



**Town of West Newbury
Planning Board
Tuesday, September 7, 2021
381 Main Street, Town Office Building
www.wnewbury.org**

Minutes of Meeting

Open Session: 7:00 p.m. in-person and by remote participation (see below)

Addendum to Meeting Notice regarding Remote Participation

Pursuant to Chapter 20 Of the Acts of 2021, "An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency", Approved by the Governor, June 16, 2021, which extended permissions for boards and commissions to conduct remote meetings, the Planning Board conducted its meeting via remote participation. The meeting agenda included instructions for the public about how to participate remotely. No in-person attendance of members of the public was permitted, but every effort was made to ensure that the public can adequately access the proceedings in real time, via technological means. In the event that it has been unable to do so, despite best efforts, the Board will post on the Town of West Newbury website an audio or video recording, transcript, or other comprehensive record of proceedings as soon as practicable after the meeting.

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No in-person attendance of members of the public will be permitted, but every effort will be made to ensure that the public can adequately access the proceedings in real time, via technological means. In the event that we are unable to do so, despite best efforts, we will post on the Town of West Newbury website an audio or video recording, transcript, or other comprehensive record of proceedings as soon as practicable after the meeting.

Chairperson Tim Cronin called the meeting to order at 7:00 p.m. by reading Governor Baker's Addendum to meeting, as noted above. Members in attendance were Ann Bardeen, Tim Cronin, Brian Murphey, Jake Cormier, Ray Cook, Associate Member Deb Hamilton, and Town Planner Leah Zambarnardi. all participating via Zoom Conference.

1. Introduction to Legal Counsel, Robin Stein, KP Law:

The matter was postponed to the September 21st regular meeting due to the Rosh Hashanah holiday.
West Newbury Planning Board Draft Minutes, September 7, 2021. Approved March 15, 2022.

2. 34 Ash Street, Patricia Kelly, Planning Board Recommendation on Exercising Right of First Refusal for Land that is Valued, Assessed, and Taxed Under Chapter 61A:

Cronin stated that this is property that the Planning Board is familiar with. Zambenardi provided a map of the property. Discussion ensued as to whether or not the property has value to the Town. Cronin stated that the difficulty with these assessments or recommendations is always that these types of properties do have value to the Town but everything is relative as to how the Town evaluates these opportunities with regard to right of first refusal and since real estate values are very high, it's very difficult for the Town in making these decisions.

Cook disagreed with the premise that the Planning Board is tasked with deciding whether it's got value to the Town, but that we are tasked with deciding whether or not there's sufficient value in the lot to recommend to the Select Board that they exercise their right of first refusal. He stated that even though it's a lovely lot, he doesn't see that this lot has any particular merit that would have the Planning Board recommend that the land be bought. Bardeen stated that the property has already been carved up, it's right by the power lines and she finds it is not compelling as something for the Town to own. Murphey added that when the lots at the top of the road were developed a number of years ago, there was no interest then.

Motion: Cook made a motion to send a letter to the Select Board that the Planning Board recommends to the Select Board not to exercise their right of first refusal on 34 Ash Street. Seconded by Cronin.

Discussion on the motion: Cronin inquired as to how this is communicated to the Select Board with Zambenardi stating she used to send a letter to the Select Board but after speaking with Town Manager Jennings, was advised that an e-mail would be sufficient to communicate this to the Select Board. Cook suggested that boilerplate language could be written so that when this comes up in the future, that it would be used.

Roll call vote was taken, and the motion passed 5-0.

Deb Hamilton inquired as to whether the lots as they are configured need no other Planning Board approval or whether that's still something that warrants discussion. Bardeen stated that the lots were approved a number of years ago, with Zambenardi stating that the plan was dated September of 2005.

Documents reviewed: Notice of Intent to Sell the Land, Map of 34 Ash Street

3. Proposed Flood Plain Bylaw - Review and Discussion of Recommendations and Edits Proposed by KP Law:

Cronin stated there were additional comments circulated, including comments from KP Law and Sam Joslin. Zambenardi shared the draft Bylaw showing the proposed revisions by KP Law. Bardeen stated that she feels those revisions make sense but didn't understand why Section 5.D.9 wasn't removed if everyone was in agreement that there would no longer be a special permit requirement and that the Floodplain Administrator would step into the role. Zambenardi stated that it would be removed in the next version of the draft. Bardeen stated that Joslin spoke to that and she agrees with his comments.

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Cook stated that he has no problem with a Floodplain Administrator stepping in, to which all Board members were in agreement.

With regards to Section 5.D.18, discussion ensued regarding the proposed revisions with Cronin stating there was a good question from KP Law about what uses are permitted. Cronin read the revised language provided by KP Law.

Cronin stated that Joslin had great comments suggesting that uses be limited to uses as a right in the district, and not uses that would require a special permit. He felt that is a conservative view, but it made sense to him. Cook stated that his feeling is contrary to that. If someone comes to get a special permit, it should become a permitted use. He stated that the floodplain restriction should not take away the right of a landowner to seek a special permit, with Bardeen stating she doesn't feel this would get the approval of the Attorney General's Office. With regard to Joslin's recommendation of a special permit, Zambenardi commented that he was talking specifically about the Planning Board special permit for a use in the floodplain overlay district, not for other special permits.

Zambenardi shared the e-mail received from Joslin regarding what is meant by Section 5 of the bylaw, the requirement for the need of a special permit, and the language that should be further clarified in the bylaw. Cook commented that the proposed language from KP Law in Section 5.D.18 is fine, such as permitted uses versus special permit uses, and removing the section on sand dunes, with that section simply saying, "All uses normally allowed." Zambenardi stated that she will speak with Joslin regarding clarification of his e-mail.

With regards to Section 5.D.19, Zambenardi quoted, "A variance from these floodplain by laws must meet the requirements set out by state law and Section 8.A.1." She questioned why a variance would be needed from the Zoning Board if there's already a variance process set out by the state. . Cook stated that he's fine with the revisions made by KP Law, with Zambenardi stating now an applicant would need two variances, one from the Town and one from the state. With regards to 5.D.21, Cook stated that he's fine with the revisions made by KP Law and that perhaps there should be a note in Section 8.A.2 referring to this section.

Cook inquired as to whether a motion should be made by the Planning Board, with Zambenardi stating that the Planning Board already made its recommendation, the Select Board forwarded the bylaw to KP Law who made comments and now the comments are being shared with the Planning Board to see if there is agreement or if it has any tweaks. Zambenardi stated that she would mark this up with a redline and send an e-mail to Robin Stein at KP Law and Town Manager Jennings with the Planning Board's suggestions and comments.

Documents reviewed: Proposed Floodplain Bylaw

4. General Business:

- Updates: Affordable Housing Website, Stormwater Bylaw, Drake's Landing, 519 Main Street (Major Boyd Drive), Page School Playground:

Affordable Housing website: Zambenardi stated that she put the website together utilizing input from the Town's consultant, Lynn Sweet, and Town Manager Jennings. Zambenardi shared her screen and explained the website and how it works.

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Stormwater Bylaw: Zambarnardi updated the Board on discussions from the last stormwater working group meeting. She stated that the group met with Jennifer Hughes from MVPC to go over the comments made by the Planning Board, the Conservation Commission, and the Board of Health. She stated that the majority of the meeting focused on the question of who the stormwater authority should be, and that there was reluctance to designating the Conservation Commission as the authority for bandwidth reasons, as the new agent will work 25 hours in West Newbury and includes staffing both the Conservation Commission and the Open Space Committee, as well as working as the agent in Merrimack for 10 hours per week. Zambarnardi further stated that the Board of Health has offered their assistance through the Health Agent Paul Sevigny, and Joslin would handle enforcement with assistance from the peer review engineer, Meridian. In terms of who the actual authority should be, everyone seemed to lean toward it landing in the Planning Office. Bardeen asked if the authority means the permit issuing body, and Zambarnardi stating that's correct.

Discussion ensued about whether the stormwater bylaw would be the type of bylaw handled by the Planning Office. Zambarnardi stated that she was assertive in talking about concerns over the Planning Board Office bandwidth and the lack of in-house expertise.

Cook stated that he agrees with Bardeen that the natural place for this would be with Joslin's office. Murphey stated that he feels that this is an opportunity to outsource the work to a consultant and he feels that it will be fine with the Planning Board. He doesn't believe that it's going to take that much time if the job gets structured as being outsourced. He stated that the Board has an established Planner, and if it's outsourced, it can be administered in an appropriate way. He stated that in a year or two, Conservation may find that they need more hours and the role could possibly be morphed into that arena, but at this time, the Planning Board is the best option for the Town. Zambarnardi stated that her concern with it is that a consultant isn't present at Town Hall, and when homeowners or developers walk in that aren't too familiar, she would inform them of basic things but would need to call the person hired. Murphey stated that it could be related to the Town Manager that the Planning Board could administer this within certain parameters and he may be okay with that considering the number of hours of the Conservation Agent in the future.

Drake's Landing: Cronin stated that Zambarnardi provided reports from Meridian on the recent rainfall event. He stated that there was some sediment collecting in the catch basins that should be removed, but that it didn't seem like anything catastrophic was noted and that the system was working properly. Cook stated that he viewed this all as good news since that was a lot of rain. Murphey stated that he drove through the area after the rains and felt that it looked very good. Zambarnardi stated that no homeowners contacted her about the event. She stated that the homeowners were looking to the developer Chip Hall for an update on when the punch list would be taken care of, and he advised that they were starting to do work on the punch list items this week.

519 Main Street: Cronin stated that Meridian's report included some pretty impressive photos. Murphey stated that he drove by the area and observed there was a lot of water. Cook stated that before the owner touched it, it would have been a lake anyway since it's a wet area. Cronin stated that eventually there will be a culvert with drainage on both sides. Cook commented that when the project is complete, it's not going to look that much different than it looked after the heavy rains, that water is intended to pond on both sides.

Page School Playground: Zambarnardi stated that the most current playground designs are on the Town website, that an e-mail went out to people subscribed to receive news with the link to the updated designs, and there would be a meeting on September 8th via Zoom for people interested in seeing the presentation of the design and hearing what the DPW Director and the playground designer have to say. She further stated that the Planning Board conducted site plan review of this project last year, so if any of the members want to continue to be involved in the design this is one way to do it. Cook stated that he looked everything over and there's nothing different than what the Planning Board had discussed.

- Correspondence: Zambarnardi stated that a notice was received from Newburyport regarding amendment and additions to the zoning ordinance regarding off-street parking regulations, correspondence from the Newbury Board of Appeals regarding an appeal of an administrative decision of the Building Inspector denying a building permit application to raze an existing home and construct a new retail gas station on Central Street in Newbury, and correspondence from City of Haverhill, regarding a hybrid hearing for redevelopment of property at 85 Water Street.
- Minutes, May 4, 2021: Board members went through portions that needed to be changed and discussion ensued regarding suggested changes.

**Motion: Cook made a motion to accept the May 4, 2021 minutes as amended.
Seconded by Murphey.**

Roll call vote was taken, and the motion passed 5-0.

- Administrative Details: Consultants, Meeting Space, Administrative Assignments, Administrative Assistant Job Posting, Town Counsel Review Policy:

Consultants: Zambarnardi spoke with Charlie Weir from Hancock Engineering regarding creating a consultant's list of up to three, and they also discussed whether there would be a conflict of interest if Hancock represents other applicants on other matters for the Town. She stated that they looked for some guidance from the Open Meeting Law since there are reports issued giving more information regarding this topic. They learned that this is fine as long as a partner of the consultant isn't representing matters to the Board or other boards. Though, an employee of the consultant can do this type of work.

Zambarnardi further stated that the list would include Meridian Engineering and Hancock Associates, and she was looking for suggestions from the Planning Board of other consultants, such as Williams & Sparages. Hamilton stated that she has worked with Greg Hochmuth for years and likes him a lot. Cronin stated that his only concern with Williams & Sparages is that they frequently appear before the Planning Board but that they do excellent work. Cook stated that if there is another engineering firm that's interested, there should be some policy about getting in the queue. Cormier stated that there should be some yearly price checking to keep updated on what the trends are in the pricing to keep everybody honest.

Meeting space: Zambarnardi stated that the DPW Director and she were speaking about office space on the second floor and discussed fixing up the second floor hearing room to allow for regular Planning Board meetings, and that would allow for a more efficient use of space in the Planning Office. Cook feels that this makes perfect sense to him for Planning Board meetings, and if the room is available, perhaps other committees would use it, as well, with all Board members feeling that this is an excellent idea.

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Administrative assignments: Zambarnardi stated that this is a follow-up on the conversation about the minutes. She stated that the minutes come to her in good form but that there are preferred formats and things that the Planning Board wants to see, and an intermediate review is needed. She also stated the Board's regulations indicate the Clerk of the Board is responsible for overseeing the creation of the minutes, and that historically, the Planning Board Administrator or the Town Planner provides for this. She asked whether the Planning Board would be open to having the Clerk of the Board, at this time Cook, be assigned to receive the minutes, make the edits, then send it out the Board as a whole, which would then be considered at a regular meeting. Cook stated that he is not anxious to take on this task.

Administrative Assistant job posting: Zambarnardi stated that the proposal is for a 6-hour position, and an additional 2 hours would be added for the current assistant to continue with billing. She stated that the 6-hour position posting had already been sent to the Town Manager's office and that it should be posted any day. It would appear in the newspaper once and it would remain posted at Town Hall and on the website until someone is hired. She also stated that the job description is the same that was provided in 2018 with just one minor change.

Town Counsel review policy: Zambarnardi stated that in follow-up to the Board's last conversation regarding timely reviews, she had a meeting with Robin Stein, the Board's assigned counsel for land use matters, and stated that the policy will work well in practice. She stated that Stein is very well-versed in the type of work that Planning Boards do, and she described what the process will be when work is needed by the Planning Board. She also stated that when it comes to conflicts between Boards and Commissions, KP Law is available to help navigate through them.

Items Not Reasonably Anticipated by the Chair 48 Hours in Advance of a Meeting: Cronin stated that he was invited along with the other Board Chairs and department heads to a September 9th special meeting of the Select Board regarding Town hiring practices, wages, grade levels, administrative issues such as time off, hours of work schedule, and performance evaluations. He spoke with Zambarnardi and feels he has enough information to address these issues.

Murphey stated that he got a note from MVPC looking for interest in the spring for Citizen Planner Training Collaborative trainings, which would be on Zoom, and wondered if Cormier or Hamilton would be interested. Both indicated that they would like to participate. Bardeen inquired as to whether MVPC allows for members of the public to participate and Murphey stated that he believes that's correct, and Bardeen suggested that this could be announced on the Town website for interested parties. Zambarnardi stated that she has used these sessions as a resource to keep up to date and learn, as well.

Adjournment:

Cook moved to adjourn the meeting.

Seconded by Murphey.

Roll call vote was taken, and the motion passed 5-0.

Respectfully submitted,

Susan M. Lobie, Certified Electronic Transcriptionist
Office Solutions Plus
15 Marion Road, Salem, MA 01970