

**WEST NEWBURY PLANNING BOARD
MINUTES OF MEETING
January 5, 2016**

Pursuant to a meeting notice posted by the Town Clerk and delivered to all Board members, a meeting of the West Newbury Planning Board was held on January 5, 2016 in the 2nd Floor Hearing Room at the West Newbury Town Offices, 381 Main Street. Board Members Rick Bridges, Raymond Cook, Brian Murphey and John Todd Sarkis were present. Planning Administrator Leah Zambenardi and Associate Member Dennis Lucey were also present. Board Member Ann Bardeen was not in attendance.

The meeting was called to order at 7:00 PM.

Subdivision Approval Not Required Plans (SANR's)

No SANR's were submitted.

Cook stated that the pre-application conference for the Daley property would begin at 7:15 p.m. He took the agenda out of order to tackle other agenda items under General Business, until that time.

General Business:

➤ **Chapter 61 – Status of Parcels Coming Before the Planning Board**

Cook stated that there has been some discussion about having money available for appraisals and asked who is working on that. Zambenardi stated she researched this a bit as there was some discussion at a recent Board of Selectmen's meeting that appraisals would be wanted for properties that the Town decided it might want to purchase and a question as to where the money for appraisals would come from. Zambenardi stated she heard at the recent Chapter 61 conference that rollback taxes paid by owners of properties coming out of Chapter 61 could be earmarked for open space conservation purposes and that funding appraisals for due diligence is a qualifying expense. She researched it a bit further and found that Conservation Commissions can establish such funds. She stated she spoke with Mike Bertino and he thought a simpler way to go was to perhaps make a suggestion to the Board of Selectmen that they have enough money in their technical services line to fund such appraisals that come up with little notice. She stated that he thought that was a better approach than earmarking those rollback taxes for a singular purpose. Cook asked that Zambenardi put that in a letter to the Selectmen. Zambenardi stated she would put the suggestion in the Planning Board's budget narrative.

➤ **Request by Open Space Committee for Local Technical Assistance (LTA) Hours from Merrimack Valley Planning Commission (MVPC) for Mapping Services**

Murphey stated that such requests are usually handled by filling out a form and having Murphey sign off on it as the MVPC representative. He stated it doesn't usually have to go to the Board if it is only a few hours.

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Cook made a motion that the Planning Board authorize the use of 2 MVPC LTA hours by the Open Space Committee for the purpose of GIS mapping of parcels under Chapter 61, or having APR's or CR's. Murphey seconded the motion and it carried unanimously. Cook stated that this is a judicious use of the mapping hours allotted to the Town by MVPC. He stated that the Open Space Committee should count on these hours being available to them.

➤ **Pre-Application Conferences**

Cook stated that the Board has 2 pre-application conferences and he asked Zambenardi if there were any regulations that limited the number of conferences an applicant can have on a project. Zambenardi stated that proponents of certain types of applications are required to request a pre-application conference, but she found no indication of limits on the number of conferences. Cook stated he is concerned that some of these conferences tend to drag on and this might be a way to circumvent filing requirements and timelines. Zambenardi stated it is a policy the Board could impose. Sarkis stated that his experience with Boards having openness to meet multiple times before filing is a positive one. Lucey stated that he is concerned there is no abutter notification, so an abutter who is not aware of a project could potentially miss out on discussions that might happen over a period of months. Cook stated there is risk if decisions are made during the pre-application phase. Murphey commented that a reasonable number would be somewhere around 3. If things can't be hashed out within 3 meetings, that is an indication there is a problem on both sides. Cook stated he would like Bardeen's thoughts on this and asked that the matter be scheduled for the next meeting. Sarkis stated that the purpose of a pre-application conference is not to resolve issues, but to identify them and to provide some guidance.

Pre-Application Conference – Development of 365 Main Street – Daley Property – Cottage Advisors, LLC

Woody Cammett from Cammett Engineering stated that after the last meeting, Cottage Advisors revisited the plan and amended it. The Conservation Commission approved the wetlands delineation with a few tweaks and the approved line is shown on the plan. The street line laid out minimizes wetlands disturbance. The road was moved over to abut the Town property. They show some of the Daley property as being conveyed to the Town property for parking or a holding tank. They also shifted the road to be against the abutters' property line. They addressed the turnaround concern and ensured it meets the design standards. They showed the right of way going out to Meetinghouse Hill Road would have a 4-foot walking path and a utility easement. He described the proposed trail easements that would go in to the Town property. Cook noticed that proposed trail is sited close to the homes. Cammett stated the dead end road is 2400 linear feet to the end of the turnaround. Cammett noted that Zambenardi did some research on the lengths of dead end roads in West Newbury and compiled a list, which is in the project file. Cook summarized the report and noted that the majority of roads on the list, 75% or so, are of lesser length than 2400 linear feet. Cammett addressed the public benefit in relation to the waivers they are requesting, including closing off two entrances to the legion, providing area to the legion for sufficient parking, providing public access to the legion via the new roadway, public non-motorized access from Main Street and from Meetinghouse Hill Road to the park area, and resolving the abutter's issues on the access

from Meetinghouse Hill Road. Cook stated that if the road were put through to Meetinghouse Hill Road, that would have impact on the abutter as she has improvements encroaching upon it. Cook stated that standard planning practice around the country is to avoid dead end roads and to create connected streets. This benefits traffic circulation, connecting utilities and emergency services. He stated that in this Town, people seem to favor dead ends. He stated for example, people on Meetinghouse Hill Road might favor a dead end because they do not want more traffic on their street. Cook noted there are other roads in Town where connections could have been made, but weren't. He stated that some other places, like Twig Rush were connected to other roads. Cook also asked about what constitutes a duplex. Zambenardi stated she spoke with Glenn Clohecy about this and he thinks that as long as structures are joined by a roof, including a breezeway, they would be considered a valid duplex. More discussion occurred on this topic.

Chip Hall of Cottage Advisors stated he asked for 2 conferences to get ahead of some of the issues. What he looked at based on the last meeting was the road entryway at 75-feet, abutter feedback, road distance, the utility easement for water and natural gas going further into Town and making it possible for a pedestrian connection to Meetinghouse Hill Road because of the utility easement. There is a gas line on the same side of Main Street as the property that they can tap in to. He stated there was some concern from the Board about condominium association ownership of the septic system. His attorney Mark Johnson looked further in to this. He handed out a letter from Johnson on the topic, which is on record in the project file in the Planning Office. He stated that the Commonwealth Land Title Insurance company indicated they would insure this, therefore mortgages could be obtained.

Some discussion occurred on why the developer is not pursuing an OSPD special permit for the property. Hall stated that he would not have as thorough a review of the architecture with a Definitive Plan, as would be done with an OSPD. From the last project he did in Town, which was an OSPD, he got the impression from several Board members that OSPD's are not preferable in general. He stated there is too much risk in taking that approach. He acknowledged some members indicated at the last meeting that OSPD wasn't a good fit for the particular site of his last project, but that it might work for this site. He got an indication this site might be more appropriate for OSPD, but that is not a guarantee. Cook stated he didn't pick up on Board members not liking the OSPD in general. Sarkis stated the last project was a tough site and it barely benefitted from the OSPD with what it offers. He stated that Members of the Board would like to see and know what those public benefits would be if you go with OSPD for this site. He looked at the definitive plan on this site and sees 4 duplexes stuffed in to the side of the hill and a roadway very close to it as well. He stated that space could be left alone with an OSPD. Encroachment on the wetlands could even be reduced. He disagreed that there are any members of this Board who are predisposed against OSPDs. If anything, he said it is the opposite. Bridges stated that frustrations on that other project were in relation to the site. He stated that changes made afterwards were difficult because the site was difficult to begin with. Hall stated another factor was bad advice from their consultants early on, whereas they engineered the full site and then worked for months adjusting the plan.

Cook asked Hall to look at the OSPD and their numbers and see if there are benefits to the

developer. He gave the example that the developer might achieve more marketable units or more units. He stated that he generally likes the OSPD. Bridges added that if they do explore OSPD for the site, there might be a wider public benefit that comes out of this. He stated they would more likely get more support should that be presented.

Murphey stated after looking at other streets in Town he has no issues with the dead end length. He stated that he likes what Cammett has done with the entrance and the road layout. There may be a need for some screening on the first two abutters' parcels. In general, the plan struck Murphey as having some favorable improvements. He is pleased the encroachment on the wetlands was further reduced. Murphey stated he likes OSPDs, but he understands some of Hall's frustrations over the specificity and the number of modification requests that were required. Hall asked if they would need that level of detail on the design specificity if he were to go with an OSPD for this project. Cook stated they might be able to craft a decision with more flexibility as long as it is discussed during the public hearing process and everyone understands that certain changes could be made. Sarkis stated that as part of the pre-application process, he would have thought Hall would present a couple of concept plans for an OSPD. Hall stated that with the site, 15 percent of the property is already wetlands and he is not sure how he can meet that. Cook stated Hall would have some good engineering advice up front and the Board has more experience now. Some further discussion ensued about making connections to abutting properties. Lucey asked the developer to further examine the trail locations and whether they are good, feasible connections. Cook asked about an easement for future development if it were ever to take place for access to the property at the northeast corner.

Cook allowed for limited public comment. Brad Buschur, 347 Main Street, stated the core issue here is the length of the dead end street. He stated that the length of dead end streets are limited because of emergency vehicles and transportation distribution. He researched other communities and noted that the length of dead end streets is typically based on the number of units. He stated the Transportation Institute of Engineers recommends a 20-unit maximum on a dead end street. He stated that we have 12 units above that standard. If you add his 3 ANR lots, that is 15 units above the standard. He stated the Town's code is out of date. Cook stated the Planning Board has been very proactive about fixing things in the Bylaws and Regulations before they become an issue. He stated that if someone made the connection to Meetinghouse Hill Road, the traffic would be better distributed. It might be, however, that too many cars are being put on the back roads that should be using Route 113. Buschur stated Route 113 is already experiencing enough traffic. He encouraged the Town Planner to include the number of units on each of the dead end street on her list.

Joan Flink, 368 Main Street and abutting the Mullen property easement, stated an earlier version of the plan shows the roadway directly across the street from the Mullen property easement. She stated that easement would be difficult to develop. She stated that a road coming out directly across the street from her property would disrupt her home with headlights shining through her windows at night. She is also concerned about a traffic light and her property values. Cook stated that is definitely a consideration during the planning process.

Ms. Koopman, 32 Meeting House Hill Road, abutter to right of way on Meetinghouse Hill Road, stated the easement is on the most dangerous, steepest part of Meetinghouse Hill Road. She would not want to see the connection to Meetinghouse Hill Road built out and she would not want utilities to go through either. She stated that Murphey should grant an easement for utilities, because it is a shorter distance rather than going between her and her neighbor's properties. She stated they should provide access through the Town's property on to Bachelor Street.

Laurie Spielvogel, 34 Meetinghouse Hill Road, stated her concern over tearing up her driveway for installing utilities. Murphey stated they would have to put back what was torn up after the installation. Cook stated motorized vehicles would likely be prohibited. Spielvogel stated she is still concerned about people walking on a trail bordering her property. Spielvogel is also concerned about people parking near her property to access the trail.

Pre-Application Conference – Continued Discussion from June 2 and July 21, 2015 of Development of Property off Archelaus Hill Road and Middle Street (Assessors Reference R-15-74, R-22-2) – Thomas Morley

Morley asked a number of questions. At the Board's request, he oriented them on the project. He stated he had additional engineering done recently and found that he has 392-feet of frontage on Middle Street. He has over 300-feet of frontage on Archelaus Hill Road. He asked a question about the reduced frontage provisions in the Zoning Bylaw. He asked about whether he has to file a definitive plan, and therefore the project would no longer be an ANR.

Cook asked Morley to clarify what he is proposing. Morley asked what the Board's position is on the ANR covenants. He would like to create an easement to access his property. Murphey questioned whether Morley had a right to an easement. Cook stated there are a number of issues here. There are 2 separate pieces of property currently. Morley would like to divide the property so he has 3 lots through the ANR process. To do that, there are certain criteria that need to be met regarding frontage and access. If Morley meets those requirements then the Planning Board must endorse the ANR. He stated this leads to the question of how Morley would access the homes on those 3 lots. Morley has a right, which is typical, to use the frontage for the lots that were created for access. Instead of doing that, Morley would like to have a common driveway or establish an easement on the Archelaus Hill lot.

Cook stated there are 2 documents that might impact this project. He stated there is a 1977 covenant, which prohibits further re-division of the lots into building lots, which indicates that owners in Archelaus Hill and abutters have the right to enforce the covenant. The expiration given in the covenant is 40 years, making 2017 the date of expiration. Cook stated there is a question as to whether the Planning Board has a right to enforce that covenant. That covenant was not recorded in the 1978 decision of the Planning Board to approve the Archelaus Acres Subdivision. Zambarnardi stated the 1978 decision did reference a covenant, but it was not the 1977 covenant. The covenant the 1978 decision referenced was surety guaranteeing that the ways and municipal services would be completed before the developer sold the lots. Morley asked for clarification. Cook further explained. Cook noted that the term "re-subdivided" as

used in the 1977 covenant is not a legally correct term that he knows of. He stated the Planning Board might not deal with that issue as it is not clear whether they can even enforce the 1977 covenant.

Murphey referred to another document dated March 1, 1978, which was submitted by the original developers during the review of the Archelaus Acres Subdivision and considered by the Planning Board at the time. He read from the document as follows, "These lots shall be sold with covenants and restrictions, one of which shall restrict partition into additional building lots. One reason for the large lot sizes is so houses would be constructed where building sites correspond with the natural features of the land. Also, we want to make a minimal impact upon the environment and to have a low density subdivision in keeping with the rural character of the town." He stated the Board at that time was thinking about this. There are several of these circular references that refer to covenants and restrictions that concern him and possibly other members of the Board. Cook noted that the intention is clear, but the 1978 decision did not reference such a covenant. Cook stated there is also a recent document from Morley's attorney opining that creating an easement over a lot is not considered subdividing a lot. He stated that adding a section to the Archelaus Hill lot to make it a larger lot would not be considered a subdivision in his opinion. Morley confirmed he is creating a larger lot on Archelaus Hill Road.

Morley asked about the timing and nature of his applications. Cook stated there are a couple of steps: 1. Change the property lines and establish the lots he desires, with some advice from his engineer, and stating why he believes they are ANR lots; 2. Perhaps have a common driveway, which requires a special permit. It would reduce the number of curb cuts. In some instances they are not preferable, but sometimes they are. If Morley does not go for a common driveway and has 3 separate easements, Zambenardi stated that a definitive plan or a plan approved in the same manner as a definitive plan, Section 6.A.9.is required. Zambenardi stated she believed Morley would have to comply with this, even if he applied for a common driveway. Cook stated that when it comes to alternate access, one of the matters the Board considers is the impact on wetlands. Cook stated there is less overall disturbance to the environment by providing access off Archelaus Hill Road instead of Middle Street.

Al Picone, 16 Archelaus Hill, stated that Baker's driveway goes over the wetland area and there are other examples in Town. Cook stated there is no question there are ways to do this. If an applicant comes before the Board asking to do something, the Board weighs the pros and cons and determines whether there is a public benefit in doing so. He read through the criteria the Board uses to evaluate a special permit request. Cook stated the Board would weigh the amount of traffic generated from 3 new homes and using Archelaus Hill Road against a landowner's rights to develop.

Murphey noted that Baker's existing access offers an opportunity to use that driveway as a common driveway for access to Morley's property. Several more alternatives were discussed. Murphey stated that if an ANR were submitted showing an easement, the Board might require that a notation be added to the plan indicating there might be a problem with accessing the lot from Archelaus Hill Road. More discussion ensued about the alternatives and Morley's

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mother's intentions of using the Archelaus lot for frontage when she bought it.

Cook stated a question would be, if Morley came forward with a common driveway or an easement, what kind of jurisdiction would the Planning Board have. Cook could see why access from Archelaus would be a good way to go. He could also see why residents in the Archelaus Hill subdivision and other abutters would be upset about that. He stated it is not a slam dunk either way. He thinks it would be a difficult decision for the Planning Board.

Cook asked for comments from members of the Board. Sarkis withheld comment because of his earlier involvement with the lots. Bridges stated that even if the Planning Board made a decision, there could still be a challenge. More discussion ensued about adding a notation on a plan.

Cook asked for public comments and questions. Charles Metrakis, abutter, asked about proximity of the proposed house to his property. Morley did not have that information with him. Cook stated that a home would need to conform to zoning, septic and well bylaws. Metrakis stated that he purchased his home with the understanding that the property abutting him was not to be developed. He has a concern of building more than one home back on the property.

Ray Tiezzi, 2 Archelaus Hill Road, asked for clarification about the covenants and other documents referenced. Cook stated it is his understanding that the letter referenced earlier in the evening was not binding as it wasn't referenced in the decision. He suggested that an attorney should be consulted to confirm this.

Richard Baker, 28 Middle Street, stated that an ANR lot with frontage on Middle Street is not appropriate. He stated the whole idea for access to an ANR lot is to make sure that emergency vehicles have reasonable access to the property. He stated in terms of adequacy of access, the Planning Board cannot count extreme topographic conditions for frontage. He stated wetlands solely is not enough, though adding long driveways snaking up and down the hill is not reasonable access. He stated that winter conditions would prevent access for emergency vehicles. He said one can't count on that as frontage. Cook stated that if an ANR comes before the Board, it will have to consider the plan against such criteria. Murphey stated his concern that an ANR might need a statement added to the plan indicating that might not be an adequate site for access and that it might need to be a subdivision. He stated there are limitations on how the Board can deny a plan, but there is case law that indicates statements can be added to a plan noting it is unclear.

George Bucco, 6 Archelaus Hill Road, asked about how addresses for the new homes are determined. Zambenardi stated that in West Newbury the Building Inspector determines addresses. Cook stated it is not the Planning Board's call.

Ocean Meadow Definitive Subdivision Plan and OSPD Special Permit – Alyssa M. Gillis – Update on Status of Completion of 24 Ridgeway Circle

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Stan Checkovitch and Doug Stockbridge spoke on behalf of the developer as partners. Checkovitch stated that they have a January 10th deadline to complete the construction of 24 Ridgeway Circle. They are before the Board because this is the last meeting before January 10th. They are experiencing push back from a scheduling point of view. They are asking for an extension to the end of February because they also have an extension with the buyer to February 10th. Cook stated the Board can grant the extension or deny the extension and take the bond to manage completion of the unit. It would not be simple for the Town to do it. Bridges asked what comfort the developer can give the Board that the unit would be completed by the next deadline. He stated he has been monitoring the unit and noted not much has been done. Board Members expressed their displeasure with the partners not meeting the deadline. Stockbridge stated cabinetry has been installed and painting is occurring. They think there has been significant progress, but the unit is not done. He stated they had the issue handed to them yesterday. There is a health issue with the other partner. Murphey stated he is inclined to give an extension. Lucey asked why give an extension or set a deadline at all? Bob Gauss, 14 Ridgeway Circle stated he thinks a deadline is important because it gives the Trustees of the condominium association an idea of when the unit will be filled and when they can collect fees.

Cook made a motion to grant the extension through to February 29, 2016. Murphey seconded the motion. Discussion on the motion: Sarkis stated that the Board should not give any more extensions after this one. Murphey stated he agreed, but the Town would want the developer to complete the project. Brad Buschur, 347 Main stated that Habitat for Humanity could take over the construction. The motion carried 5-0. Cook asked the partners to express the Board's frustration over this with their other partner.

General Business Continued

Steve Greason, 86 Coffin Street, stated that the Open Space Committee is in the process of coming up with a Chapter 61 parcel list. He acknowledged that the Board granted more hours and thanked them. Greason stated that by Dec. 2016, the Committee needs to update the Open Space Plan and they need to figure out how many hours the Committee needs to redo all of the maps. Murphey stated that they should come up with a number of maps and get a sense of the number of hours for the maps that they will need. Murphey stated if they need more hours beyond the 35 hours by MVPC, they should prepare an Article for Town Meeting. Greason asked a question regarding the maps. He stated that 11 of the 88 parcels in Chapter Land are also APR sites (permanently protected). There are also 4 CR parcels on there. He'd like to know what properties they should map. Cook stated that they should create a map based on their needs. He thinks showing all the types of protected parcels on the map could be very useful for planning purposes. Greason stated that there seems to be a spike in the Chapter Lands coming out of the program this coming year. Within the past 7 years the Town lost 4 properties (the 2 large parcels, the Sullivan parcel and the small parcel on Chase Street). The Town has gained one Chapter parcel (the horse farm on Turkey Hill Road). It is expected that 3 or 4 more parcels will fall out within the year. Cook stated he is concerned the Town might miss a property coming out of Chapter 61. The Board and Greason concur that the Town should be proactive about reaching out to property owners in Chapter Land and discussing options other than development.

Vouchers: Zambenardi handed out a voucher for payment of invoices.

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Administrative Matters:

- Bailey's Lane – Zambenardi read an email from Glenn Clohecy in to the record regarding the sign. Clohecy would respond if he received a complaint. The Board decided not to pursue this at this point.
- Minutes: Board members took up the minutes of December 1, 2015. They made suggested edits. Cook made a motion to accept the minutes as amended. Sarkis seconded the motion and it carried 4-0, with Murphey abstaining.
- Zambenardi asked members of the Board if they would be fine with her giving Annie Sterling a key to the Planning Board office. Members have no objections.

The meeting was adjourned at 9:50 p.m.

Submitted by,

Leah J. Zambenardi, AICP
Planning Administrator