



**PLANNING BOARD
Public Hearing/Regular Meeting**

Wednesday, February 1, 2023
Old Town Hall

1111 Somerset Ave, Dighton, MA 02715

Jeff Carvalho, Chairman
Robert J. Woods, Vice Chairman
Joseph Figueiredo, Clerk
Christopher Cunha, Member
Daniel Higgins, Member

Video and audio of the meeting is available on Comcast Local TV9 or on the Town of Dighton Planning & Land Use YouTube Channel.

Meeting was called to order by Vice Chairman Robert Woods at 7:00 PM. Chairman Jeff Carvalho and Clerk Joseph Figueiredo was absent

The Pledge of Allegiance was recited.

The Board determined that the next scheduled meeting/public hearing is February 15, 2023 at 7:00 PM.

REVIEW/DISCUSS/ACT: Jeffrey P Rodrigues, 2040 County St (Map 17, Lot 304), Site Plan Review
Mark Rodrigues, PE appeared before the Board to present the Minor Site Plan Review application of Jeffrey Rodrigues for property located in a Business District at 2040 County Street (M 17, Lot 304). Mr. Rodrigues noted that under the Zoning Bylaw definitions the structure will be permanent on a concrete slab for equipment maintenance and will be painted so that it will be visually pleasing.

The Board thanked Mr. Rodrigues and the applicant, Mr. Rodrigues, for their patience as the Board looked into and researched the matter and noted that the property has been cleaned out.

Christopher Cunha motioned, Daniel Higgins seconded to approve the minor site plan review for 2040 County Street (Map 17, Lot 304).

VOTE:	ROBERT WOODS, VICE CHAIRMAN	AYE
	CHRISTOPHER CUNHA, MEMBER	AYE
	DANIEL HIGGINS, MEMBER	AYE

REVIEW/DISCUSS/ACT: FY24 Proposed Budget

Office Manager Kerrie Easterday presented the FY2024 Planning Board budget. There was an increase in the SRPEDD Assessment line and a 2% increase in the Clerk Part-Time/Office Manager line as required by the Clerical Union contract.

Member Daniel Higgins proposed a \$1,200.00 increase in the Public Hearings line to cover the legal publication costs and the Board agreed. Vice Chairman Robert Woods proposed an 8.7% increase in the Chairman and Member Salary Stipend Salary line due to inflation and the Finance Committee's denial of the increase request made last year and the Board agreed.

Christopher Cunha motioned, Daniel Higgins seconded to approve the FY2024 budget as amended.

VOTE:	ROBERT WOODS, VICE CHAIRMAN	AYE
	CHRISTOPHER CUNHA, MEMBER	AYE
	DANIEL HIGGINS, MEMBER	AYE

Dighton
Town Clerks Office
Notice of Posting
Time: 3:26 PM
Date: 2-16-23
[Signature]

REVIEW/DISCUSS/ACT: Forest Hills Estates, Special Permit Conservation Subdivision (Map 3, Lot 28, 33 & 78)

Daniel Higgins motioned, Christopher Cunha seconded to open the public hearing of Forest Hills Estates, Special Permit Conservation Subdivision (Map 3, Lot 28, 33 & 78).

VOTE:	ROBERT WOODS, VICE CHAIRMAN	AYE
	CHRISTOPHER CUNHA, MEMBER	AYE
	DANIEL HIGGINS, MEMBER	AYE

Joshua Glass, Operations Manager of DI Trust, II, Jason Youngquist, PE, of Outback Engineering, Inc., and Edmund J. Brennan, Jr., Esquire of Brennan, Recupero, Cascione, Scungio & McAllister, LLP appeared before the Board to present “Second Response Documents” consisting of revised plans for Forest Hills Estates dated November 11, 2022, responses to various peer review comments, responses to various comments received from town departments and revised drainage report dated November 11, 2022.

Mr. Youngquist noted that the Conservation Subdivision stems from a Settlement Agreement and the agreed upon layout. There are eight proposed infiltration drainage basins and use of roof drain infiltrators for the houses, where some of the stormwater will be recharged to the groundwater and some will be released to the wetlands. Extensive calculations were taken to meet stormwater management policy. Additional test pits were performed at the site and witnessed by Health Agent Todd Pilling. Additional elevation surveys required adjustments to the calculations. The last plan revision was a result from 15-20 comments mostly consisting of small plan corrections (i.e., notes, pipe slope, invert line, etc.). At this time, the Applicant is waiting to hear back from the peer review engineers on the latest submittal.

Notwithstanding the desire to move forward this evening, Mr. Glass notes that the Applicant is reserving their right that they believe the Special Permit is covered by and incorporated into the Settlement Agreement. The revised Plan and written response incorporate the Planning Board’s, Conservation Commission’s, Stormwater Subcommittee’s, North Dighton Fire District’s, Sewer Commission’s peer review agent’s comments and various Town Board entity’s comments. Mr. Glass notes that the request for numerous continuances was a result of delayed comments from other boards and additional requests and to compile responses to other boards. The Applicant put forth a 20-page letter over a year ago regarding subject matters pertaining to the Special Permit and the request for a yield plan, to which they have received no written response from the Planning Board or it’s counsel. Mr. Glass does not believe that it is a credible position to take that the Settlement Agreement took place simply for the act of a subdivision. The notion that the Applicant gave up 85 acres of land, 40-50 of which is prime upland valued at \$10-15 million dollars, reduce the number of homes from 143 to 135, 35 of which are age restricted, that somehow the parties didn’t agree that this conservation subdivision should be approved through a special permit is dubious. The notion that there is no “to-do” list on the legal side is inaccurate. The terms and conditions of the special permit is what the parties should be discussing. Regarding the files found in April 2022, parole evidence comes into record when there is ambiguity in a contract. The Applicant sees no ambiguity in this contract. As such, Mr. Glass would like to work together to refine the conditions of the Special Permit and focus on how to get to the conclusion of this process.

Counsel for the Planning Board, Jay Talerman, maintains that a Special Permit is not covered in the Settlement Agreement nor could have been because there was never an original application submitted.

The Settlement Agreement relates to the subdivision and how many units they can apply for, but it does not grant a Special Permit. The only thing that was before the Court was the subdivision application. The court cannot take away the Board's jurisdiction for a special permit. It is Atty. Talerman's opinion that no judge would issue a court order removing the Planning Board's jurisdiction the need to obtain a special permit. To the extent of any ambiguity, in April 2022, Office Manager Kerrie Easterday discovered files, which have been provided to Mr. Glass. Among those files were minutes that included discussions between the Planning Board, Attorney Bobrowski, representing the Planning Board, and Attorney Hanyan, representing the Applicant, clearly stating the need to obtain a Special Permit. At this time, there is no "to-do" item on the legal side, the Board's position has been made very clear from the beginning, and would take umbrage with the notion on the Board's behalf that there hasn't been cooperation in light that the Board has been willing to keep the matter open, continuing this hearing month after month at the Applicant's request. A yield plan is requested, not for the purpose of demonstrating how many lots the Applicant can apply for, but to show what the development would look like conventionally. In doing so, it allows the Planning Board to determine if the Conservation Subdivision better promotes the objective than a conventional plan. As such, it would behoove the Applicant to submit a yield plan. To that end, Atty. Talerman does not believe that a formal letter is required on the matters at hand as they have been provided verbally through meetings and by email. Going forward, the engineers should continue their due diligence and the Board retain all of its jurisdiction to approve or deny a special permit under the laws pertaining to special permits. Lastly, Atty. Talerman noted that the Board has the liberty to approve the Special Permit with the condition that adequate water service will be available, however, it should be noted that adequacy of utilities, including water service, is specifically referenced in the Town's special permit criteria.

Vice Chairman Woods inquired on the status of obtaining water for the subdivision. Mr. Glass noted that he is comfortable obtaining water from the North Dighton Fire District, as well as, is open to having conversations with Dighton Water District if they were interested in providing water, however, the Applicant is open to having a conditional approval so long as it meets legal scrutiny.

Nancy Goulart, Chairman of the Stormwater Committee inquired on Mr. Glass' comment regarding the Stormwater Committee feedback. As of today, the Applicant has not appeared before the Stormwater Committee to take action on the subdivision therefore, what feedback is Mr. Glass referring to? Mr. Glass noted that the Stormwater Committee and its jurisdictional role remains ambiguous to the Applicant, however, correspondence dated February 8, 2022 from Todd Pilling, Health Agent Stormwater Committee, was read into record. Mrs. Goulart noted that the work performed by Mr. Pilling is preliminary to any work that would come before the Stormwater Committee. Therefore, Mrs. Goulart restates that the Applicant has not appeared before the Stormwater Committee for action. Mrs. Goulart inquired on the status of the City of Taunton's Conservation Commission due to the fact that stormwater will be draining from land located in Dighton into a proposed basin located in Taunton and none of this has been reviewed and/or approved by the Dighton Stormwater Committee. Mr. Glass stated that they are to appear before the Taunton Conservation Commission in 2 weeks and the intention is to resolve the components in Dighton first. The Applicant will request not to close the public hearing in Taunton.

David Marvell, 102 Forest Street recognizes that the land owner wants to utilize the property but has concerns about the impact this development will have on the wildlife, schools, safety on the road and sufficient water pressure.

Vice Chairman Woods noted that a lot of the residents were unaware of the public hearing being held tonight due to the numerous continuances, therefore he expects the next meeting to have more attendees.

David and Karen O'Connor, 237 Forest Street email dated January 21, 2023 was read into record.

Daniel Higgins motioned, Christopher Cunha seconded to continue the Public Hearing to February 15, 2023.

VOTE:	ROBERT WOODS, VICE CHAIRMAN	AYE
	CHRISTOPHER CUNHA, MEMBER	AYE
	DANIEL HIGGINS, MEMBER	AYE

Approval of Meeting Minutes

Christopher Cunha motioned, Daniel Higgins seconded to approve the meeting minutes of January 18, 2023.

VOTE:	ROBERT WOODS, VICE CHAIRMAN	AYE
	CHRISTOPHER CUNHA, MEMBER	AYE
	DANIEL HIGGINS, MEMBER	AYE

Correspondence

None.

Public Input

Selectman Leonard Hull suggested that the Board present a warrant article at Annual Town Meeting for a stipend increase procedure for Board Members/Commissioners/Department Heads.

Stormwater Committee Chairman Nancy Goulart presented an article from NewportRI.com dated January 27, 2023 regarding the opening of Newport's Spring Park that highlights the installation of an innovative below-ground Silva Cell system, a high-quality tree care and stormwater management tool used to improve ecological function in urban areas.

Adjournment

Christopher Cunha motioned, Daniel Higgins seconded to adjourn at 8:03 PM.

VOTE:	ROBERT WOODS, VICE CHAIRMAN	AYE
	CHRISTOPHER CUNHA, MEMBER	AYE
	DANIEL HIGGINS, MEMBER	AYE

Respectfully submitted,
Kerrie J Easterday
Office Manager
Planning Board

List of Documents Presented at Meeting:

1. Local & State news article from NewportRI.com dated January 27, 2023