

**WEST NEWBURY PLANNING BOARD  
MINUTES OF MEETING  
October 20, 2015**

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 October 20, 2015 in the Planning Board Office at the West Newbury Town Offices, 381 Main Street. Board Members Ann Bardeen, Rick Bridges, Raymond Cook, Brian Murphey, and John Todd Sarkis (arrived at 7:15 p.m.) were present. Planning Administrator Leah Zambenardi and Associate Member Dennis Lucey were also present.

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

**Subdivision Approval Not Required Plans (SANR's)**

- a. 112 and 114 Crane Neck Street – 112 Crane Neck Road Realty Trust and James E. and Tammy K. Brackbill

Jeff Hoffman of Millenium Engineering presented the plan to convey an approximately 2,000 s.f. parcel of land from property of 112 Crane Neck Road Trust to the Brackbills. He stated is it a lot line adjustment.

Cook made a motion to endorse the plan for 112 and 114 Crane Neck Street drawn by Millenium Engineering and dated October 14, 2015, as one not requiring approval under the Subdivision Control Law. Bridges seconded the motion and it carried (4-0).

Sarkis arrived.

- b. 111 and 115 Indian Hill Street – Essex County Greenbelt Association (ECGA) and Flying W Realty Trust

Vanessa Johnson from ECGA was present and stated that the homes at 111 and 115 Indian Hill Street are on 2 separate lots. 111 Indian Hill Street is 22.55 acres and has an 18<sup>th</sup> century home upon it. 115 Indian Hill Street has a more modern home with 2.32 acres. ECGA has a contract to purchase both properties. The intent is to reconfigure the two properties so that both homes are on one 7.66 acre parcel with frontage on Indian Hill Street. It is intended that the more modern house, garage and shed at 115 Indian Hill Street will be demolished (as noted on the plan) and the 18<sup>th</sup> century home will be restored by new homeowners. ECGA will retain the back portion of the property (17.21 acres) as open space. The ECGA parcel has no frontage and is identified as a non-buildable lot on the plan.

Cook noted filing this plan would result in 2 houses being put on 1 lot, which would be a zoning violation. Johnson stated their intent is to demolish the red house, though they plan to live in it while they restore the older house. Then the red home will be demolished. Members express concern about plans changing and the zoning violation persisting. Bardeen commented endorsing an ANR is a matter of determining frontage and access. Zambenardi agreed Cook expressed his concern about creating a lot that is non-compliant. Zambenardi stated there is a note on the plan that the Planning Board's endorsement is not a determination as to

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conformance with zoning. She stated there is also a note on the plan that the red house is to be demolished. Cook noted that the owner would need building permits, so the Town would have some protection from the Zoning Enforcement Officer. Murphey asked about the urgency for signing off on the plan. Johnson stated the closing is scheduled for the end of October. Murphey stated the Board could sign off on the plan at the next meeting, after it has had a chance to consult with the Building Inspector. Members discuss reconfiguring the plan to avoid the zoning violation. Bardeen also noted that the home to be restored does not appear to be habitable as it exists today. Johnson affirmed this. Bardeen noted they will not get a permanent occupancy permit if there is a second house on the lot when the older home is ready to be occupied. She stated if they did want to keep the red house they would have to re-divide the lots. Members refer to the Massachusetts ANR Handbook (1997), page 45. Cook stated that this section indicates “relative to the Planning Board’s endorsement the answer is clear. The only pertinent zoning dimension for determining whether a plan depicts a subdivision is frontage.

Cook allowed Jerry Liske, listing agent for the property in question for the Walker family to speak. He noted that it is a matter of mechanics. He suggested that there be a condition in the agreement with the buyer that the houses are not occupied at the same time.

Cook noted that the ANR Handbook provides a list of questions the Planning Board should ask in order to determine if a plan can be endorsed as an ANR. These are the only questions a Planning Board can consider.

1. Do the proposed lot(s) have frontage? Cook stated yes, there is no question that the buildable lot has frontage.
2. Do the proposed lot(s) have the minimum frontage pursuant to the local zoning? Cook stated yes.
3. Can each lot be accessed? Cook stated there is already one building lot and it does have access.
4. Does the way on which the proposed lots provide adequate access? Cook stated yes.
5. Does each lot have practical access from the way to a buildable portion of the lot? Yes.

Sarkis and Bardeen stated that is their understanding a well. Sarkis doesn’t agree with it, but that is what is allowed under the law.

Liske stated he spoke with the buyer, who said he has no intention of living in the red house. They will stay at their current residence until the older home is ready.

Cook made a motion that the Planning Board endorse the plan for 111 and 115 Indian Hill Street drawn by Reid Land Surveyors and dated October 5, 2015, as one not requiring approval under the Subdivision Control Law. Cook noted that Parcel B is not a buildable lot and that as noted on the plan, endorsement does not give the parcels any standing under the Zoning Bylaw of West Newbury. Bardeen seconded the motion. Discussion on the motion: Cook stated that he will vote to approve this as an ANR, though he is not comfortable with this because it could cause problems down the road. Murphey stated they are not under any legal constraint to approve this tonight. He stated he is not voting in favor. The motion carried (3-2). (Bardeen, Cook and Sarkis in favor) (Bridges and Murphey in opposition). Board members ask Zambenardi to see how the Building Inspector would view this issue. (Note: On October 21, 2015, Building Inspector Glenn Clohecy indicated that putting both homes on 1 lot would

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create a zoning violation. He recognized and agreed that a Planning Board's endorsement is not a determination on zoning. He indicated that in this case, he would probably issue a conditional building permit requiring that the red house be torn down within 30 days of occupancy of the 18<sup>th</sup> century house. He also noted they could have drawn the plan in a way that the homes would still be on separate lots and avoid the zoning violation).

**Follinsbee Lane, Cottages at River Hill, Open Space Preservation Development Special Permit (Section 6.B) and Site Plan Review (Section 8.B) – Cottage Advisors, LLC – Approved March 11, 2014 - Request for Approval of Interim As-Built Plan, Unit Releases from the Covenant Not to Convey and acceptance of a Performance Bond.**

Chip Hall of Cottage Advisors noted he submitted the above-referenced request to the Board prior to the last meeting. At that time LandTech and Meridian Engineering were still working out the final bond amounts. Since that time, Millenium has revised the figures and split the lines into 2 construction phases. Phase 2 covers completion of improvements associated with units 11, 13, 14, 15, 16, 18 and 20. Phase 3 covers units 21 through 32. Zambenardi noted that Meridian has reviewed the schedule and finds it acceptable. Hall presented a signed Tri-Partite agreement as surety. Zambenardi also noted that Meridian had approved the Interim As-Built plan, but noted several items that should be added to the final As-Built.

Cook made a motion that the Board accept the Interim As-Built Plan drawn by LandTech Consultants dated February 20, 2015, with Sheets 1 & 4 revised 10/1/15 and Sheets 2 & 3 being revised 10/2/15, as approved and reviewed by Meridian. Bridges seconded the motion and it carried (5-0).

The Board then accepted the list of remaining construction items and associated costs for Phase II and Phase III.

Cook then made a motion to enter into a Tri-Partite Agreement in the amount of \$132,413 as surety to guarantee the completion of units in Phase II and to approve the release of Units 11, 13, 14, 15, 16, 18 & 20 from the restrictive language of the Covenant Not to Convey. Murphey seconded the motion and it carried (5-0).

The Board then discussed the open-celled pavers with Hall, noting the pavers have been removed. Cook noted that the curbing has not been put back, though he is not sure the Board can do anything about that.

Hall discussed some other updates including a change in the berms, project status, and invitation to a site visit on Friday with a representative from Congressman Moulton's office to discuss economic impact of developments such as this on the region.

**Continued Discussion on Planning Board Projects and Priorities**

Board members reschedule the meeting to December 1<sup>st</sup>. They asked Zambenardi to notify the people invited. Zambenardi noted that Mike Gootte of the Water Department had expressed interest and noted potential issues with providing water to new developments downtown. The Board asked Zambenardi to extend the invitation to the Water Department. Members speak about discussion points for the December 1<sup>st</sup> meeting.

**General Business Items**

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Cottages at River Hill - Cook noted the Cottages project was discussed earlier in the evening.

Sullivans Court – Zambarnardi stated that she received in inquiry from Deborah Green about no parking signs recently installed at the intersection of Sullivans Court and Whetstone Street. Ms. Green is opposed to the signs and asked if the Planning Board had involvement in the decision to install them. The Board noted that during the review of Mr. Neve’s project at Sullivans Court, it discussed the difficulty at that intersection (including the construction vehicle parking across the street from Sullivans Court) and they asked Mr. Neve what he might do to make that intersection better. They recognized all along however, that this part of the road is in the Selectmen’s jurisdiction. The Board did not weigh in on the signs at the corner of Whetstone and Sullivans Court. They said this is something they never made a formal recommendation on and that they have no jurisdiction at this corner.

Drakes Landing Preliminary Plan – Zambarnardi stated there was some discussion at the last meeting about whether or not to notify abutters of the meeting on the Preliminary Plan scheduled for November 3<sup>rd</sup>. She noted the Statute and the Board’s Regulations do not require it. Murphey stated we should follow the law and not notify abutters. He added that this petition does not resemble what will ultimately be filed in any way. Bridges asked about the cost for notifying abutters. Zambarnardi stated it would be staff time. The Board agreed not to notify abutters, because it will be on the agenda, no significant comment will be taken and the law does not require it. Zambarnardi stated she is creating an email list for people wanting updates on the project.

Zambarnardi asked the Board if it would like to hear from Mike McCarron, Town Counsel about the implications of filing the preliminary plan and zoning freezes. There seemed to be some questions about this at the last meeting. Murphey clarified he is concerned that a future plan, bearing no resemblance to the Preliminary Plan, would be grandfathered. The Board agreed.

Zambarnardi stated that Cottages would like to come to the Board for a pre-application conference for the development of the Daley property. The Board did not want a pre-application conference the same night as the preliminary plan (November 3<sup>rd</sup>). The Board was also reluctant to have the pre-application conference on November 17<sup>th</sup> as 2 Members would not be present. The Board indicated it would do the review on December 1<sup>st</sup>. Zambarnardi stated that the developer would most likely come to a meeting of Town Department Heads to talk through the plan and get initial, non-binding feedback.

Right of First Refusal Amendment - Cook noted that the Board of Selectmen voted to make an amendment to the RoFR draft and the Board has been asked for its opinion on the amendment. After some discussion, Cook stated that a letter would be issued indicating that the Board respectfully declines endorsement of the amendment as it is in direct conflict with Section 7, which reads, “The Board of Selectmen will set an agenda item at the next available meeting that will still allow the Town Entities a reasonable opportunity to prepare recommendations and the Town Entities will be notified of the time and date of this meeting. Town entities not providing feedback by or at the Board of Selectmen’s meeting will be assumed as not wishing to offer a recommendation.”

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Town Meeting – Zambenardi note the Town Meeting vote on the Open Space Preservation Development Zoning Bylaw Amendment is October 26<sup>th</sup>. Cook will present the amendment.

Draft Annual Report – Members make comments on the preliminary draft. Zambenardi will continue working on the draft and present the final draft at the next meeting.

2016 Meeting Schedule – Zambenardi provided a 2016 meeting schedule for the Board's approval. Board Members made a few edits and approved the schedule noting that it is tentative.

Minutes - Cook made a motion to accept the minutes with amendments. Murphey seconded the motion and it carried (4-0-1 with Bridges abstaining).

The meeting was adjourned at 8:50 p.m.

Submitted by,

Leah J. Zambenardi, AICP  
Planning Administrator