

WEST NEWBURY PLANNING BOARD
MINUTES OF MEETING
June 2, 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 June 2, 2015 in the Planning Board Office at the West Newbury Town Offices, 381 Main Street. Board members Ann Bardeen, Richard Bridges, Raymond Cook, Brian Murphey, Chairman, and John Todd Sarkis were present. Associate Member Dennis Lucey and Planning Administrator Leah Zambenardi were also present.

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

Public Hearing to consider Applications for three Reduced Frontage Lots (Section 6.A.1) and a Common Driveway to serve two lots (Section 7.D. Of the Zoning Bylaw) – 720 Main Street – William and Mary Daley

Murphey recessed the regular meeting and called the public hearing to order. He stated that the Daley's have submitted a written request to continue the public hearing to the next meeting. Murphey then made a motion to continue the public hearing to Tuesday, June 16 at 7:00 p.m. Cook seconded the motion and it carried 5-0.

Murphey reconvened the regular meeting of the Board.

He noted that the scheduled time for the next item on the agenda is 7:15 and the Board has several minutes before it can take up the matter. In the interim the Board considered meeting minutes.

The Board considered the May 5, 2015 minutes and made recommendations for edits.

Murphey made a motion to approve the minutes as amended. Bridges seconded the motion and it carried 5-0.

Pre-Application Conference: Development of Property off Archelaus Hill Road and Middle Road (Assessors Reference R-15-74 and R-22-2) – 2 or 3 Building Lots – Deborah Hamilton and Thomas Morley

Murphey stated this is not an official hearing, but an opportunity for the applicant to present to the Board and the Board asks questions. Once the Board is satisfied they will open up the discussion for anyone who chooses to comment. Again, because this is a pre-application conference the Board asked the public to be succinct and stay to the point.

Sarkis stated that he will sit during the pre-application conference but that he might not sit in the event a formal application is filed as he believed he was under a contractual agreement a number of years ago for the development of the property. This never came to fruition and Mr. Thomas Morley noted that the agreement was never formalized.

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Ms. Deborah Hamilton spoke on behalf of Morley. She stated the project involves 2 parcels. The first parcel contains 1.38 acres with frontage on Archelaus Hill Road that was part of the original subdivision. The second parcel has approximately 15 acres and is a u-shaped parcel. They would like to seek a special permit from the Planning Board for the construction of a driveway easement across the smaller parcel in order to access the buildable areas of the larger parcel. According to the Zoning Bylaws a common driveway special permit can be granted if there is a public benefit in doing so. She gave some examples of such a benefit and noted the other Bylaw requirements. She gave the history of the property, stating that Morley's parents had planned to live on the property, until Mr. Morley passed in 1976. Mrs. Morley sold the portion of the property in the middle of the larger parcel with frontage on Middle Road. She later purchased the last lot in the Archelaus Hill Road subdivision with the mindset that the parcel would provide frontage and access to their land. She stated that the Morley's have been paying taxes on the potentially developable property for three decades and that Morley paid over \$8,000 in taxes on the property last year. Morley has been working for the past 10 years to develop the property.

She stated that they are working with Cammett Engineering to figure out a way to develop the land without unduly altering it. She referred to an original private subdivision covenant that is now 38 years old, which forbade further subdivision of the parcels in the Archelaus Hill Subdivision. She noted a proposal she delivered to neighbors earlier in the year with two ANR lots on Archelaus Hill Road, and one reduced frontage lot. She stated that they are changing the plan from that earlier proposal. She noted that they could potentially do a definitive subdivision plan with a new roadway creating more lots than they are proposing to do now.

She noted that she has reviewed the covenant with several attorneys in Town that are of the opinion that the covenant expired after 20 years. The original covenant provided for 2, ten year extensions however those extensions were not recorded. It does create a possible cloud on the title however which has prevented Morley from subdividing the parcel and moving forward. Clearing up that title might require a land court filing or a declaratory judgment but this could take years and requires money Morley would rather not spend. They attempted to have the neighbors on Archelaus Hill Road agree to change the covenant, but they were not successful.

Hamilton stated they are now taking this course of action, which would create 3 good size lots. The smallest lot would be over 3 acres, the second would be 4 acres and the third lot would be 8.6 acres, without subdividing the Archelaus Hill lot and without creating undue hardship on the Archelaus Hill neighborhood or the land. There are many conservation considerations too. Last year she met with the Conservation Commission and they discussed the options including driveway access from Middle Street. The Conservation Commission was opposed to crossing the wet frontage and climbing the steep slopes and constructing long driveways. The Conservation Commission preferred that we considered coming in another way. While there is sufficient frontage coming off of Middle Street, all of the building sites are closer to Archelaus. She stated that areas of the site that perc'd in 2002 and 2004 and are in the area where the 3 houses are shown on the plans. She stated that if they went off Middle Road, it would require 3 wetland crossing, 4 replication areas and 2 serpentine driveways, 550 feet long and 1300 feet long. No one would build on those lots because of the cost. Further, locating driveways off Middle Street would impact a mature woodland that has not been touched and wildlife biodiversity. The

Mass Endangered Species Act indicates the land along Middle Street does fall within their identified biodiversity areas for protection. The top of the hill does not. We prefer not to do that. We seek a common driveway for two lots with conforming frontage on Middle Street. One lot would have frontage on Archelaus hill road. There would be no construction on the actual Archelaus hill road frontage lot. Part of the 15 acres would be conveyed to that lot and the house would be built upon that additional land. The new houses would be 180-feet, 320-feet and 160-feet back from Archelaus hill road. They should not pose much detriment visually for the Archelaus neighbors. She discussed some options for lot and house layouts. Morley noted that the Archelaus hill road frontage lot has more frontage than just about any other lot in the Archelaus Hill development. The lot also has 2-1/2 times the land area you would need for 1 home.

Murphey stated that there is much confusion on whether the land off Archelaus Hill Road can be further subdivided. He asked about the frontage on Archelaus Hill Road. Hamilton responded 531-feet.

Murphey noted that the existing lot could have a home upon it. He observed that putting an easement across someone's property might not be attractive to a buyer. Hamilton noted that the lot is not very deep.

Bardeen noted that these 3 lots could be created by ANR at any point. She stated that the Board would be asked to approve alternate access over something other than the approved frontage. She commented that anyone who has read the zoning bylaw and looked at the lots would think that those lots have difficult frontages over wetlands and steep grades. She commented that alternate access would be the logical thing to do. There would be the alternate access being allowed and a common driveway, which we frequently grant. This does not seem complicated.

Cook questioned if an easement for a common driveway is considered subdivision of a lot. He noted that the covenant indicated there should be no further subdivision and the proposal here is not for further subdivision of the lot. Cook stated that he needed clarification on Section 6.A.2 which refers to contiguous buildable area and that one must discount a percentage of steep slopes and wetlands. Hamilton and Morley spoke to this concern.

Some discussion ensues with a member of the public about well fields and leaching fields on the plans. Murphey stated that is not the Board's concern this evening. Sarkis discussed options for the lot layouts and house locations.

Zambernardi asked questions about frontage and how the 2 lots with frontage on Middle Street project would meet the requirements for common driveways and the frontage definition of the Zoning Bylaw. Specifically she asked about the requirement in the frontage definition about practical access. She asked what the interactions they had with the Conservation Commission about the wetlands. Morley spoke to his interactions with Jay Smith, the Town's Conservation Agent. Smith and Morley met on site and observed that the wetland is a result of drainage from the street. Smith noted that the crossing counted as a wetland, but that it would be better if Morley could get access somewhere else. Sarkis stated that if practical dry access in the eyes of the Conservation Commission cannot be achieved otherwise, if the applicant demonstrates that they've made a valiant effort to produce that access through other means such as permitting or redevising even, if he can't do that by

virtue of the Planning Board denying access here or a deed restriction prohibiting subdivision here that the applicant is entitled to a limited crossing of the wetlands if that is in fact his only means of access to the premises. So that would certainly qualify as a limited crossing. If the gentlemen is denied a permit to access these house sites from Archelaus hill road, he would most likely be issued a permit to access those house sites from Middle Street. Sarkis agrees with everything that everybody said that accessing through Archelaus hill is a more logical way to develop what would ultimately be 3 houses anyway. Murphey clarified that Sarkis' statement is his opinion.

Murphey referred back to the Archelaus Hill Subdivision legal documents. He stated he is not convinced it's not a subdivision. He noted the 15-acre lot was not part of the Archelaus Hill Subdivision but that they are accessing the property through Archelaus Hill.

Cook stated he does not see how the project could be considered a subdivision. Murphey stated it goes back to the original intent of the covenant. Members agree that needs to be looked at. Bardeen agreed this needs to be looked at. She commented that the intent was that the Board did not want the properties to be divided into smaller lots, but that bigger lots might be acceptable. Morley spoke to his research on the topic. He stated the 15 acres was never part of this subdivision. He stated he has the right to grant an easement and create access to that lot. He thinks it is a reach to consider that a subdivision.

Sarkis stated that it should be looked at as to whether the use of the parcel as proposed does not fly in the face of the intent of the covenant.

Murphey asked the members of the public for their comments and reminded them to be brief. Charles Metrakis, 9 Archelaus Hill Drive stated that the developer made an incorrect statement about the covenant. He stated that it does not matter if the extensions were not recorded. The covenant stated that they should be automatically renewed and they will not expire for another 3 years. Morley speaks to this and cites a provision in Mass General Laws regarding expiration of covenants. Further discussion ensued on this between Metrakis and Morley.

Ray Tietzi, 2 Archelaus Hill Road asked the Board to consider quality of life of the residents. He said that aside from discussion of the covenants, time should be allotted to consider the impact on the quality of life in the neighborhood. He stated that 2 or 3 additional houses would be added with 6 or 8 more vehicles traveling on Archelaus Hill Road. More cars on the road will negatively impact the quality of life.

Dennis and Cindy Statz of 13 and 15 Archelaus Hill Road noted that what was presented this evening was different from what the neighbors were presented with before. They note that they question whether the current Archelaus lot is even buildable.

Cook stated that part of the lot is very steep. He also noted that this Board cannot change the covenants. The Planning Board's task is to look at the lots pursuant to what is allowed under the Zoning and Subdivision rules.

Don Leone, 10 Archelaus Hill Road made comments.

Cook stated that the Board will look at the criteria for granting a special permit in the Zoning Bylaw for a common driveway. The ANR's are by right. He stated that the attorneys

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will have to weigh in on the impact of the covenants. Cook also noted that the question of whether this constitutes a subdivision in the context of the covenants needs to be looked at.

A resident of 14 Archelaus Hill Road asked if Morley would meet with the neighbors to discuss a compromise. Morley stated he would be willing to have a small group meeting and come back to the Board.

A resident of 15 Archelaus Hill Road made comments.

Murphey stated the hour is late and the Board has more items on the agenda. He suggested the developer take the Board's comments in deciding whether or not to move forward.

The Cottages at River Hill - Request for Bond Reduction - Cottage Advisors, LLC

Chip Hall of Cottage Advisors, LLC gave the Board an update of work. He stated that one item that had been discussed at the last meeting was a trash trap door. He stated it had still not yet been installed because the part has not yet been delivered. He confirmed today with the site contractor that it will be installed tomorrow. He stated that the detention ponds were doing well. He noted that 1200-feet of the water line had been installed and that there is 1800-feet in total. They are waiting for National Grid for the layout of the gas lines. He stated that they have been having issues with dust because of the dry weather. They have been watering on the hour. He will be putting more calcium chloride down for dust control. He stated they are looking into drilling a well in the pocket park in anticipation of a water ban in the Town. The well will be used in the short term. He noted the well could be used to water the community gardens and pocket park planting.

The Board then considered Hall's request for a reduction in the bond amount for Phase I from \$125,930 to \$27,763. Hall noted the work had been completed since before the last meeting. He did not have enough time to update the numbers for review by the Board's consultant prior to the last meeting. He is therefore making this request tonight. Zambenardi stated that the Board's consultant, Meridian Engineering reviewed the request and concurs with the estimates provided.

Murphey made a motion to approve the request by Chip Hall of Cottage Advisors LLC for a reduction in the Tripartite Agreement by \$98,167. The balance will therefore be reduced from \$125,930 to \$27,763. Cook seconded the motion and it carried 5-0.

The Cottages at River Hill – Updates

Hall asked for clarification on the Board's restriction on the hours of construction as stipulated in the special permit approval. He stated he would like to have painters and flooring professionals work inside outside of the allowed hours. He stated they would not be using compression based tools. It would be jobs such as painting, polyurethane and electrical.

Bardeen and Cook concurred that the expectations of limiting construction hours was established during the public hearings. Cook stated that he would be inclined to approve this, but the construction hours were discussed during public meetings and agreed to. Bridges stated that he is sensitive to the impact on abutters and would not be comfortable making such a decision without their input. The Board determined that to approve such a request, Hall

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would have to file a major modification request with the Board and have a public hearing.

Murphey stated he would also be inclined to approve this kind of work, and perhaps the Board should make a distinction on the type of work that should have limited hours in future decisions.

Ocean Meadow Update

Zambernardi stated that she received a letter from the management corporation of the homeowners association in early May with complaints about a number of items that were not completed to the satisfaction of the condominium. At the last meeting, members had determined that the items were most likely out of the scope of the Board's purview, but they asked Zambernardi to provide them with an update on the project at this meeting. Zambernardi stated she sent out an email to the developer, Alyssa Gillis, Maureen O'Hagan, the affordable housing consultant and Eric Botteman, the project engineer. Zambernardi stated that her email indicated that an update was received on the affordable housing units in March 2015 from Alyssa Gillis that 24 Ridgeway was under agreement and that there were 2 eligible purchasers for the other unit, but both purchasers had homes to sell. Gillis indicated at that time that both of the units would be finished by the end of June. The Planning Board's records indicate that the Board will not release the last market rate unit, 62 Moody, for occupancy until the affordable units are complete and ready for occupancy. Zambernardi stated that Maureen O'Hagan responded that both affordable units are under agreement and the first is slated to close on July 31st and the second shortly thereafter.

Zambernardi stated that Meridian's last inspection report from 11/14/14 indicated that lawn/landscaping was disturbed during installation of the Cape Cod berm throughout the site and that it should be repaired and re-seeded during the spring 2015 growing season. The report also indicated that hoods are required in the catch basins and should be placed into the structures now that the final paving is directing surface run-off into the previously raised structures. The email also referred to the management corporation's letter. It noted that there is question as to whether the 19 items listed are under Town jurisdiction or if the items are now a private matter between the developer and the homeowner's association. Zambernardi stated that the pending items and complaint should be addressed through As-Builts being submitted by Eric Botteman at Millenium and the Planning Board's consultant, Meridian Engineering doing a final site inspection and review of the As-Builts. Zambernardi recommended to the development team that they complete any pending items (including relevant items in the management corporation's letter) and then have Millenium prepare an As-Built plan. She has asked Meridian to provide the Board with a quote on the final site inspection and review of As-Builts, which is forthcoming. She stated that additional funds will be needed from the developer to cover the cost of Meridian's review. She stated that Botteman responded to the email noting that Gillis had asked him to begin the As-Built plans. Zambernardi stated that Gillis did not respond back to her as of the meeting time.

Murphey recognized two members of the public attending for this update. The President of the Homeowner's Association, Rich Mandeville, stated that Gillis has not responded to any of their attempts at communication since July 2014. He stated that Johnson Paving did paving at the very end of the fall. He stated that there has been sporadic work on 62 Moody. He observed they were doing some work on the affordable units today. He stated that the developer has not honored warranties on the latest houses that were sold. Bob Gauss, also of the homeowners association noted that 4 driveways were still not complete. He stated that the

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most well done driveways were done 6 to 8 years ago in August. They concurred that the developers need to put sod in behind the berm. They asked for help in keeping the developer's "feet to the fire". They are glad the Board will support not releasing 62 Moody for occupancy until the affordables are completed.

Muphey asked Zambenardi to follow up with Gillis.

Re-organization of the Board

After some discussion, Murphey made a motion to nominate Cook as the Chair, Bridges as the Vice Chair, and Sarkis as the Clerk for FY2016. Bardeen seconded the motion and it carried 5-0. No other nominations were submitted for consideration. Cook is therefore the Chair, Bridges the Vice Chair and Sarkis the Clerk for FY2016.

Members then voted 5-0 to appoint Bridges as their representative on the Community Preservation Commission and Brian Murphey as the Town's representative on the Merrimack Valley Planning Commission for FY2016. The Board supported B. Dennis Lucey III as the alternate (Note: It was later determined that the Board of Selectmen chooses the alternate to serve on the MVPC).

ANR Plans (if any)

Zambenardi stated that no ANR's were submitted.

General Business

Carryover Items from May 19, 2015 Regular Meeting:

-Discussion of Planning Board Projects and Priorities - Members of the Board identify and discuss the following projects:

- Sign Ordinance
- Town Center, Business District
- Clean up Inclusionary Housing Bylaw and determine how fees should be used.
- Requirements for residential ground mounted solar installations.
- Clarify the Open Space Preservation Development Ordinance in terms of definition of open space, information necessary to determine the Basic Maximum Number on a Yield Plan (i.e. percs, burden of proof), clarify how duplexes apply.

-Discussion of Role of Monitoring Projects: Tabled to June 16, 2015

-Discussion of Planning Board Policy for Handling Complaints: Tabled to June 16, 2015

-Selectmen Request for Results Report on FY 2015 Objectives: Zambenardi stated that the Board of Selectmen asked for a report from the Board on how it is addressing/meeting its FY2015 objectives. Members discuss jotting down some notes for Zambenardi to put a statement together.

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Minutes: May 19, 2015. Members table review of the May 19 minutes until June 16, 2015.

Administrative Details: Zambenardi stated she had a discussion with Michael Bertino in the Finance Department about the Planning Board's supplies budget and purchasing supplies before the Fiscal Year end. She supplies the Board with a list of supplies she would like to order. Members concur with ordering the supplies. Zambenardi then discussed technology improvements with the Board. She stated there is money in the Board's budget to cover the new office desktop computer. Members concur with covering the cost of the desktop. She stated that she has access to the Health and Conservation Commission projectors, so the Board does not need to purchase one at this time. She stated it would be very helpful to get a laptop for the Board. This would help during presentations, with meeting minutes, working from home and providing the public visiting the office with plans, assessor's information, google maps, etc. during in-office meetings, among other things. Members made some suggestions on products and then asked Zambenardi to work with the Town's IT consultant to choose a laptop that is within the budget.

The meeting was adjourned at 10:30 p.m.

Submitted by,

Leah J. Zambenardi, AICP
Planning Administrator