

TOWN OF STOW
PLANNING BOARD

Minutes of the September 19, 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.

Review of Minutes

Karen Kelleher motioned to approve the minutes of August 22, 2023, as amended.

Margaret Costello seconded.

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

Karen Kelleher motioned to approve the minutes of September 12, 2023, as amended.

Margaret Costello seconded.

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

Review of Correspondence

Traffic Safety Advisory Committee, Public Forum, Common Road Modification

Karen Kelleher expressed concern about the Common Road modification public forum flyer received. She stated that the flyer for the forum presents the modification as a decision that has already been made even though the Board requested to get data on vehicular traffic patterns. Valerie Oorthuys stated that the forum was a request of the Select Board and is intended to get feedback from the public.

Karen Kelleher stated that she wanted more data prior to a decision as she is nervous about the impacts the modification will have on vehicle traffic on Great Road. Valerie Oorthuys encouraged members of the Board to attend the public forum to express their concerns and share their comments. Nancy Arsenault and Karen Kelleher stated that they intend to attend the meeting.

Karen Kelleher asked the Board if they should attend the public forum as a Board or as individuals. Valerie Oorthuys stated that she has provided the Select Board with a memorandum regarding the Board's stance on modifications to Common Road. She added that she could share the memorandum with the Traffic Safety Advisory Committee. Karen Kelleher supported Valerie Oorthuys' idea to share the memorandum with the Traffic Safety Advisory Committee.

Nancy Arsenault interpreted the content of the flyer as one-sided. Lori Clark stated that the recording of the Select Board meeting (where a motion was made to request the Traffic Safety Advisory Committee to hold the forum) will have the language of what the Select Board intended the forum to be.

Department of Environmental Protection - Large Entity Reporting Requirement

Lori Clark asked if the requirement is something that the Board would be responsible for. Valerie Oorthuys stated that it is not; she inferred that it was sent to the Board as a mailing requirement.

Public Input

Katie Fisher, 1 White Pond Road, acknowledged the Board's work at the September 18, 2023, Special Town Meeting. She added that DEP, in reference to the previously discussed correspondence, is asking about large vehicle to help with their plans for electric vehicle infrastructure.

Dorothy Garant, 11 White Pond Road, asked a question about a public hearing that was currently open. Valerie Oorthuys stated that the Board is not able to discuss the public hearing. Dorothy Granat stated that she believes that the Common Road modification is in response to the Library's plans and that the forum is presenting a decision already made.

Planning Board Member Updates

Lori Clark and Nancy Arsenault shared that they attended the September 18, 2023, Special Town Meeting. They stated that it was a long meeting, and well attended. Lori Clark stated that the Comprehensive Plan Committee will be meeting on September 25, 2023.

Planning Director's Report

2023 Annual Town Meeting

Amendment to the Zoning Bylaw, including the creation of the Lower Village Business District, have been accepted by the Attorney General

Gleasondale Road Bridge over the Assabet River

The reconstruction of the Gleasondale Road Bridge is nearing completion. A site visit was planned for September 18, 2023, but was rained out. The site visit will be rescheduled.

Town Center Transportation Improvement Plan

A consultant for creating concept plans for Town Center has been selected. One of the first tasks the consultant will do is gathering data about how roads are used in Town Center.

Comprehensive Plan Update

Staff had met with the consultant for the update to the Comprehensive Plan. The meeting went smoothly and established some initial tasks for Staff, the consultant and the Comprehensive Plan Committee.

Montachusett Regional Transit Authority (MART)

MART has received grant funding for on-demand rides and shuttle bus service for Stow and neighboring communities. Staff have been working with MART to identify key destinations and potential shuttle routes. Public input will be needed to help understand what people are looking for.

Joanne Drive Subdivision – Request for Relief from Street Tree Planting Requirements

Present: Tim Black, representing Kendall Homes

Lori Clark acknowledged receiving a letter from Tim Black requesting relief for planting 14 trees, and a plan marking the locations of the trees subject to the relief.

Lori Clark asked Tim Black for clarification regarding if the 14 trees requested in the letter are for the entire subdivision. Tim Black responded that the 14 trees are being requested in total for the entire subdivision. He stated that there are no other requests.

Lori Clark acknowledged a letter received from Kathy Sferra, Conservation Director, that states that a planted tree will get transplanted to another location. Tim Black stated that the tree that will get transplanted to a location behind the mailboxes. He identified that he could plant a tree near the proposed stop sign, and that some trees were instructed to not get planted yet.

Debbie Woods noted that the plan only marks 13 trees to not be planted, but the request letter states 14 trees. She asked for clarification. Tim Black stated that the plan has an error; he identified a tree on the west side of Joanne Drive (marked as planted) as the tree that is subject to the waiver. He restated that the request is for 14 trees.

Lori Clark stated that the Board had discussed their site visits at the last Board meeting. She stated that the Board did not make a decision about the request letter, but the Board has identified potential solutions that could be negotiated like planting shrubs around the drainage basin.

Tim Black stated that he had read the letter from Sue Carter, peer reviewer for the Board, and acknowledged the solutions she offered. He stated that he agrees that there are places where trees or shrubs could be planted. He noted that there are safety concerns from Kendall Homes regarding planting trees in the cul-de-sac.

Lori Clark stated that planting shrubs in the cul-de-sac could add beauty to the area. Tim Black acknowledged the idea and stated that he will discuss this with Kendall Homes.

Tim Black asked the Board if there could be a resolution to the trees. He believes that Kendall Homes has exceeded what they needed to do for the subdivision.

Nancy Arsenault stated her concern is regarding one house in the subdivision has no trees and has a direct view of the cul-de-sac. Tim Black stated that there is a tree that is not yet installed on the site as the house is still under construction.

Tim Black asked for comment about how the subdivision was almost entirely built according to plan. Lori Clark stated that the Board has observed the planted street trees and found that the planted street trees meet the intent of the subdivision. She added that the Board was curious to see if there were alternative locations that could be considered. She stated that the Board was open to the idea of planting shrubs around the drainage basins instead of the trees. Lori Clark asked the Board for comment.

Karen Kelleher stated that she views the subdivision as one project, instead of two phases of a project like Kendall Homes is presenting. She stated that she is looking at the entirety of the project and found that shrubs could be planted in-lieu of the street trees in the cul-de-sac as it was barren.

Lori Clark stated that the Board has found that the cul-de-sac and the drainage basin to be two areas where additional plantings could be placed. She acknowledged that trees may not be the solution, but other vegetation could be planted to soften their appearance. She asked Tim Black if there is something that could be offered in exchange for the trees and asked the Board if there are any other comments.

Lori Clark, as an aside, noted that she would like to not see a stop sign installed at the intersection of Joanne Drive and Forest Drive to give the appearance that it is not a through way. Tim Black stated he is open to having a conversation about that.

Margaret Costello stated that she expects 14 trees or the equivalent of 14 trees to be planted. She stated that if trees were planted elsewhere, she would like them identified on a plan. She added that those trees could be subtracted from the overall waiver if the Board finds it suitable. She reiterated that she would like to be shown a solution that is of equal value to the number of trees subject to the waiver.

Tim Black stated that there will need to be an internal conversation between Kendall Homes employees to discuss numbers. He stated that Chuck Black, Kendall Homes, had asked to relay a message to the Board that he does not believe that trees should be planted in the cul-de-sac, and that he would like a waiver of 14 trees. Lori Clark responded that the Board is aware that the 14 trees are appropriate to be waived but would like shrubbery or other vegetation to be planted in-lieu of the trees. She noted that the Board is open to alternatives to trees. She advised Tim Black to propose an alternative and then the Board can respond to the alternative.

Karen Kelleher reminded Tim Black that the Board is not asking for more trees to be planted on site than what was originally approved as part of the subdivision plan.

Lori Clark stated that the Board has identified locations for additional planting, such as the drainage basins and cul-de-sac. She stated that the Board is okay with the 14 trees not getting planted, but would like something added in-lieu of trees, such as ornamental shrubs.

Tim Black asked when he can meet with the Board again. The Board and Tim Black discussed upcoming availability and meeting dates. The Board agreed to discuss again on September 25, 2023, before the start of the two public hearings scheduled for that meeting.

Tim Black asked the Board for permission to have a section of the granite curb in the subdivision removed per the request of the fire chief. He noted that Sue Carter, peer reviewer, has agreed that removing the granite curb is suitable.

Karen Kelleher motioned to authorize a redline change to the subdivision plan to remove a section of granite curb as recommended by the Fire Chief and the Board's engineer.

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

Margaret Costello added that a discussion with Kathy Sferra, Conservation Director, may be helpful for siting plantings. Lori Clark concluded the conversation with summarizing what was discussed. She acknowledged the flexibility of Kendall Homes and encouraged Tim Black to bring a proposal to the next meeting.

Review of Special Permit Enforcement – 148-156 Great Road

Lori Clark began the discussion by stating that 148-156 Great Road was granted a reissuance of their Special Permit but did not meet a condition in the Special Permit by the required deadline of August 31, 2023. Lori Clark asked Valerie Oorthuys if there had been any submissions to the Board. Valerie Oorthuys replied that nothing had been received, but she had a brief conversation with the applicant about what is required.

Lori Clark asked Richard Harrington, engineer for the applicant¹, if he has any comments. Richard Harrington stated that the property has had a change in its zoning. He stated that outdoor dining is now an allowed use, and that the conditions in the Special Permit are unfair. He stated that he believes that the Board views a Special Permit as a way to impose any conditions they want on an applicant.

Lori Clark asked Richard Harrington if he has produced a plan to satisfy the condition in the Special Permit. He did not answer the question. He stated that he believes the permit is not required as outdoor dining is an allowed use. He stated that there is outdoor dining on the site currently.

Lori Clark asked Richard Harrington for clarification if he is stating that he didn't produce a plan because the zoning changed. Richard Harrington responded that her clarification is correct, and added that the reissuance of the permit does not consider the change in zoning. He stated that he believes the conditions in the Special Permit are no longer required.

Lori Clark asked the Board for questions or comments. Karen Kelleher stated that she is frustrated with the lack of compliance. She stated that the permit was issued after site disturbance and a cease-and-desist order. She stated that at the last meeting regarding 148-156 Great Road, Richard Harrington stated that he will be producing a plan to satisfy the condition in the permit. Richard Harrington responded that after the meeting, he had come to the conclusion that a Special Permit is not required. He stated that he believes that the conditions are excessive and no longer valid.

Valerie Oorthuys stated that the reissuance of the Special Permit was intended to bring the applicant back into compliance regarding erosion control. Richard Harrington responded by stating that he still believes that the special permit is no longer needed. Karen Kelleher stated that the extension of the special permit was reissued as a favor to the applicant to give the applicant more time to come into compliance. She stated that the permit is for erosion control, not only outdoor dining.

Lori Clark reiterated Karen Kelleher's point that the permit was for erosion control not outdoor dining. She asked Richard Harrington if he is suggesting litigation as the next step forward. Richard Harrington responded that he is not suggesting litigation. He added that he realized that the permit was unfair after the permit was reissued and he reviewed the new zoning regulations. Lori Clark stated that he has used the zoning regulations as justification for not following the conditions in the Special Permit before, so his claims today are not new. She told Richard Harrington that the options forward are limited and may be solved by receiving a site plan as a condition of the Special Permit or litigation.

Lori Clark asked Richard Harrington if he is advising his clients to not submit a site plan to the Board. Richard Harrington responded that he has not. Lori Clark asked Richard Harrington if he has been asked by the applicant to submit a site plan. Richard Harrington did not respond; instead he restated that he believes that the conditions within the permit are no longer required.

Lori Clark asked Richard Harrington if he has been hired to put forward a plan. He did not respond to the question. He stated that he attended the meeting to get clarification on the Special Permit decision regarding the new zoning. He added that he has not been able to discuss the Special Permit with the

¹ Richard Harrington, at the time of the reissuance of the Special Permit, was the engineer for the applicant. Lori Clark later in the meeting asked if was still hired by the applicant. Richard Harrington did not respond to the question. It remained unclear if he was representing on behalf of the client.

applicant as he needed to discuss the zoning with the Board. Lori Clark stated that at previous meetings, the zoning was discussed.

Lori Clark stated that if work did not occur on the site prior to the issuance of any permit, this would not be the case. Richard Harrington stated that he disagrees.

Lori Clark asked if the public had any input. Leigh Hilderbrandt, 196 Great Road, asked if outdoor dining requires a special permit under the new Lower Village Business District. Valerie Oorthuys stated that a new establishment will require a Special permit, and changes that impact the number of parking spaces required will need a Special Permit.

Leigh Hilderbrandt, 196 Great Road, asked for clarification regarding if the purpose of the reissuance of the Special Permit was to remediate the erosion control violation or for outdoor dining. Lori Clark stated that the special permit was to remediate the erosion control violation; she stated that the applicant also applied for a Special Permit for outdoor dining, but the Board tabled that Special Permit until the applicant is in compliance with the erosion control Special Permit.

Margaret Costello stated that no additional Special Permits will be issued to the applicant for outdoor dining until the unpermitted work is remediated. She expressed frustration that the Special Permit is not being respected.

Nancy Arsenault asked if the applicant could be present at a Board meeting so that the Board can talk with them directly. She noted that the Board is unaware if Richard Harrington is still hired to represent them. She stated that talking to the applicant directly would be beneficial to improve their understanding. Lori Clark agreed with Nancy Arsenault.

Valerie Oorthuys asked the Board if a meeting between the applicant, Staff and a member of the Board would be appropriate instead of meeting during a Board Meeting. Lori Clark stated that the suggestion would be appropriate. She added that smaller meeting will be less intimidating. Karen Kelleher agreed. Lori Clark asked Valerie Oorthuys to reach out to the applicant and schedule a meeting.

Dorothy Granat, 11 White Pond Road, asked if the applicant is aware of the meetings held regarding their Special Permit over the last two years. Lori Clark stated that they are likely aware as Richard Harrington has been present representing them. Valerie Oorthuys stated that the applicant has met with Staff on several occasions.

The Board expressed their frustrations regarding the noncompliance. They stated that a conversation directly with the applicant will hopefully clarify issues and provide a mutual understanding.

Mark Forgues, 9 White Pond Road, stated that the Planning Board is a hard-working Board. He thanked the Board for their work. He added that he believes that the Board is supportive of businesses.

Adjournment

Margaret Costello motioned to adjourn. Karen Kelleher seconded.

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

Respectfully Submitted,
Michael Slagle