

**WEST NEWBURY PLANNING BOARD
MINUTES OF MEETING
December 15, 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 December 15, 2015 in the 2nd Floor Hearing Room at the West Newbury Town Offices, 381 Main Street. Board Members Ann Bardeen, Rick Bridges, Raymond Cook, Brian Murphey and John Todd Sarkis 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)

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:

Right of First Refusal: Cook gave an update of the Selectmen's meeting that he and Bridges attended the previous night. Cook stated that Selectmen Glenn Kemper conveyed that there is not enough time in the timeline for Town entities to give meaningful feedback and that the Selectmen are elected to make decisions on these matters. He said there was a meaningful discussion and that ultimately, it is the Selectmen's policy to adopt this. He stated that in the procedure, they all agreed that whether a property owner was going to convert land or sell it, that the Town would want its own appraisal if there was interest in the land. Cook stated that the law requires an appraisal if the Town is interested in purchasing a conversion of use property. He stated that the Town does not legally have to do it if there is a bonafide purchase and sale agreement. He described the initial steps in the process including that if the Town is going to do an appraisal, it has to be done and delivered to an owner within 30 days of receiving a complete and valid notice. He stated the owner can rebut the appraisal between 30 and 60 days. If the Town and the owner do not come to an agreement on the price, they can elect to hire a 3rd appraisal between 60 and 90 days.

Bardeen stated she thought the key to this was that the Town has 120 days from the receipt of notice. She stated that an important thing to convey is that there are a number of different groups that have interest in this. Cook confirmed they related that to the Selectmen. He stated they added the Finance Committee to the list of entities to be notified. Bardeen noted that it was suggested that abutters be included in the list of Town entities at the recent forum on Chapter 61 by Greenbelt. She thinks that is a good idea because those are the most interested people.

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Cook stated that the Town's policy will be to get an appraisal done whether it's a sale or a conversion. Both appraisals will need to be done within 30 days of receipt of a complete notice, which causes the rush. Murphey stated that it is good the Selectmen have committed to having an open mind and to create a forum for a public discussion to help make decisions.

Sarkis stated that some of these timetables have to do with the contract/covenant the landowner made with the Town. Sarkis stated there is still a notion that the Town is buying the First Right of Refusal. Presumably if the Town had no real intent on buying the property, it wouldn't enter into such an agreement. Bardeen and Cook clarified that it is a State law and landowners can utilize it if they meet certain criteria. The Town does not have a choice in the matter. Sarkis stated that if such a policy is in place, it is indicative that the Town should seriously consider buying the property. He stated that the Town should do its homework in advance and look at all of the parcels on the list in Town to be prepared if a RoFR is triggered. If a First Right of Refusal comes up, the Town will have the capacity to act in those 30 days. Bardeen added that the Town doesn't have to just wait until a property is ready to come out of Chapter 61, the Town can be proactive by talking to the landowners about their intent, plans and timeframes for their properties. Sarkis stated if the Town was prepared, it could get an appraisal done within the 30 day time frame. From a landowner perspective, having a 120 day timetable ensures the Town can't draw out the process. Bridges noted that Selectman Dave Archibald had related that the Open Space Committee has identified priority parcels and he suggested that other Boards should do the same with the inventory. That would help the Selectmen process Chapter 61 properties.

7:15 p.m. Pre-Application Conference – Development of 365 Main Street – Daley Property – Cottage Advisors, LLC

Attorney Mark Johnson spoke on behalf of the applicant. Cook stated there was a meeting of department heads recently where a 30 or 32 unit development was presented. Cook clarified that the last development the Planning Board saw was a 2-lot development. Johnson affirmed this. Sarkis explained that the applicant has filed a request for a pre-application conference to discuss their project prior to submitting formal plans for subdivision approval. The purpose of tonight's meeting is to review plans informally and begin a dialogue that will be constructive to the applicant and abutters as to how the process works and what is being reviewed and the substance of the plan itself. Cook stated that the purpose is to make people aware of what might happen formally sometime in the near future. He stated no permits have been applied for with the Planning Board at this time. The process also gives the applicant a chance to get some early feedback so when the application does come forward, some issues might have been addressed ahead of time and things might go more smoothly.

Cook stated that in a subdivision, the Board's rules indicate that the centerline of roads should be located 75-feet from adjacent property lines unless there is a compelling reason to put it closer. He stated that is an issue that the Board and some of the abutters are concerned about. Johnson stated that is the first issue he'd like to discuss with the Board. He referred to Section 4.2.4.11 of the Board's Subdivision Rules and Regulations and noted that is in the section where

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they talk about design standards. He stated there was some discussion at the last meeting on whether or not a waiver would be required. They are trying to reconcile that with the “compelling” language in the regulation. He opined that a waiver would not be required if the Board found there were compelling reasons the road did not meet the standard of Section 4.2.4.11. He stated that if the Board found there were not compelling reasons, then the applicant would have to request a waiver from the Rules and Regulations. Cook further explained the Town Bylaws, the Board’s Subdivision Rules and Regulations and the State’s Subdivision Control Law. Johnson stated they would like to know if the Board agrees with their interpretation. Johnson stated that his intent is to lay out how the developer interprets that regulation and to explain why he believes a waiver would not be required. The first part of the presentation will be to give the Board what he believes is a compelling reason to place the roadway in the location they will show the Board tonight.

Engineer Woody Cammett spoke on behalf of the applicant. He passed out 11” x 17” plans, which are included in the Planning Board Office file, and showed a presentation board. When he first talked with the Board and some of the neighbors, there was concern about moving the road more closely to the western property line. Cammett stated that the development team has done some research and has come back to the Board to have an open discussion on why they believe there is an overwhelming compelling reason. He referred to the Town’s Comprehensive Development Plan and identified the goals and recommendations that referred to housing and housing needs in West Newbury. He stated these deal mainly with discussing how West Newbury can be well developed and he stated that the Town has been implementing these recommendations over the years. He noted one focus of the plan was economic development of the Town Center. Coming out of that was a smart growth initiative with the goal of creating different types of housing, other than large single-family housing that the Town has traditionally seen with Form A lots and some subdivisions scattered throughout Town. He stated those initiatives are very detailed in the Comprehensive Development Plan. The plan identified where larger, more dense growth should occur without having a negative impact on things such as wells, watersheds, endangered species and things of that nature. The subject parcel was an area particularly identified in the Comprehensive Plan as a high profile piece near the Center of Town, near services with Town water available and suitable for 1-, 2- and 3-family dwellings.

Cammett referred to the Existing Conditions plan and noted there are 3 plans showing existing conditions including wetlands, topography and the entire property from Dane Street to Meetinghouse Hill Road. He stated there is a Resource Area Delineation request before the Conservation Commission. He noted they have walked the site and generally agreed to the line. At their next meeting the Conservation Commission would likely adopt the line with some changes on the entrance area. Cammett further described the locus. He stated they have committed to work with and have an open dialogue with abutters regarding the 50-foot strip through Meetinghouse Hill Road, including the Spielvogel’s. He added that he plan showed the back part of the Murphey parcel as being part of the project.

Sarkis asked for more information on the wetland going over the Murphey and Daley properties. Cammett stated that the 50-foot strip has wetlands traversing it. Cammett stated it

is more of an intermittent stream and that it narrows through the Murphey property.

Cammett displayed an aerial photograph with a roadway overlaid that meets the regulations, including the 75-foot requirement and the radius criteria. He stated that this plan would result in a filling of wetlands and that mitigation would be 1-1/2 to 2 times the amount of land filled, subject to locating the certified vernal pool.

Cook asked why the beginning of curvature to the west is deeper into the property whereas on the next plan the curvature begins right away. He asked why not slide the road further westward and minimize the wetlands impact? Cammett stated this is because of the 75-foot requirement and he wanted to show the Board a plan meeting the design criteria. Bardeen clarified the pavement would be 20 to 24-feet. Cammett stated they figured filling to the edge of the right of way because of grading, walls, etc. Murphey addressed the first option where the roadway going in is straight for 100-feet. He asked for the citation in the regulations. Cammett stated this is the standard for the area before a curve begins. He stated that there would be wetlands filling even if the road curved sooner. Cammett stated that if the layout is moved, they would still be filling in 21,000 s.f. of wetland and that is the point. Cook stated it would result in a little less impact, but not much. Cammett stated that the compelling reason to move the road closer to the western property line is much more preferred than the extent of wetlands filling that would have to be done.

Cammett noted that whatever the distance is to the beginning of the curve, the compliant plan would still interfere with the stream that comes out to Main Street. He reviewed the legend on the plan which indicated there would need to be a channel relocation and bank restoration. It is very expensive to do and difficult. He also referred to the policy statement by the DEP wetlands division. He stated that this project would require a limited access permit, which is difficult to obtain. He stated that once over 5,000 square feet is filled, the landowner is required to do an alternatives analysis. If a landowner can come up with an alternative that shows less filling, that is the plan that will be permitted. The whole idea is not to fill in the wetlands because they are hard to mitigate and recreate. It can be done, but when you can avoid them, you should.

Cammett presented an alternative plan, which changed the location of the roadway and pushed it more to the left, then brought it in at a slight angle. The entire west side would be part of the right of way, which means the centerline of the road would not be 75-feet from the property line. He pointed out that all of the 3 houses on the west side of the property are very close to Main Street and he showed the distances from the center of the right of way to each of the houses. Cook asked about the curb cut and why it is not closer to the west property line. Cammett stated he is dealing with MassDOT standards for required distances between curb cuts. Cammett stated their goal would be to talk with the Town about closing the two entrances, utilizing only one entrance and providing parking, a holding tank or some other mitigation for the legion building in the rear. Cook asked if it could be done in a way to further lessen the impact on the wetland. Cammett stated that it could, by bringing the right of way right up to the property line, which has been shown to the Planning Board before. He stated they are willing to enter into negotiations with the Town on this. Cook asked if access would then be

provided to the legion building from the new road. Cammett affirmed. He stated there would be one entrance instead of three. He also stated MassDOT would encourage it if the Town was in favor. He pointed to the table shown on the plan indicating the impacts would be much less than the compliant plan.

Bardeen asked about a 3rd option that would be a hybrid of the two where the entrance was more like the 2nd version and the road straightened out but had a more gentle “S” curve than the 2nd version, with the goal of staying farther away from the western property line. More discussion ensued regarding these options. Cammett agreed to look in to it and reiterated they are looking at providing conceptual alternatives to reduce the amount of wetlands impact and to provide a “compelling reason” under the Bylaw. He stated that specifics on the design would come after that. Cook commented that there is a compelling reason, but he thinks there might be a way to design the plan so the compelling reason is not required. He offered that pulling the road away from the abutters would lessen impact to them and that the road could still be far enough from the wetland.

Bardeen stated that filling in fewer wetlands is the compelling reason being presented to the Board. Bardeen stated that laws are in place to protect the wetlands and that has nothing to do with this Board. She commented the developer is therefore asking the Board to consider the economic reasons to be the “compelling” argument. Murphey concurred. Hall stated he walked the property with the Conservation Commission recently. He said the Conservation Commission would prepare written feedback on the matter to the Board. Cook stated that it is his experience that wetlands should be left minimally touched rather than trying to replicate them, regardless of the financial impact. He reiterated his opinion that there is another roadway alignment that minimally impacts the wetlands, while still meeting the 75-foot requirement. Hall pointed out that he cannot meet that requirement because of the road’s proximity to the Town property. Murphey stated the Town will work with him on a configuration that will result in improved access and parking. It is clarified that the developer can’t meet the 75-foot requirement at the Town property and the Board members generally agreed with that because it is a non-residential structure.

Johnson addressed Bardeen’s comments. He referred to the Board’s Subdivision Rules and Regulations and stated that part of the purpose is to protect natural resources. He stated it may have a financial impact, but they are trying to preserve as much of the natural resources as possible. Murphey stated that if they are really looking at that, they should consider an open space preservation development special permit (OSPD), which drives the conservation of land areas. Johnson stated the compelling reason is tied to the location of the road. He acknowledged that they have the right under the Bylaw to request a special permit for the OSPD. Hall summarized the feedback he received, including that the road can be closer than 75-feet to the property line abutting the Town property, that the developer should work with the Town and MassDOT to move the road against the property line and make one entrance, they should re-examine the curve of the road and the radius of the cul de sac. Cook stated that there might be a compelling reason to reduce the distance from 75-feet to 65-feet.

Sarkis referred to a strip of land across Main Street that connects to the Mullen property. He

stated there would be a potential issue with road alignment if that property were ever developed. Murphey's recollection is that entrance would be very difficult for access and that there is other access to the site elsewhere. Cook noted there would be issues with turning radius and the 75-foot requirement.

Murphey stated that the developer is requesting the right to develop the land. He acknowledged there are certain economics at play. He stated that the developer is asking the Board to take their economics into consideration. He stated that when the Board is looking at what is "compelling" it is hard to say the economics of the deal should drive how the Board views this. Hall stated the Board highly valued impact on wetlands on another of his projects. He stated the majority of the impact is on back acreage, not homes. He stated there are different values being weighed here. Cammett reminded the Board that minimizing impact on wetlands with alternative layouts is a requirement of DEP, not the local Conservation Commission.

Cook addressed the length of the roadway. Cammett noted that the 50-foot wide strip of land would also be subject to the 75-foot requirement. He stated that it is buildable as a public roadway. Murphey asked for the proposed width. Cammett stated the width of pavement would be 24-feet according to the regulations. Cook stated that the point is that the developer could propose to run the roadway through to Meetinghouse Hill Road. Cook stated that instead of running it through, the developer would ask for a longer dead end road. Sarkis asked about grading of the road and how it would be handled. Cammett stated the design is still conceptual. Cook discussed meeting the turning radii. Cook and Murphey are skeptical. Cook stated that according to regulation, the maximum dead end roadway length is 800-feet. Cammett stated that the proposed length is 2,400 feet. Sarkis asked if there would be any provision to connect the road to other properties. Cammett stated the Town owns much of the property to the west. Cook stated there are dead end roads all over Town that are longer than 800-feet. He stated that he is not sure those roads have a density like this project. Hall noted that Follinsbee Lane was approved at 1,250 feet to the beginning of the turnaround. Cook stated it would be interesting to look to see if there are any other long dead end roads that have this kind of density. Hilltop and Cortland Lane are discussed. Sarkis pointed out some parcels to the east that might be potentially developable. Bardeen asked about the length of road if the Murphey parcel was taken out. Cammett responded that if the Murphey parcel was left out of this, the road would be shortened by about 400- to 500-feet. Cook stated that the curve around Lot 8 should be re-examined because it would be tight for emergency vehicles.

Sarkis asked about the designation of lots and the idea that there would be a shared septic system. Johnson stated that the lots would be under individual ownership by the owners of the duplexes. He stated a land condominium would be set up, so the owners would have individual ownership of the lot and would have to buy into the condominium for the shared septic system. Sarkis asked if this would be like a homeowner's association and Johnson confirmed. Cook asked about the Board of Health's position. Johnson stated that the Board of Health approved this so long as it is in a condominium. Cook and Murphey noted that they have not seen this model in Town before. Whether the road would be public or private was discussed, but not decided upon. Cook asked what the Subdivision Control Law says about a septic system. Zambarnardi and Sarkis noted it is DEP's and the Board of Health's jurisdiction. The Board

discussed why each lot does not have its own septic system. Hall stated that it is aesthetics and a 20,000 square foot lot would be tight to have a septic system upon it. Sarkis stated the legalities of this are outside the box. The Board would have to weigh those legalities and the waiver requests against what the public benefit is. He stated the benefit to the developer is increased density. He stated there might be a rationale for alternate forms of housing here, but he suggested this be put on the table in an honest and open fashion so the Board can weigh the positives and negatives of the project.

Murphey asked what the benefit to the Town is to grant a waiver. Hall stated they would look at the long strip to Meetinghouse Hill Road and see if they can address the neighbors' concerns by deeding and abandoning it while still meeting the Water Department's needs. He also noted there could be a walking trail easement. Cook stated he understands why the developer might not want to go the special permit route for an OSPD. He asked if they would consider it. Hall stated they did a plan to freeze the zoning to keep their options open for that. He stated that they have less control with a special permit. He stated that they are looking for a shorter process and to come in with as few waivers as possible. They are trying to gauge the palatability that those requirements would be waived. If they get feedback that this is workable, they would pursue the plan and look to mitigate concerns. Hall stated that from his experience with an OSPD special permit for Follinsbee Lane, he went far in to the process without knowing whether the plan would be approved. He stated it was a very long and expensive process. Murphey pointed out that site was challenged to begin with and this is a different site and more suitable for housing. Murphey asked Zambenardi to look in Town to see what other long dead ends are out there for comparison.

Duplexes were discussed. Hall stated he is working with the Town Building Inspector on the interpretation of a duplex and whether two units connected by a trellis qualified. Hall stated that Glenn Clohecy's initial thought was that it would not qualify. More discussion occurred on building style and the types of connections between units that would be allowed. Hall stated that with a subdivision plan, he has more control over the design of the homes so long as he meets the building code. Murphey suggested that before they file, they come back to the Board with a plan addressing suggestions and concerns discussed this evening. Murphey stated there are some undeveloped parcels abutting this property. He addressed adjacency, and stated that providing access and connections to other parcels are perceivable benefits and could justify a waiver. Sarkis agreed.

Cook opened up the meeting to limited public comment.

Brad Buschur of 347 Main Street stated that the presentation began with a thoughtful analysis of the Master Plan and natural resources. He stated that if the developer was serious about the analysis, they would be looking more closely at an OSPD development. He stated that there are significant wetlands on the site that make access very challenging. He stated that there are regulations addressing roads encroaching upon abutting properties. He stated that the proposed road is 3 times the length allowed. If this is scenario is acceptable to the Board and is granted over and over, then the Board should change the Bylaw. He stated that if the Board were to allow this long road and the proximity to the abutting parcels, he would ask that the Board

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ensure that it be aligned to provide frontage for 3 Form A lots along his property. He stated his belief that the development compromises the natural resources on the property. Murphey asked how this would impact Mr. Buschur's actual access. Cook summarized that Mr. Buschur would like the road up against his property so he would have frontage for new lots. Buschur added that there are tax benefits associated with donating 3 Form A lots. An appraisal needs to show value and adding frontage would be a way for them to show value. With that said, he noted the wetlands on Daly's property are of high value to his family and there is a high level of public use of the property.

Kay Gove of 369 Main Street stated she has lived at her home for 55 years. She referred to the culvert and stated that the water can pond near the culvert and that water funnels through her cellar to the wetland.

Faye Gill, 360 Main Street stated the culvert crosses the street and turns a corner. She stated that the culvert surfaces behind her property. She has observed that the stream is starting to meander and she asked if the runoff from the development would change the stream. Cook stated that the developer hires a certified engineer who designs the storm water management system according to state standards and best management practices. Bridges stated that the Town hires a certified engineer to review the plans and monitor construction.

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 Minor Plan Modification – Interceptor Trench #1

Cook stated the request is to allow the breaking up of Interceptor Trench #1 into two (2) separate systems.

Hall stated they are supposed to have an Interceptor Trench along the west side of the pocket park to be able to take ground infiltration water. The site contractor misread the plans and did a 10-inch interceptor trench with a pipe in it instead of a 10-foot trench as is called for in the plan. Hall stated they already built the road, which is right next to where the 10-foot trench should be. Going back and installing the 10-foot trench now would compromise the road. Hall spoke with and presented the plan to the Board's consultant engineer, Charlie Wear of Meridian Associates. Cook stated that they received an email dated December 11, 2015 from Charlie Wear recommending approval of the design.

Cook made a motion to consider the request by Matthew A. Waterman of LandTech Consultants on behalf of Cottage Advisors LLC dated December 3, 2015 as a Minor Modification to the Cottages at River Hill. Bardeen seconded the motion and it carried unanimously. Cook made a motion to approve the change in substance and find that it does not alter the intent or the Conditions of Approval and noting that Meridian recommended approval. Murphey seconded the motion and it carried unanimously.

General Business Continued

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111-115 Indian Hill Street – Zambenardi read an email for the record from Chris LaPointe of Greenbelt indicating that Greenbelt purchased the land and houses at 111 and 115 Indian Hill St. from Flying W Realty Trust on 11/23 and that Greenbelt plans to sell the 7.66-acre lot to a private buyer on 12/18. They will record the ANR after the sale goes through. Zambenardi indicated she thought the deal with the original buyer fell through, but they found a new buyer. (Note: LaPointe later clarified that Greenbelt is selling to the original buyers, Jake and Stephanie Cormier, and that Greenbelt is conveying the property subject to a deed restriction that prohibits subdivision and requires single family use)

Cottages at River Hill – Murphey stated that he drove through the property this past Sunday and he observed painters working there.

Sullivans Court Extension – No updates were provided except the Board had a brief discussion about parking at the corner of Sullivans Court and Whetstone Street.

Ocean Meadow, 24 Ridgeway Circle – Cook noted that the deadline for completing the unit is approaching. Bridges asked what the Board’s plan is, if they miss the deadline. Murphey stated it would be useful for Zambenardi to keep pushing them along.

Minutes: Board members took up the minutes of November 17, 2015. They made suggested edits. Cook made a motion to accept the minutes as amended. Bardeen seconded the motion and it carried 3-0, with Bridges and Sarkis abstaining.

Vouchers: Zambenardi distributed a voucher for payment to Meridian Associates and for a reimbursement of postage for overnighting a grant application.

Correspondence: Zambenardi notified the Board of public hearing notices received from Merrimac and Haverhill and assignment of addresses to the new lots at 720 Main Street.

Administrative Matters:

- Massachusetts Downtown Initiative Grant: Zambenardi stated the grant had been submitted. She stated she got in touch with MassDOT about the sidewalk reconstruction and paving project along Route 113. She stated there is a project planner who stated that if we have some minor changes that we relate them to MassDOT before the Spring. Some discussion ensued about adding on-street parking. Cook looked at the state regulations for on-street parking on a state highway and it seemed the Town would not be able to comply. Murphey stated he spoke with the Transportation Planner at MVPC and asked that they make a point to inform the Town through him about transportation projects impacting the Town, whether or not it is on the TIP. Some discussion ensued regarding contacting the Dunn family about their future plans for their property. The Board decided it would wait to discuss this further until it knows whether or not it received the grant.
- Bailey’s Lane: Cook asked Zambenardi about Bailey’s Lane and whether the road is public or private. Zambenardi stated she spoke with Town Counsel Mike McCarron and he indicated that the end of Bailey’s Lane had not been accepted by the Town. Cook stated that did not mean the public does not have access. Zambenardi agreed and stated that there is a trail easement beginning at the end of the turnaround. She stated that if the end of the road is not accessible to the public, then the public has no access to that trail. Zambenardi stated there was no requirement in the approval

documents that the road be offered for acceptance by the Town. Cook stated he distinctly remembered that part of the road was intended to become public. Murphey asked if now is the right time to follow up with the Cena family on this. The Board decided to ask the Building Inspector for his formal opinion on whether there is a violation with the “no public access” sign.

The meeting was adjourned at 10:00 p.m.

Submitted by,

Leah J. Zambarnardi, AICP
Planning Administrator