknowledged the people who attended the hearing and the people who signed the petition. He stated that he wants to see regulations be fair, and that he feels that the town has achieved a lot in the 50 years he has lived in Stow.

Lori Clark concluded the hearing by stating that any changes to the Zoning Bylaw the Planning Board proposes, such as regulating firearm land uses, will likely have a public forum (for initial public input on what the public would like to see) and a required a public hearing (to gather input on proposed language for a Bylaw).

Karen Kelleher motioned to close the public hearing.

Nancy Arsenault seconded.

Roll Call Vote: Lori Clark - **Yea**; Nancy Arsenault - **Yea**; Margaret Costello - **Yea**; Karen Kelleher - **Yea**.

Joanne Drive Site Visit Debrief

Members of the Board visited the Joanne Drive Subdivision to better understand the context for a street tree planting waiver requested by the developer. Lori Clark asked Members of the Board to share their thoughts and comments based on their observations.

Karen Kelleher agrees with the developer's request to waive the tree planting in the locations specified in the waiver but wants alternative locations for trees to be identified. She suggested planting trees or shrubs along drainage basins as long as they do not interfere with the function of the drainage system.

Nancy Arsenault agreed with the developer's request to not plant trees in the locations specified in the waiver, noting that there is existing tree coverage in the locations. She stated that she observed areas with denser tree planting, like near the intersection with Forest Drive, and sparse tree planting, like the cul-de-sac of Joanne Drive. She suggested planting shrubs that can help balance the lack of trees in some locations while not interfering with the drainage basins or underground utilities.

Nancy Arsenault asked who is responsible for maintaining the landscape inside the cul-de-sacs when there is no Homeowners' Association. Karen Kelleher stated that once a public way is accepted by the Town at Town Meeting, it becomes the responsibility of the Town.

Nancy Arsenault, referencing the correspondence received from the Fire Department that asked for granite curbing to be removed near a fire cistern in the development, asked if there are specifications that can be shared with developers about curbing materials. JP Benoit, Fire Chief, was present at the meeting. He stated that when the Fire Department was testing the cistern, the wheel of one of the fire apparatuses went over the granite curb, which could be a safety hazard. He stated that in the Fire Department's review

of the plan, they do not look at curbing material and instead review the location of cisterns and the location of trees near the cisterns. He stated that curbing material will be reviewed in the future.

Margaret Costello stated that she observed that the east side of the road appears bare when looking south from Sudbury Road. She agrees that trees cannot be planted along the west side of the road in the locations specified in the waiver. She stated that for any tree that is waived from being planted, she would like a tree planted in another location. She also suggested that other plantings or dead tree removal could be used as an equal exchange for the tree plantings.

Lori Clark identified two areas where trees could be planted: (1) near the intersection of Forest Drive and Joanne Drive, and (2) in the cul-de-sac per the recommendations of the peer reviewing engineer. She acknowledged Margaret Costello's suggestions.

Lori Clark stated that one concern from abutters of the subdivision was cut-through traffic on Forest Drive. She stated that this concern was not remediated as the intersection of Forest Drive and Joanne Drive appears like a typical intersection and is wide open. Lori Clark asked JP Benoit to comment on the intersection from a public safety perspective. JP Benoit stated that the intersection, as built, was requested as it is easier to keep clear from snow in winter and to accommodate a cistern. He also requested that "No Parking" signs be added near the cistern to keep it clear and accessible.

The Board deliberated solutions that could help meet the concern of the abutters and meet the needs of public safety. Lori Clark suggested adding signs that say "Not a Through Way" or "Emergency Access Only" that could deter vehicle flow. She suggested that these signs could be installed in lieu of a few street trees.

Valerie Oorthuys stated that the Conservation Commission is planning to have parking spaces near the intersection of Forest Drive and Joanne Drive, a location previously suggested for alternative tree planting. She stated that the trees may interfere with the Conservation Commission's plan, which may not be aligned with what the plans received by the Board.

Margaret Costello asked who is responsible for tracking the number of trees planted. Lori Clark stated that the as-built plans will have the location of trees, which will then be used for future reference. Valerie Oorthuys stated that the trees planted will be under a warranty for a period.

Debbie Woods asked if there is a way that a tree fund could be established for instances where trees cannot be planted and a fee for unplanted trees could be collected for future tree planting. She stated that this could help with future waivers and keep developers accountable. Lori Clark stated that she supports the establishment of the tree fund, but the Board will need more information regarding the legal aspect of establishing one. Valerie Oorthuys stated that other towns have a tree fund and tree protection bylaw; the Board expressed interest in learning more about tree funds and tree protection bylaws.

Upcoming Meeting Dates

The Board discussed upcoming meeting dates for the months of November and December. The Board have scheduled the following meetings.

- November 14 & 28
- December 5 & 12

Citizens Petition Deliberation

The Board deliberated about the citizen's petition.

Karen Kelleher stated that she understands and agrees with the intention of the petition. She stated that she does not see how the Board could support the petition as the petition does not contain language for a bylaw amendment. She suggested that the Board should not support the petition itself, but that the Board should report at Town Meeting that the Board supports the idea of drafting a bylaw regarding firearm land uses.

Nancy Arseneault asked about the amendment proposed by Roy Miller. It was clarified that the Board will be voting on the warrant article, not the motion made at Town Meeting.

Lori Clark reminded the Board that Town Counsel recommended that the Board should not support the petition, and that the petition is non-binding. She stated that she has a neutral stance on the petition but is open to the advice from Town Counsel.

Lori Clark stated that a petition for Town Meeting is not the way to ask the Board to do something. She stated that the petition could be brought directly to the Board instead. She added that the Board has stated that they are interested in working on firearm land use zoning, so the outcome of Town Meeting will not impact the Board.

Karen Kelleher stated that a report made by the Board at Town Meeting needs to be carefully worded to avoid appearing that the Board is opposed to regulating firearm land uses.

Margaret Costello asked about the amendment proposed by Roy Miller and the implications it has on the Board. Lori Clark stated that it will only require the Board to provide an update at the next Annual Town Meeting and will not require the Board to have a bylaw amendment prepared. She also noted that the petition is vague and does not have a stance on being restrictive or not with firearm land uses.

Debbie Woods asked if Town Counsel has identified a risk to supporting the petition. Lori Clark stated that there were no risk presented by Town Counsel. She stated supporting this could set a precedent for citizens to ask for bylaw amendments.

Karen Kelleher motioned to (1) support the intent of the citizen's petition, and (2) to not support the citizen petition, indicated as Article 17 in the September 18, 2023, Special Town Meeting Warrant, as the article does not contain specific bylaw language.

Margaret Costello seconded.

Roll Call Vote: Lori Clark - **Yea**; Nancy Arseneault - **Yea**; Margaret Costello - **Yea**; Karen Kelleher - **Yea**.

Joanne Drive Site Visit Debrief, continued.

Margaret Costello asked what the decision was for Joanne Drive. Lori Clark responded that the Board does not need to make a decision at this meeting. She added that, in general, the Board agrees with parts of the waiver, and that the Board has a list of alternatives that could be implemented in lieu of planting trees according to plan.

Margaret Costello asked Valerie Oorthuys to share her thoughts on the dead trees on site. Valerie Oorthuys stated that removal of dead trees could be in lieu of planting additional trees as the Conservation Director identified that removal of the dead trees will soon be a cost to the Town.

Citizens Petition Deliberation, continued.

Valerie Oorthuys asked if the Board would like to meet prior to Town Meeting to review the report that she will draft with Lori Clark; the report is to be delivered at Town Meeting. The Board agreed that they do not need to meet.

Adjournment

Margaret Costello motioned to adjourn.

Nancy Arsenault seconded.

Roll Call Vote: Lori Clark - **Yea**; Nancy Arsenault - **Yea**; Margaret Costello - **Yea**; Karen Kelleher - **Yea**.

Respectfully Submitted,
Michael Slagle