

TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS

John R. Bethoney, Chair
Michael A. Podolski, Esq., Vice Chair
James E. O'Brien IV, Member
Jessica L. Porter, Member
James McGrail, Esq., Member
Andrew Pepoli, Associate Member



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450 Washington Street
Dedham, MA 02026
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Jeremy Rosenberger
Planning Director

**PLANNING BOARD
MEETING MINUTES**

**TOWN OF DEDHAM
450 WASHINGTON STREET
DEDHAM, MA**

**MINUTES OF THE PLANNING BOARD MEETING
VIA TELECONFERENCE
MARCH 10, 2021, 7:00 P.M.**

PLANNING BOARD MEMBERS:

John R. Bethoney	Chair
Michael A. Podolski, Esq.	Vice Chair
James E. O'Brien IV	Member
Jessica L. Porter	Member
James McGrail, Esq.	Member
Andrew Pepoli	Associate Member

SELECT BOARD MEMBERS:

Dennis Teehan	Chair (until 8:45 p.m.)
Dimitria Sullivan	Vice Chair (until 8:45 p.m.)
James A. MacDonald	Member (until 8:45 p.m.)
Sarah MacDonald	Member (until 8:45 p.m.)
Kevin R. Coughlin	Member (until 8:45 p.m.)

TOWN OF DEDHAM STAFF:

Jeremy Rosenberger	Planning Director
Michelle Tinger	Assistant Planning Director
Jennifer Doherty	Administrative Assistant
Leon Goodwin	Town Manager (until 8:45 p.m.)

Minutes prepared by Cassidy Civiero of Minutes Solutions Inc. from an audio recording.

1. CALL TO ORDER

The Chairman of the Planning Board, Mr. Bethoney, called the meeting of the Planning Board to order at 7:22 p.m.

The Chairman of the Select Board, Dr. Teehan, called the meeting of the Select Board to order at 7:22 p.m.

2. HOUSING CHOICE LAW

Mr. Rosenberger stated that there have been changes to many zoning regulations that affect the Town. Mr. Rosenberger presented Chapter 358 of *Acts of 2020*, “An Act Enabling Partnerships of Growth”, the purpose of which is to finance improvements to the commonwealth’s economic infrastructure and promote economic opportunity. There will be changes to the following statutes:

- G.L. c.40A, *The Zoning Act*
- G.L. c.40R, *Smart Growth District*
- G.L. c.40V, *Housing Development Initiative Programs*

Mr. Rosenberger stated that this legislation has been discussed since December of 2007 when Governor Baker announced the initiative to better enable municipalities to adopt the zoning measures needed to meet the State’s housing needs.

Mr. Jonathan D. Eichman of KP Law presented the changes to G.L. c..40A, *The Zoning Act*, effective January 14, 2021, as follows:

- Section 1A, Definitions
 - Accessory Dwelling Unit
 - The State has placed a limit on the size of the unit. It cannot be larger in floor area than half the floor area of the principal dwelling or 900 square feet, whichever is smaller. The unit is subject to such additional restrictions as may be imposed by a municipality.
 - Zoning by-laws qualify for a majority vote of Town meeting if the units meet the State definition. The State and Town definitions must be compared, as the protections in *the Zoning Act* come from the State definition.
 - Mixed-Use Development
 - A mixed-use development is now defined in *the Zoning Act* as a development containing a mix of residential and any other use.
 - Multi-Family Housing
 - Multi-family housing is now defined as a building with three or more residential dwelling units or two or more buildings on the same lot with more than one residential dwelling unit in each building. This is a very broad definition.
 - Open Space Residential Development
 - This has been renamed from “Cluster Development”.
 - The conditions have been made more relaxed than they were and allow for special permits with a fair bit of latitude from the Town to define what is considered an open space residential development.
- Section 3, Exemptions
 - MBTA Community
 - Dedham is, by definition, an MBTA community.
 - An MBTA community shall provide at least one zoning district in which multi-family housing is permitted as of right. This states that an MBTA shall adopt certain zoning to remain eligible for Housing Choice, Local Capital Projects Fund, and MassWorks. Dedham

does not at this time utilize these programs, however they could be of benefit in future.

- Housing Choice is a program that awards communities for increasing their housing stock by three to five percent every five years. Dedham has only increased by one percent in the past five years and would be ineligible for this program in any case.
 - Local Capital Projects Fund is a repository for a certain allocation of gaming licenses. At least half of this has been used and it has not yet been tapped. It is a limited pot source, approximately five percent of all gaming licenses in the State.
 - MassWorks was last utilized for Dedham for Dedham Square improvements approximately ten years ago. This is a competitive annual grant.
 - The Act authorizes DHCD to adopt regulations to ensure communities are compliant. Until such regulations are adopted, all communities are automatically deemed compliant.
 - Section 5, Zoning Amendments
 - This is the section that governs the adoption of zoning bylaw amendments in the State. Under new legislation, certain types of zoning bylaw amendments are available with a simple majority vote at Town Meeting. Each amendment must be considered individually to determine whether it qualifies. The types are as follows and must meet State definitions:
 - Multi-family housing in eligible location.
 - Mixed-use development in eligible location.
 - Accessory dwelling units.
 - Open space residential development.
 - Increase in density of Multi-family/Mixed-use development.
 - Reduction in parking for Multi-family/Mixed-use development.
 - New TDR or Natural Resource Protection Area.
 - Modifications to bulk, height, yard sizes, lot area, setbacks, open space, parking and building coverages to allow for additional housing units.
 - Smart Growth or starter home district.
 - Section 9, Special Permits
 - This change applies to every town and city going forward and states that if a zoning bylaw authorizes one of three uses under the State definition by special permit, that special permit will now be granted through simple majority vote. The three uses are:
 - Multi-family housing within half mile of transit and ten percent affordable.
 - Ten percent affordability can be proposed by a developer to qualify for a simple majority vote.
 - Mixed-use development in centers of commercial activity and ten percent affordable.
 - Reduction in residential parking resulting in additional units.
 - In the opinion of Mr. Eichman, the changes to this legislation apply to special permit applications currently in the pipeline.
 - Section 17, Appeals
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- This does not apply to the Planning Board or Town as a whole.
- The State has allowed a Court, in its discretion, to require a plaintiff appealing a decision to approve a special permit, variance, or site plan, to post surety or cash bond of not more than \$50,000. This provides the option for Court to impose a burden on plaintiffs where it is believed that the purpose of litigation is to slow housing that a city needs.

Mr. Eichman stated that there are many terms not defined in the new legislation, and close coordination with legal counsel must occur on a case-by-case basis.

Mr. Rosenberger stated that there is one zoning amendment requested by a Dedham resident with a public hearing on April 14, 2021, which could be a good litmus test as the request is regarding implementation of additional housing on vacant lots.

Ms. Porter requested an overview of the implications for Dedham immediately and over the next year in layman's terms. Mr. Eichman responded that it has changed the quantum of vote for certain types of permits in the Town and zoning bylaw amendments brought before Town Meeting, from 2/3 to a majority.

Ms. Porter inquired whether Dedham as an MBTA community is mandated to come within the requirements urgently, and requested confirmation that Dedham is not considered to be out of compliance at this time but will be in future. Mr. Eichman responded that the urgency is strictly based on whether the Town wants to access one of the three funding sources tied to the adoption of an MBTA compliant zoning district. Ms. Porter stated that it would be worthwhile in future to discuss in-depth the three sources of funding.

Mr. O'Brien stated that this will take a lot of thought and evaluation, especially when dealing with As of Right and the new quorum for voting and how that can be used by a developer to bring a project that may not be in Dedham's interest.

Mr. Podolski stated that this is a perfect example of top-down legislation, as this legislation was passed in the middle of the night without any input as to what works in zoning and what does not. Mr. Podolski added that he was not contacted by any State representatives inquiring about his opinion on this matter.

Mr. Bethoney inquired, if the Town chose to do nothing following implementing regulations on any proposed zoning amendment, what would the result be. Mr. Eichman responded that the DHCD is only going to promulgate regulations with respect to the MBTA portion of this legislation. If the Town chose to do nothing it would not be eligible for the three funding programs.

Mr. Bethoney inquired of Dr. Teehan whether he anticipates issuing any gaming licenses in the near future. Dr. Teehan responded that he does not believe so. Mr. Rosenberger stated that, of the three existing casinos in the State, the license fees that they had to pay funded this specific infrastructure fund that cities and towns can access and confirmed that Dedham does not anticipate any new casinos at this time but could be eligible in future.

Mr. Bethoney stated that the Town should seek as much State fund as is possible; however, MassWorks has not been accessed for the last ten years. Any accessing of state

funds would need to be performed in a way that the Town feels is worthwhile in understanding the aftereffects.

Mr. Coughlin inquired, if Dedham did qualify for the MBTA, what could an owner of a single-family home property do with that piece of land.

Mr. Rosenberger responded that the Town would have to provide zoning districts within a half mile of a commuter rail stop, the most obvious being Endicott Commuter Rail Station and Dedham Corporate, with the ability to construct multi-family housing by right within that half mile that would meet 15 units per acre, about one unit per 3,000 square feet. Mr. Rosenberger added that the Town would have to think of commercial displacement for the tax base.

Dr. Teehan requested confirmation that there is a parcel of land undeveloped at Dedham Corporate that is owned by the MBTA and has been considered for development multiple times in the past. Mr. Rosenberger confirmed that they have put out feelers for the re-development of their parking area.

Ms. MacDonald stated that there have been conversations regarding the Master Plan that there is not enough housing stock to meet resident needs. Ms. MacDonald inquired what opportunities there are if this is the area that the State is allocating resources. Mr. Eichman responded that this would be a combination planning/legal exercise to determine where this would fit in terms of Dedham's Master Plan and an examination of how a zoning district can be prepared or a zoning bylaw amended to allow certain projects in certain areas. Ms. MacDonald stated that she is interested in using this legislation as a tool rather than something to fight against.

Dr. Teehan stated that the Dedham Corporate center may be a way to work within the context of this legislation and agreed with Mr. Podolski in that he is disappointed with this law. More housing stock is needed, and the Town must be creative; however, this is a broad sweeping change that could potentially lead to negative consequences causing problems at a local level. Dr. Teehan added that this legislation is unfair to those who have purchased homes in neighborhoods where the density and atmosphere may be altered.

Dr. Teehan inquired about the affordable housing component and how it could be ten percent if someone were to build a triple-family house. Mr. Eichman responded that he does not know, and this will be project specific.

Dr. Teehan requested confirmation that, if the Town does nothing, it will simply mean a change to a simple majority from a 2/3 vote to enact special permits. Mr. Eichman confirmed this. Dr. Teehan inquired whether doing something with the vacant lot near Dedham Corporate would satisfy the legislation so other neighborhoods could avoid being affected. Mr. Rosenberger responded that, if the Town wants to provide a district at Dedham Corporate, it seems like the likely place to start.

Dr. Teehan inquired whether the 2/3 to majority vote will only apply in the designated area or to the whole Town. Mr. Rosenberger responded that, if a zoning change were enacted for Dedham Corporate to provide by-right family housing, it would be a majority vote at Town Meeting, and this would not be Town wide unless the Planning Board or

Town wishes it to be so. Mr. Rosenberger added that the MBTA portion is a standalone policy affecting only the three funding sources. Dr. Teehan inquired whether the other portion of the legislation which is a change of threshold applies to everything the Town does. Mr. Rosenberger confirmed this.

Mr. Bethoney inquired if Town Meeting would have to vote 2/3 if a Town Meeting member proposes a zoning articles that will allow ADUs in a single-resident district. Mr. Eichman responded that, if the ADU meets the definition in the State Zoning Act, it would qualify for a majority vote at Town Meeting if the amendment allows for an ADU by-right or the amendment is to allow for an ADU by special permit for a separate structure on the same property.

Dr. Teehan requested confirmation that everything still requires a vote at Town Meeting, it is just the threshold that has been changed. Mr. Eichman confirmed this.

Ms. Sullivan inquired if there is something in the regulation about limiting parking or making it so that certain parking cannot be required. Mr. Eichman responded that there is nothing in the legislation that allows the Town to limit parking, but it makes it easier for the Town to allow for certain uses with more restricted parking.

Ms. Sullivan asked whether the Dedham Representative and Senator voted in favor of this legislation. Mr. Eichman responded that he does not know.

Mr. Pepoli inquired, if Dedham's definition of an ADU does not match the State definition, does the vote revert back to a 2/3 rather than a simple majority. Mr. Eichman confirmed that the vote would revert to a 2/3 vote in this case.

Mr. McGrail stated that there is nothing requiring to Dedham to act within a certain timeframe, and there is plenty of time for the Town to consider this legislation. There is nothing that has to be done that is inconsistent with the Town's principles and there is a tremendous amount of unknowns for this legislation.

Mr. Bethoney inquired if there is an obligation for the Town to put together a district in which these uses can be placed which is viable. Mr. Eichman responded that it is fairly clear that for any legislation like this, the district must provide a realistic chance of providing the housing to be created. Mr. Eichman added that the DHCD regulations will provide further guidance on this. Mr. Bethoney summarized that creation of a district that does not allow for as much as is reasonable would be considered a mirage.

Mr. O'Brien inquired whether the Whiting Avenue area would be considered a mirage in that it may be a brown field. The zoning was changed in that area for a new development, and Mr. O'Brien inquired whether that zoning could be reverted under this new legislation as-of-right. Mr. Bethoney responded that only within an act of Town Meeting could this occur.

Mr. Rosenberg added that there are more questions than answers about this legislation and it perplexes professionals and laymen alike. Mr. Rosenberg added that it needs to be determined whether a community can qualify to be an MBTA community and have as-of-right zoning for a commuter rail stop outside of its district.

Mr. Bethoney inquired what would happen if a commuter rail station was within a half mile but happened to be in a different community. Mr. Eichman responded that the legislation does not address that at this point, and guidance will have to be sought from DAC; however, he believes it should apply to rail stations not within the Town.

3. MOVE FROM THE SELECT BOARD INTO EXECUTIVE SESSION

Dr. Teehan stated that the Select Board would be entering executive session and would adjourn their meeting following the session.

A motion was made by Mr. MacDonald to enter into executive session pursuant to M.G.L. Chapter 30A Section 21(a) Exemption 3 to discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the litigating position of the public body and the Chair so declares, in regard to the Ames Schoolhouse Building. The motion was seconded by Mr. Coughlin. A roll call vote was taken:

Dennis Teehan	Yes
Dimitria Sullivan	Yes
James A. MacDonald	Yes
Sarah MacDonald	Yes
Kevin R. Coughlin	Yes

Motion passed unanimously, 5-0.

Following approval of the motion, the Select Board and Town Manager departed the meeting.

4. CONTINUATION OF PUBLIC HEARING, 95 EASTERN AVENUE – SREG MANAGEMENT LLC

Request for a Special Permit for a Major Non-residential Project, Special Permit for a hotel use in a Flood Plain Overlay District, Special Permit to exceed the allowable building height, Major Site Plan Review, and associated waivers to construct a six (6) story, 120 room hotel and 144 off-street parking spaces. The subject property is located at 95 Eastern Avenue, Dedham MA, Assessors Map/Lot 123-16 and 123-22, and is located within a Highway Business (HB) Zoning District and Flood Plain Overlay District (FPOD). Dedham Zoning By-Law Section 3.1, 4.1, 4.2, 5.1, 5.2, 8.1, 9.2, 9.3, 9.4, 9.5, Table 1, Table 2 and Table 3. Representative: Mr. Kevin Hampe, Esq. Continued from 2/24/21.

A motion was made by Ms. Porter to grant the applicant an extension until the Planning Board meeting of April 14, 2021, at 7:00 p.m. The motion was seconded by Mr. Podolski. A roll call vote was taken:

James McGrail:	Abstained
Jessica Porter:	Yes
James O'Brien:	Yes
Michael Podolski:	Yes
John Bethoney:	Yes

Motion passed, 4-0, with one abstained. The public hearing is continued to April 14, 2021 at 7:00 p.m.

Mr. McGrail stated during the old/new business portion of this meeting that he did not actively abstain from the above motion, but rather just had his microphone and camera turned off.

5. FALL TOWN MEETING WARRANT ARTICLE

Mr. Bethoney noted that this proposal was spoken about in the past that is also being contemplated by the Board of Health and Board of Assessors. The Planning Board is noted in the warrant article, with the Planning Director to report to the Planning Board as opposed to the Town Manager going forward. Mr. Bethoney stated that this could be discussed now or potentially deferred until after the determination of the Charter Commission. The Select Board will also hold a public hearing on this matter once recommendations are received.

Mr. Bethoney presented the proposed changes to the warrant article. Section 5 states that everyone reports to the Town Manager excluding the Library Director, Parks and Recreation Director, Health Department Director, Assessing Department Director and Town Planner, all of which would report to the Planning Board. Mr. Bethoney stated that although this is how the changes were submitted, they do not have to go through in this fashion.

Mr. McGrail stated that he would prefer to take the lead from the Charter Advisory Commission before undertaking a vote by the Planning Board.

Ms. Porter agreed with Mr. McGrail and stated that this is a radical suggestion, as it is not just about moving reporting from the Town Manager to the Planning Board, but also changing the Planning Director to a year-to-year contract. Ms. Porter noted that the proposed language should be shared with the Charter Commission.

Mr. Bethoney stated that the Charter Commission should determine its own language based on its own process. He is focused only on the exclusion of the Planning Director from the department heads who report to the Town Manager. Mr. Bethoney added that if any of his colleagues wish to discuss further items with the Charter Commission they can do so at the public hearing.

Mr. Podolski stated that this is the first time he has seen this language and it seems to be inconsistent; therefore, he cannot comment further on this item at this time.

A motion was made by Mr. McGrail to defer review and approval of the changes to the warrant article in support of going through the Charter Commission process. The motion was seconded by Mr. Podolski. A roll call vote was taken:

James McGrail:	Yes
Jessica Porter:	Yes
James O'Brien:	Yes
Michael Podolski:	Yes
John Bethoney:	Yes

Motion passed unanimously, 5-0. The warrant article will proceed through the Charter Commission process.

6. APPROVAL OF PREVIOUS MINUTES

Chair Bethoney stated that all meeting minutes to be discussed were previously distributed to Planning Board members.

March 28, 2019

Mr. O'Brien stated that that his name should be the fourth (4th) instead of the third (3rd) listed on Page 15 of the March 28, 2019 minutes.

A motion was made by Mr. O'Brien to approve the minutes of March 28, 2019, as amended. The motion was seconded by Mr. Podolski. A roll call vote was taken:

James McGrail	Abstained
Jessica Porter:	Yes
James O'Brien:	Yes
Michael Podolski:	Yes
John Bethoney:	Yes

Motion passed, 4-0, with one abstained. The minutes of March 28, 2019 were approved.

April 11, 2019

Mr. O'Brien stated that he voted no out of protest to the Hilton Hotel in regard to the condition of the stairs leading to the parking lot, as they were very rotted. Mr. O'Brien inquired if anyone investigated these stairs to determine whether they are in an appropriate condition or if they need to be fixed, as this is a safety issue.

A motion was made by Mr. Podolski to approve the minutes of April 11, 2019, as presented. The motion was seconded by Ms. Porter. A roll call vote was taken:

James McGrail	Yes
Jessica Porter:	Yes
James O'Brien:	Yes
Michael Podolski:	Yes
John Bethoney:	Yes

Motion passed unanimously, 5-0. The minutes of April 11, 2019 were approved.

April 25, 2019

Ms. Porter stated that the Public Safety Building was noted in the agenda as to be continued but does not appear to have been continued in the minutes. Ms. Doherty responded that she would need to review her notes regarding this item. Mr. Bethoney added that this was a public hearing requiring a motion to continue to a date certain, which must be included in the minutes.

Mr. Bethoney stated that approval of the April 25, 2019 minutes would be deferred until Ms. Doherty can investigate and implement the continuance for the Public Safety Building.

May 9, 2019

A motion was made by Ms. Porter to approve the minutes of May 9, 2019, as presented. The motion was seconded by Mr. Podolski. A roll call vote was taken:

James McGrail	Yes
Jessica Porter:	Yes
James O'Brien:	Yes
Michael Podolski:	Yes
John Bethoney:	Yes

Motion passed unanimously, 5-0. The minutes of May 9, 2019 were approved.

May 23, 2019

Ms. Porter stated that regarding the continuance of 197 Milton Street, the first line needs to be edited as it does not make sense as is.

A motion was made by Mr. O'Brien to defer approval of the minutes of May 23, 2019 to the next meeting. The motion was seconded by Ms. Porter. A roll call vote was taken:

James McGrail:	Yes
Jessica Porter:	Yes
James O'Brien:	Yes
Michael Podolski:	Yes
John Bethoney:	Yes

Motion passed unanimously, 5-0. Approval of the minutes of May 23, 2019 was deferred.

7. OLD/NEW BUSINESS

Ms. Porter stated that the Planning Board has discussed working on Providence Highway between the Spring Street/Bridge Street intersection and the Marine Rotary, and on March 11, 2021 at 7:00 p.m. there will be a community meeting for community input. Information for the meeting is located on the Town website.

8. DATE AND TIME OF NEXT MEETING

The next meeting of the Planning Board will be held on March 24, 2021 at 7:00 p.m.

9. ADJOURNMENT

A motion was made by Mr. Podolski to adjourn the meeting at 9:16 p.m. The motion was seconded by Mr. McGrail. A roll call vote was taken:

James McGrail:	Yes
Jessica Porter:	Yes
James O'Brien:	Yes
Michael Podolski:	Yes
John Bethoney:	Yes

Motion passed unanimously, 5-0. The meeting was adjourned.

DISCLAIMER

The above minutes should be used as a summary of the motions passed and issues discussed at the meeting of the Board of the Planning Committee. This document shall not be considered a verbatim copy of every word spoken at the meeting.