

WEST NEWBURY PLANNING BOARD
MINUTES OF MEETING
September 6, 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 September 6, 2016 in the 2nd Floor Hearing Room at the West Newbury Town Offices, 381 Main Street. Board Members Ann Bardeen, Richard 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.

Bridges recessed the regular meeting and called the scheduled public hearing to order.

Continued Public Hearing – Special Permit for an Open Space Preservation Development (OSPD) – Drakes Landing - 365 Main Street & 34 Meetinghouse Hill Road - William A. Daley and Joseph B., Jr. & Beverly A. Murphey (Owners) - Cottage Advisors (Applicant)

Lucey recused himself from the meeting.

Woodbury Cammett stated he submitted a revised Yield Plan. He summarized the feedback he received at the last meeting on this. He stated in response to that feedback they have reduced the length of the road by eliminating the two branches that extend from the dead end, resulting in a 1,980 s.f. road. He stated there are still 16 lots (32 units). Cammett noted that Meridian reviewed this plan and the only recommendation was that the applicant should request a waiver from the dead end road requirement on the Yield Plan, which Cammett said they have done. Cammett stated that would be the only waiver of the subdivision requirements that would be needed. Cammett stated that on the basis of looking at the Master Plan and the general plan of the land, they have come up with a 16-lot plan.

Bridges asked if there were any other changes. Cammett stated that each lot still has its own septic system and that each lot has positive perc tests and deep holes.

Bardeen asked about the reduced frontage lots and if any common driveways were being requested. Cammett stated that 4 reduced frontage lots were being requested, but no common driveways. Cook stated that the reduced frontage lots would require special permits from the Planning Board. Cammett agreed.

Murphey stated that the Board has issues with this project beyond the Yield Plan, with what the applicant has characterized as an OSPD plan. Cammett stated they are focusing on the Yield Plan to figure out the number of lots/units. Murphey stated he is not sure he can do that unless he sees the entire plan. Cammett stated that he has not amended the OSPD plan. He asked for clarity on what Murphey would like to see as he was not present at the last meeting. Murphey commented that the OSPD plan was a farce. Attorney Mark Johnson stated their intent is to get a determination on the Yield Plan and then to further the design on the OSPD plan. They know they need to get a permit on the OSPD plan. Murphey stated he thought the Board made it clear at the last meeting on this, that they thought 32 units was too many for this site based on what they were proposing. Johnson stated that there were really 2 issues. He

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stated at the last meeting it was clear that the Board did not like the T-shaped roadway and that it wanted them to get rid of that T. He stated they understood they need to have a dialogue with the Board on the OSPD plan. Murphey commented this is part and parcel of the same dialogue. Johnson disagreed and stated that the initial determination needs to be on the Yield Plan. They know they need to do some work on the OSPD plan.

Cook asked how many there would be if there were no reduced frontage lots. Cammett stated there would be 14 lots. Cook reviewed the dimensions of the reduced frontage lots. Murphey stated that the Yield Plan depends upon getting a waiver from the dead end road requirement. Cook added that a special permit would be needed for the reduced frontages. Sarkis added that the Board had to make a finding that there is a compelling reason not to site the road with 75-feet from the centerline of the road to abutting properties.

Bridges asked if Jim Fairweather, the Board's consultant engineer from Meridian Engineering, had anything to add in terms of the Yield Plan. Fairweather stated he is in agreement that a special permit and waiver would be required. He stated that in his experience, the number of lots is first determined through the Yield Plan. Cook suggested the Board consider whether this project would be deemed buildable under a reasonable application of the rules. He asked if a developer were to come to the Board with this project, whether the Board would reasonably grant the waiver and the reduced frontage lots.

Bardeen stated she can't remember ever granting special permits for reduced frontage lots in this size of a project. Bardeen and Murphey stated they would not approve reduced frontage lots in this case. Bardeen stated that a requirement of the subdivision regulations is to ensure that the lots comply with zoning. Sarkis stated that the applicant is not specifically excluded from requesting a special permit. Bardeen stated that before the Board gets into discussing the criteria for granting a special permit for reduced frontage lots, the Board should look at this as an overall development of land, noting the Yield Plan should be a fairly standard application of the regulations to see what would typically be built. She stated she does not think the Board would ever see a subdivision like this built out in this Town as duplexes. She acknowledged it would be allowed under the property owner's grandfathered rights. She did not think a realistic plan would show pairs of reduced frontage lots. She stated that road length waivers are sometimes granted. She thought the message was clear at the last meeting that the Board wanted the branches off the dead end taken away from the hill and that the length of road should be further reduced. She thought the implication was pretty clear as well that by so doing, the total number of lots would be reduced.

Sarkis stated that if one were looking to truly build out the Yield plan one might look to align the roadway better with the land and to shorten the roadway and then permit a reduced frontage lot off the end of that. In general he would not reject a reduced frontage lot on a conventional subdivision if it resulted in a better plan. Cook stated that the OSPD should be a better plan overall for the Town than a conventional subdivision. Murphey commented that a conventional subdivision might be a better solution for this property based on what the Board has seen so far.

Cook stated he thinks the reduced frontage lots are a stretch. He stated the Board should give the applicant a level of certainty. Murphey and Bardeen stated they believed the Board was clear at the last meeting. Cook stated the applicant should leave here with a firm number, acknowledging the applicant might not be happy with that number.

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Bardeen stated that maybe this very linear parcel hits a wall literally and cannot be developed thereafter. If it is just going to be homes strung along a road, maybe a conventional subdivision is the way to go.

Murphey stated he has never seen a plan before the Board that is not a complete application like this. He stated that the applicant has not chosen to modify the OSPD plan, but is asking the Board to accept a Yield Plan based on a promise of good efforts down the road after we have granted a waiver for a dead end street, and to accept an application that may or may not have merit. He stated that is a stretch.

Johnson stated that they are not asking the Board to approve an OSPD plan with a certain number of units. He stated they are asking the Board to apply the regulations and determine the number of units that would be allowed. They know they still have to come back with an OSPD plan as part of the special permit.

Cook stated that the alignment makes sense to minimize the disturbance to wetlands. He added that an OSPD plan might be a good thing here. He stated that in order for the Board to vote on the OSPD plan, the Board has to see beyond what has been informally presented so far. He stated that he does not particularly like the reduced frontage lots, so he sees 14 lots instead of 28 units. If he had to vote right now, he would say the Basic Maximum Number (BMN) would be 28 units on 14 lots.

More discussion ensued and Cammett asked about 15 lots with a special permit. Cammett added that a single family subdivision would be a greater expense to the Town and noted that with the proposed project the owners of the condominium association, not the Town, would maintain the road at their cost. He added there would likely be fewer school aged children living in the proposed project than in a conventional subdivision.

Murphey questioned this and he stated that a conventional subdivision plan would be a far better option. He noted however, that a waiver would still be needed of the dead end length. Murphey stated that given what he has seen so far with this application, the OSPD plan does not meet the Board's criteria in any way, shape or form.

Sarkis stated that that the benefits generated from the project should be something other than tax revenue and school children. He stated that the plan really has to include OSPD that is usable, or at least in a collected fashion, having seen the effects of it otherwise in Town.

Cook stated he still sees some benefits to the OSPD. He suggested that the Board put its focus on the Yield Plan. Bardeen stated that with the Board just looking at the Yield Plan now, the fact remains that the larger number is still out there and the applicant will want to proceed with this perceived boon of building all of these units. She stated that the Board has seen how all of this lies on the site and what the quality of the open space is.

Sarkis stated the Board should talk about what the BMN is. He stated that the Yield Plan is not the BMN. The Yield Plan includes information so the Board can decide what the BMN is. If that is the case, he would want to see garages, sizes of houses, 8-foot retaining walls and such. He stated that would likely result in decreasing the density. The Board could then entertain increased density through the density bonus provisions in the OSPD plan. He stated that if the Board wanted to have this discussion, everyone should take time to look at the plan and come back to have the discussion before the applicant does anything else. Bardeen

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suggested the discussion occur now. Murphey stated he is fine with having that discussion now and that he is at 24 units on 12 lots as the BMN. He felt that this number would lead to a project with real open space and not “created” open space.

Sarkis asked if the homes proposed on it have similar footprints to those on the OSPD plan. Chip Hall of Cottage Advisors stated that the footprints were not the same. There are no garages proposed on the OSPD plan units. The units would be 45’ x 30’ without garages. Cammett stated the overall footprint of the duplex would be 90’ x 30’.

Sarkis then pointed to the units in the Yield Plan and asked everyone to look at how they compare. He asked if the units were basically similar to the units in the Cottages at River Hill project. Hall confirmed this but noted that there would be 2-car garages where the River Hill project has 1-car garages. Hall clarified that there might be 1- and 2-car garages, because a 2-car garage is optional.

More discussion ensued among the Members about whether the Yield Plan should be considered without the benefit of the OSPD plan. Murphey stated that the draft OSPD plan did not meet the open space criteria. Bardeen stated that the rub is more with that aspect than the unit count. Johnson reiterated that they still have to go through that process and they are not trying to short circuit that. Cook stated that they really cannot get to a more refined OSPD plan without knowing the BMN and he thinks the Board should have that discussion.

Bardeen stated that the Bylaw includes fairly general language about buildability under the conventional process. Bardeen asked how the Board accounts for something like no garages, which it thinks would normally be in a conventional plan. She asked if the Board should ask to see 1-car garages on the units in the Yield Plan and see what that does to the number of units. She stated there needs to be some sort of test that the Board needs to go through. Murphey agreed. Cook stated that each Board member should look at the language of the Bylaw and see how they interpret this. Each person might interpret it a bit differently.

Bardeen noted there is an option that the Board does the work to see what the plan yields. She asked Sarkis what information would satisfy him, such as whether the septic systems work, a different footprint with garages included, and no common driveways or 8-foot retaining walls. She stated her opinion that is the responsibility of the Board, unless the Board receives some other specific direction.

Zambernardi stated that when the Board is looking at a conventional plan, the Board would want to make sure the lots meet setbacks, lot size, frontage and other zoning requirements. She stated that the subdivision regulations do not require that buildings be shown on the lots. Sarkis agreed but stated that a Yield Plan should go beyond the regulations for a conventional subdivision because the Yield Plan has a different purpose. Cook stated that the siting of the buildings on this Yield Plan is the applicant’s idea of a reasonable application.

Bridges said he thought the Board was clear at the last meeting, but he asked the applicant if they have received enough information to go back and amend the plan. Cammett stated they cannot do that without knowing what the BMN is. Hall stated what he understood as happening at the last meeting and explained how they responded to those comments. He noted that at some point a Board member mentioned the use of a reduced frontage lot and they went with that comment. Some members did not recall that being discussed. Sarkis noted that is something he could have suggested, but that is beside the point. He stated that what he finds

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ridiculous about the plan is that there are 8-foot retaining walls and no garages. He suggested the applicant take that information and do with it what they will. Cook acknowledged they had generally addressed the requests at the last meeting. Some discussion ensued about next steps given the feedback provided at the meeting. Sarkis stated that waivers and special permits should only be issued because the end result is something better.

Hall suggested coming back and, instead of 4 lots, they show 2 lots, move the cul de sac back and eliminate the retaining wall. Cook stated he does not think this is needed. Murphey reiterated his position and stated under the current configuration he would not give a waiver of the length of road. He is still at about 12 lots.

Bridges stated he sees merit in stepping back and looking at this under a magnifying glass. He does not want to be rushed. Bardeen agreed. Sarkis reiterated how important seeing buildings that would actually be built in West Newbury on the Yield Plan is to him. Cook stated he respects Member's desires for more time but noted he is concerned about this dragging on. Bardeen stated that a month ago the applicants received feedback and chose to respond quite quickly with this plan that didn't address all of the concerns. Bridges acknowledged he had expected to see something different.

Cammett stated that the Board thought the applicant would come back with a lot less than 16 lots. He stated that the applicant got creative in reading the Bylaw. He stated that there is nothing in the Bylaw which states an applicant cannot propose a special permit on a roadway. He acknowledged the Board disagrees with this. Cammett reminded the Board about what the other Departments are asking for with this plan, including the water connection at Brake Hill. He stated the lower the lot numbers, the less able the developer will be to do such improvements. Johnson stated they would take another shot at the Yield Plan and that they would come back in 2 weeks. He stated they would not address everything, such as showing the same size house on both plans.

Bardeen stated she thinks 12 lots is an arbitrary number at this moment. Cook stated he thinks he could defend 14 lots. He stated that he understands Sarkis' point about wanting to see other information on the Yield Plan, but he tends to agree with the attorney that asking for that information is not afforded to the Board by the Bylaw. Bridges stated that getting such information would result in a more substantive BMN.

Discussion ensued regarding a date for the continued meeting

Cook asked Jim Fairweather about Meridian's point of view and noted that Meridian verified the Yield Plan in terms of compliance with the Bylaw, but noting that a waiver and a special permit are needed. Fairweather stated his opinion that they have passed around the word conventional, which excludes "special", therefore the plan would have 2 fewer lots than the 16 which is currently proposed. Cook asked Fairweather's opinion about the Board considering unit size and driveways. Fairweather stated that is irrelevant to the process. He stated that seeing whether a structure has a garage or not is not critical. Sarkis stated that it is not critical in terms of compliance with subdivision regulations, though it can be deemed critical in the Board's interpretation of what constitutes the BMN. Bardeen noted that it is a special permit process overall. Fairweather stated that is not his experience in the process of determining the BMN. Bardeen stated that the Bylaw allows the Board to reserve its right to come up with a different BMN regardless of what the Yield Plan shows. Murphey concurred. Johnson stated

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that the peer review of the conventional plan indicated that the plan conforms. He stated that he believes the Board is reading into the Bylaw incorrectly. He stated that the Bylaw does not provide for garages being shown as a requirement. Sarkis agreed but stated showing them increases the likelihood the Planning Board would agree with the BMN shown on the Yield Plan. More discussion occurred on the interpretation of the language of the Bylaw. Sarkis stated that the applicant is not required to provide a plan showing garages, but it is important to see for him and he would therefore draw it up himself. Murphey stated that the Board also might not think a 1,980-foot street is realistic.

Bridges asked for questions from the public on the Yield Plan.

Brad Buschur of Main Street noted that this plan would dramatically change how water flows off of his land and onto the other land. He stated that on both plans the grading rises about 2-feet. He stated that he gets about 3-inches of rain sheeting off the back yard. He stated he hopes they don't create a swale between the new road and his property line. Bridges stated that the applicant would need to prove that any changes to the property would maintain that water within that property. Bridges stated they are not there yet, but he believes that issue would be addressed. Buschur added that the number of units is really tied to congestion of traffic at one point and a reasonable application of the Bylaw. He stated that 28 units is far beyond anything usually permitted within this Town, which conforms to the usual planning standard. He stated that 28 units plus the overall density bonuses they will get is too much congestion of traffic at one point. He stated he is disappointed to hear the Board talk about the number of units and he thinks that goes against the entire reason for our Zoning Bylaw and compliance with it. Lastly, he stated that the Board has been very reasonable to the applicant. He stated this has been very drawn out. He stated it is the applicant's responsibility to bring forth a reasonable number, not for the Planning Board to tell the applicant the number. He stated the applicant should listen to the Board and respond.

Steve Greason, 86 Coffin Street stated that at the last meeting he left with the impression that there would be 11 lots and a shorter road, now the proposal is for 14 lots. Cook stated that at the last meeting the Board asked them to eliminate the branches off the dead end. He stated it was his understanding that by eliminating those branches, they would end up with 11 lots and a 1,200- to 1,800-foot road. Cook stated they came back, interpreted the Bylaws and proposed 14 lots. Cook stated he sees that his initial thought on 11 lots was off based on the information given tonight. He stated that is why he ends up agreeing with 14 lots. Cook stated that Murphey has come up with 12 lots based on the information he has seen this evening. Cook stated that the road is longer than he initially thought it would be. Cook stated is a long way from the 1,200-foot road. He stated the plan is evolving based on discussions that are being had on new information provided.

Hall stated that he is looking back at the plans that were approved by the Board on his last project. He referred to that Yield Plan and stated that there was a box drawn on each lot showing where each unit and septic system would be, though it did not show any driveways or house sizes. He stated that for the duplexes, a box with a dashed line identifying it as a duplex was shown. He stated that he would show garages on this Yield Plan even though it wasn't required for the last plan. He asked why he should show those garages if it is up to the Board to determine the BMN regardless. He stated he will provide that information, but it is nowhere to be found on the plan that he spent 9 months on last time. He stated that it was not even

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mentioned. Sarkis stated that the Yield Plan Hall referred to had lots with single families on them. He stated it was not done with the intention of putting duplexes on each lot. He stated they did not scrutinize the single family lots. Sarkis stated there are no singles with this project.

Bridges made a motion to continue the public hearing to October 4th at 7:00 p.m. Sarkis seconded the motion and carried 5-0.

Lucey returned to the meeting.

Subdivision Approval Not Required Plans (SANR's)

Zambernardi stated that no SANR's had been submitted.

Request for Release of Last 4 Units – Cottage Advisors – Cottages at River Hill – Follinsbee Lane

It was noted that there are actually 5 units that were left to be released, not 4 as understood at the last meeting. One unit was released at the last meeting, therefore there are 4 left to be released. Bridges stated that Cottages remaining obligation prior to the final release is to construct the trail network to the satisfaction of the Conservation Commission. He asked Hall for an update on that. Hall stated that they completed the trail and received a "thumbs up" from Jay Smith, the Town's Conservation Agent. Zambernardi confirmed and stated that Smith sent a letter to this effect to the Board.

Bridges made a motion to release units 23, 26, 30 and 31 from the Covenant Not to Convey finding that all obligations in the Certificate of Vote have been met. Cook seconded the motion and it carried 5-0. It was noted that a revised Mylar is needed for the Board to sign reflecting the trail relocation that was approved at the last meeting. Zambernardi also provided a Certificate of Vote for the Board's signature regarding the minor modification for the trail relocation.

Bridges then took the agenda out of order for Correspondence.

Correspondence – Notice of Property Transfer pursuant to GL Ch 61, Sec 1 & 2 & Ch. 61A, Sec 14 – Daley Property on Main Street (formerly known as 720 Main Street)

Zambernardi stated that the Board received notice that Bill and Mary Ann Daley have transferred 1 lot to their daughter Mary for nominal consideration for the purpose of building a dwelling. She stated that she spoke to Michael McCarron about this request. He related that because it is a transfer between family members, there is no Right of First Refusal for the Town. He stated that they are notifying the Town as a belt and suspenders approach. The relevant section on Chapter 61A reads as follows:

Sec. 14

"The discontinuance of agricultural or horticultural use shall not, in itself, for the purposes of this section, be considered a conversion. Specific use of land for a residence for the owner, the owner's spouse or a parent, grandparent, child, grandchild, or brother or sister of the owner, or surviving husband or wife of any deceased such relative, or for living quarters for any persons actively employed full-time in the agricultural or horticultural use of such land, shall not be a conversion for the purposes of this section, and a certificate of the board of assessors, recorded with the registry of deeds, shall conclusively establish that particular use."

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Zambernardi stated this is a courtesy notification. Board members ask questions related to right of first refusal for the other lots.

Discussion of Zoning Bylaw Amendments – Signs and Parking of Commercial Vehicles in Residential Districts

Bridges noted that a placeholder request was sent to the Board of Selectmen for the Sign Bylaw and for the Commercial Vehicles Amendment suggested by Glenn Clohec. Zambernardi stated that Clohec has not provided proposed language at this point, so it will probably have to wait until the spring. Regarding signs, Bridges stated that Selectmen Chair, Joe Anderson sent an email in response to the placeholder request indicating he favors a revised sign bylaw. He stated however that the amendment is going to require a degree of discussion in addition to the Planning Board. He stated that the Board might be better off to wait until the spring. Board members discussed whether it was a good idea to wait for spring. Zambernardi stated her understanding of the email was that the last time this item was brought to Town meeting, it did not pass. She thinks that this time around the Board should vet it beyond the Planning Board with the public and make any amendments resulting from that process before Town Meeting. Murphey asked if Anderson expanded any on what he meant by vetting with the public. Zambernardi stated he did not, but her thought on this is that the Board should have a stakeholder meeting and get feedback from the business community and others, make edits accordingly, then present to the Finance Committee. Cook stated he agreed. Murphey questioned if the public hearing held by the Board when there is a Zoning Amendment would serve this purpose. Zambernardi stated that it would be a good idea to seek public feedback before the draft is finalized and submitted for Town Meeting. She stated the draft is in fairly final form once the Planning Board hearing occurs. Board members agreed to wait for spring. Sarkis suggested that the Board get the emails of business owners and send them the draft, and ask them to come in and work with the Board to give their feedback. Members discussed the matter and thought sending the draft after the stakeholder meeting with any business owner comments incorporated might be better. Members agreed that the draft should be tightened up and sent to Clohec for comments. Cook stated that the amendments Zambernardi made reflect what was requested at the last meeting. Zambernardi stated she had some questions on some of the sections. Members discussed this and made more edits for Zambernardi to incorporate.

General Business

- Sullivans Court Extension – Zambernardi stated that there had been a complaint about beginning work before 7 am. She stated Neve has been responsive and the Police Chief got involved as well. Zambernardi stated that Cindy Sherburne contacted Gary Bill about bare spots in front of her house and whether he would help her by planting grass in those spots. Zambernardi stated she sent this question to Meridian. Meridian responded that the area should actually be a gravel shoulder but that there isn't one yet. There's a small section of lawn beyond the 2-feet that should be gravel shoulder, not grass. Also, the area around the culvert inlet construction is not growing grass. She stated that Meridian had no objection to seeding instead of gravel, but such a change is at the discretion of the Board. Members discussed this further and Bardeen stated that the Board allowed the narrowing of the road specifically because there would be a gravel shoulder. The Board ultimately found that the shoulder should be built per the plan, unless Neve comes to the Board and requests a minor modification. The Board instructed that Neve should be

notified of this and that this should be explained to Sherburne.

- Administrative Details
 - Review of Draft Mission Statement – Zambarnardi stated that several meetings ago the Board revised its Mission Statement and Programmatic Goals for 2017. She stated this occurred during the review of the FY2016 accomplishments. Zambarnardi stated she edited the document pursuant to those comments and she asked the Board for its final approval. Members make some final edits and asked Zambarnardi to incorporate them and send them to the Board of Selectmen.
 - Recording Secretary Update – Zambarnardi stated that the deadline is September 16th. She has not yet received any applications. She posted the ad on Indeed.com today.
 - Personnel Evaluation – The Board decided to do the evaluation at the October 18th meeting.

The meeting was adjourned at 9:45 p.m.

Submitted by,

Leah J. Zambarnardi, AICP
Planning Administrator