

**Call to Order:**

The Planning Board Meeting was called to order at 7:04PM on April 27, 2021 via Cisco Webex online video conferencing platform. Present were Chair Zachary Bergeron, Vice Chair Rocky Leavitt; Members Ann Knowles, Vinny Chiozzi, Jr., Neil Magenheim (joined at 7:30PM), and associate Morgan von Prella Pecelli. Also present were Paul Materazzo, Planning Director, Jacki Byerley, Planner, Lisa Schwarz, Assistant Director of Planning, Tom Urbelis, Town Counsel, and Carol McGravey, Assistant Town Counsel.

**DISCUSSION ITEMS:****Town Meeting Warrant Articles:****P33 – Amendment of Open Space Land Acquisition Bonding Appropriations**

Susan Stott, Open Space Task Force (OSTF) Committee Chair, presented a statement of support for Preliminary Article 33 which had been submitted to the Planning Board prior to the meeting. The purpose of this article is to update Article 56, passed at the 2014 Town meeting, which authorized the use of open space bond authorizations, originally passed in 2001 and 2002, for the acquisition of up to 20 parcels, should they become available, and their owners be interested in selling to the Town. Mr. Materazzo added that this article represents a modification of a previous article and that the OSTF is updating the list of available parcels that they would like to acquire for open space acquisition.

Ms. Knowles commented that this article is deserving of the Planning Board's support. Mr. Chiozzi asked if there will be a presentation showing where the parcels are located. Per Ms. Stott, maps were made available in the 2014 Town Meeting Finance Committee Report and the parcels cannot be viewed on one plan because they are spread out across Town. However, she offered to investigate whether they could be presented on a screen for review.

Ms. von Prella Pecelli asked if the Town has purchased any parcels or if this article outlined a wish list of properties that the Town would like to acquire. Ms. Stott clarified that this article preapproves the list of parcels in question, which would allow the Conservation Commission and Select Board to negotiate a purchase if a parcel became available. Ms. von Prella Pecelli also requested more information on the parcels located near the Shawsheen River. Per Ms. Stott, these parcels were selected due to a range of interests. These include improving areas that have been impacted by climate change and/or flooding, and expanding pedestrian access for walking along the river, picnicking, and boating. She added that there has been a long-time interest in Town to make the Shawsheen River more visible and acquiring these parcels could help revitalize this area.

Mr. Bergeron expressed his support for this article and commented that this project falls in line with the overall Master Plan. He asked if identifying these parcels could have a negative impact on the Town by driving up costs. Per Ms. Stott, she does not believe so because approximately \$1.2M has already been reappropriated and remains available, and the room for negotiation is stronger due to the large number of parcels listed.

On a motion by Ms. Knowles, seconded by Mr. Chiozzi, the Planning Board voted to recommend support for P33 – Amendment of Open Space Land Acquisition Bonding Appropriations. **Vote: (5-0)**

### **P32 – Street Acceptance – Monarch Lane**

Ms. Byerley noted that documents have been reviewed by Kathryn Morin, Attorney for the developer, and Carol McGravey, Assistant Town Counsel, regarding acceptance of Monarch Lane as a public way. Both were in attendance to provide an update to the Planning Board. Ms. McGravey reviewed a memorandum that she had submitted to the Board prior to the meeting, which explained that the title certification for the deed to Monarch Lane and the Utility Easement to be conveyed to the Town is contingent, in part, upon the conveyance of the Drainage Lot on the subdivision plan to the Homeowners Association. Because the Deed for the Drainage Lot and the private Sewer Easement had not been recorded and cannot be recorded until the Land Court issues a decision on a petition filed to correct errors made at the Registry of Deeds, Ms. McGravey recommended that the street not be accepted until the title certification conditions can be met. In response, Ms. Morin noted that there is no title flaw and documents that have been prepared on behalf of the developer were done correctly. Therefore, it is unfortunate for the developer to delay acceptance of the street because the timing on the recording of conveyance documents to the Homeowner's Association is uncertain. Ms. Morin explained that the error is in the process of being corrected and she is in communication with the Land Examiner in Boston, who is unable to give a projection of when this issue will be resolved. She requested that the developer be allowed to move forward with the street acceptance, notwithstanding the uncertainty as to the timing of the recording.

Mr. Chiozzi asked Ms. Morin to explain the hardship for the developer, in which she responded that he would be required to hold and maintain the road for one year and his bond would not be released. Mr. Chiozzi expressed his frustration that it is costly for lawyers to resolve issues such as this and ultimately the Planning Board needs to follow recommendations made by Town Counsel because these matters are not within their expertise. Mr. Leavitt added that, from his professional experience, the Land Court has been incredibly slow and with the Land Examiner being appointed on March 22, 2021, he does not anticipate that this will be addressed any time soon. Mr. Chiozzi asked if it was reasonable to assume that the Planning Board could recommend approval of the street acceptance at Town Meeting next year. Per Mr. Leavitt, it is not outside the scope of possibility.

Ms. Byerley informed the Planning Board that the Select Board is meeting on May 3, 2021 to discuss the street layout. She suggested that the Planning Board make a recommendation contingent on the favorable review from Town Counsel (in the event that the error can be corrected during this time) and the Select Board could decide how best to move forward at the upcoming meeting. Mr. Urbelis advised against moving in this direction. Mr. Materazzo asked if this discussion could be continued at a subsequent meeting, as it would be unfortunate to recommend disapproval and then have a decision from the Land Court in time to proceed at Town Meeting. Per Ms. McGravey, there are strict deadlines that the Town needs to follow regarding street acceptances. She explained that the Select Board is required to hold a layout hearing and the report of the layout must be filed with the Town Clerk no later than 7 days before Town Meeting. Therefore, the Select Board would need the Planning Board's recommendation prior to the layout meeting on May 3, 2021. Mr. Urbelis added that there is an additional time constraint with having the Planning Board's recommendation published in the Finance

Committee Report. His recommendation to the Planning Board was to disapprove street acceptance this year given the circumstances, as there would be no extensive harm to the developer. Ms. Byerley advised that the Board could recommend disapproval or have the article withdrawn until next Town Meeting. Mr. Chiozzi supported a recommendation to have the article withdrawn until all requirements are met.

On a motion by Mr. Chiozzi, seconded by Ms. Knowles, the Planning Board voted to recommend to the Select Board the withdrawal of article P32 – Street Acceptance – Monarch Lane. **Vote: (5-0-1)**

\*Mr. Magenheim abstained from voting.

Mr. Urbelis stated that he and Ms. McGravey will provide an explanation to the Select Board that this decision was made due to not having all documentation recorded in time and the Planning Board recommends having this article put on the next Town Meeting Warrant.

### **P39 – Noise and Vibration Standards Bylaw**

Joe Albuquerque, a resident at 197 Greenwood Road, was in attendance to discuss the proposed article which pertains to the construction of Major Non-Residential Projects and Special Residential Projects, and would regulate outdoor sound amplifying equipment, motor vehicles, trucks, construction and demolition equipment, industrial and commercial sources of sound, and other mandated sounds that cause noise. The following Town Officials reviewed the proposed bylaw and submitted comments, questions, and/or recommendations to the Planning Board prior to the meeting: Janet Nicosia, Director of Facilities, Chris Cronin, Director of Public Works, Tom Carbone, Director of Health, Chris Clemente, Buildings Commissioner/Inspector of Buildings, and Patrick Keefe, Chief of Police.

In response to Mr. Chiozzi's question as to why this bylaw is necessary, Mr. Albuquerque stated that it would improve the health, welfare, and safety of Andover residents and that he has concerns about noise levels associated with upcoming projects, including Town Yard and 146 Dascomb Road. He also commented that this bylaw was written by the Town and he believes it reflects a compromise to a more stringent bylaw that was presented at Town Meeting in 2018. Mr. Albuquerque welcomed feedback from the Town Staff in attendance and expressed being open to suggestions on how to improve this bylaw. He further noted that this article is fair, as it exempts the temporary use of equipment such as leaf blowers, lawn mowers and chainsaws.

Mr. Urbelis referenced a memorandum submitted by Mr. Carbone, Director of Health, that stated municipal staff did not move forward with the 2018 draft because it was not a feasible option. He also suggested that the timing is not appropriate for making changes to this article.

Ms. Nicosia, Director for the Department of Facilities which manages all vertical construction projects for both the Town and Schools, expressed that including an exemption for municipal projects in the current proposal is not fair and suggested it was politically driven. She had previously engaged the expert opinion of Acentech acoustical engineers, who was recently hired to perform pre-construction testing at the West Elementary site to determine baseline acoustics. Their report, which was shared with the Planning Board prior to the meeting, raised concerns about the measurement parameters outlined in this article, their enforceability, and the limitations being proposed, as the ambient noise that was

measured at the West Elementary site already exceeded the proposed standards. Therefore, Ms. Nicosia recommended withdrawal of this article.

Carlos Jaquez, Deputy Director of Public Works, added that this bylaw, as it is currently written, would have a detrimental impact on daily operations, regardless of the exemptions noted. He explained that capital construction projects would be halted due to exceeding decibel levels. As a result, the Department of Public Works did not recommend support of the proposed bylaw.

Regarding enforceability of this bylaw, Patrick Keefe, Chief of Police, explained that when responding to noise complaints, officers would not have time to put out listening recorders and sound devices to check decibels. He also expressed concern with the department losing discretion when investigating noise complaints, in considering what is reasonable and how best to move forward. Officer Glen Ota added that the proposed standard, which would restrict deliveries after 10:00PM, would be problematic for Main Street in particular.

Ms. Byerley shared with the Planning Board that she played a role in drafting the original bylaw and that moving a modified bylaw forward as a warrant article had been difficult due to a lack of expertise with regards to engineering, and the increased Town resources that would be required to investigate noise violations and enforce the bylaw.

Ms. Knowles recommended disapproval of this article and expressed that more information is needed, such as investigating noise bylaws in nearby towns and how they are being enforced. Mr. Bergeron commented that there are more questions than answers at this time, and therefore, he cannot support this article. Mr. Leavitt added that the bylaw needs to be refined based on the information presented at the meeting and agreed that it would be helpful to learn what community peers are doing. Mr. Magenheim added that he could envision the creation of a task force to further refine this bylaw.

Mr. Materazzo shared an email from a resident that was submitted during the meeting. Monica Morell, 98 North Main Street, stated that this is not the same article that was proposed 3 years ago, and the original noise ordinance did not include a municipal exemption. Ms. Morell also noted that this article addresses issues raised by the consultants and Town Officials.

On a motion by Mr. Magenheim, seconded by Mr. Leavitt, the Planning Board voted to recommend disapproval of warrant article P39 – Noise and Vibration Standards Bylaw. **Vote: (6-0)**

### **P38 – Terms for Boards, Committees & Commissions**

Mr. Albuquerque was present to discuss the abovementioned article and read a prepared statement to the Planning Board. Per Mr. Albuquerque, implementing term limits would create an opportunity for nurturing new community leaders, increasing community involvement, promoting active resident participation in the processes of self-government, and encouraging diversity and inclusiveness. In addition, imposing term limits would result in a more well-rounded, representative government, with a change of Chair preventing one member from having considerable influence over the Board, Committee, and/or Commission.

Mr. Bergeron expressed that diversity and inclusivity are important to the Andover community to ensure that we are embracing ideas from different perspectives. He noted that a variation of this article had been presented to the Board previously and asked for clarification on how this article differs. Mr. Albuquerque was not aware of a similar article, but shared that Paul Salafia, a former Planning Board Chair, had communicated to the Select Board that 16 years, his length of service, was too long which sparked a conversation on term limits at the meeting. Mr. Bergeron also asked if this article was modeled after neighboring towns. Mr. Albuquerque responded that other communities across the country have imposed term limits, but none in surrounding communities.

Mr. Magenheim inquired if Mr. Albuquerque had any Boards, Committees or Commissions specifically in mind when proposing this article, in which he shared that the Conservation Commissioner has been serving as Chair for 20+ years. Mr. Albuquerque also highlighted select Planning Board members and their length of service to date.

The Planning Board briefly discussed when this would go into effect should the article be approved and how it would impact the terms of current members. Mr. Albuquerque proposed 2 consecutive 5-year terms and commented that current members would be grandfathered in until reappointment.

Mr. Leavitt expressed his opinion that the knowledge and experience of long-time members has been invaluable, as he would be unable to make consequential decisions without their leadership. In addition, because some projects take many years to materialize, it is helpful to have continuity in membership. Mr. Urbelis agreed and added that Planning Board projects are more complex from a regulatory perspective than other Boards, Committees, or Commissions. Ms. von Prella Pecelli asked if term limits have been considered by the Town Study Governance Committee. Mr. Materazzo stated that it would be helpful for the Planning Division to have a policy with regards to this matter set by the Committee. Mr. Urbelis suggested to Mr. Albuquerque that he bring this article to the Town Study Governance Committee and request that it be discussed at their next meeting.

Mr. Leavitt asked if it was appropriate to take a position on this article, considering that disapproval may appear to be self-serving. Mr. Materazzo suggested that the Planning Board could recommend disapproval, with the understanding that the Town Study Governance Committee investigate a more global policy decision.

On a motion by Mr. Chiozzi, seconded by Ms. Knowles, the Planning Board voted on the disapproval of Article P38 – Terms for Boards, Committees & Commissions with a recommendation that the Town Study Governance Committee investigate the feasibility of different forms of governance that is individualized for Boards, Committees and Commissions. **Vote: (6-0)**

#### **PUBLIC HEARINGS:**

##### **Town Meeting Warrant Article P30 (Seasonal Placement of Tables and Chairs and Retail Fixtures):**

Ms. Byerley provided an overview of this article to the Planning Board. It would amend the zoning bylaw for the seasonal placement of tables and chairs and stipulates the following: the length of the season would be extended from March 1<sup>st</sup> to November 30<sup>th</sup>, the Inspector of Buildings would issue the permit

after review by the Board of Health and Public Safety (as opposed to a special permit being issued by the Zoning Board of Appeals), and it would allow businesses to apply for retail fixtures and products outside.

The Planning Board discussed concerns with how the bylaw is written and its vagueness with regards to a definition for “retail fixture” and criteria for safety barriers. The Planning Staff communicated that the language is intentionally vague to allow for flexibility, as the needs for each business will vary. These matters will be left to the discretion of the Inspector of Buildings, Public Safety, and the Fire Department. Permits will be reviewed on an annual basis and it will be within the Town’s authority to revoke any permit at any time should issues arise. Also, the insurance criteria will continue to be facilitated through the Town Clerk’s office.

On a motion by Mr. Magenheim, seconded by Mr. Leavitt, the Planning Board voted to recommend approval of Article P30 to amend Section 3.2.1 Specific Accessory Uses, Section 10 Definitions, and Section 3.1.3 Table of Use Regulations Appendix A Table 1. **Vote: (6-0)**

**Town Meeting Warrant Article P29 (General Bylaw):**

Ms. Byerley opened discussion of this article, pertaining to the Outdoor Dining License Bylaw which is issued by the Select Board for use on public property and includes similar amendments to Article P30.

On a motion by Mr. Magenheim, seconded by Ms. Knowles, the Planning Board voted to recommend approval of Article P29 General Bylaw, proposing an amendment to Article XI Section 9 of the Town’s General Bylaws Outdoor Dining License Bylaw. **Vote: (6-0)**

**DISCUSSION ITEMS:**

**Other Planning Related Business:**

Ms. Byerley asked for the availability of the Planning Board to hold a special meeting to discuss a land acquisition article pertaining to 45 acres of land at 138 Chandler Road. The Select Board is scheduled to revisit this article on May 3, 2021 and the Conservation Commission on May 4, 2021. The Planning Board scheduled a meeting for May 6, 2021 at 8:30AM.

**Adjournment:**

On a motion by Mr. Magenheim, seconded by Mr. Leavitt, the Planning Board voted to adjourn the meeting at 9:21PM. **Vote: (6-0)**

**Documents:**

2021 Annual Town Meeting Warrant – 3.16.21

**P33 – Amendment of Open Space Land Acquisition Bonding Appropriations:**

- Letter of support from Open Space Task Force re: P33 Town Meeting Warrant Article – 4.8.21

**P32 – Street Acceptance – Monarch Lane:**

- Memorandum from Jacki Byerley to Planning Board re: Monarch Lane Street Acceptance – 4.22.21

- Memorandum from Town Counsel to Planning Board re: Monarch Lane Street Acceptance – 4.27.21
- Letter from Attorney Kathryn Morin to Planning Board re: Monarch Lane Delay in Accepting Documents – 4.27.21

**P39 – Noise and Vibration Standards Bylaw:**

- Letter to Janet Nicosia from Acentech (project no. 634525) re: Andover Noise Regulation Comments – 4.23.21
- Memorandum from Janet Nicosia to Planning Board re: Article P39 Facilities Comment – 4.26.21
- Memorandum from Chris Clemente, Building Inspector to Ann Gilbert, Select Board Chairperson re: Noise Bylaw – 4.12.21
- Memorandum to Andrew Flanagan, Town Manager from Tom Carbone, Director of Public Health re: Noise Bylaw – 4.5.21
- Memorandum to Andrew Flanagan, Town Manager from Chris Cronin, Director of DPW re: Noise Bylaw – 4.22.21
- Police Noise Review Comments – 4.22.21

**P29 & P30:**

- Preliminary Article P29 Outdoor Public Property – 4.22.21
- Preliminary Article P30 Zoning Bylaw Amendment for Outdoor Uses – 4.22.21
- Memorandum from Jacki Byerley to Planning Board re: Preliminary Articles 29 & 30 – 4.22.21