



**Town of West Newbury
Planning Board
Tuesday June 21st, 2022
381 Main Street, Town Office Building
www.wnewbury.org**

Minutes of Meeting

Open Session: 7:00 PM by remote participation (see below)

Addendum to Meeting Notice regarding Remote Participation:

Pursuant to Chapter 22 Of the Acts of 2022, “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.

Chairperson Ann Bardeen called the meeting to order at 7:00 PM. Members in attendance were Ann Bardeen, Ray Cook, Tim Cronin, Deb Hamilton, & Brian Murphey. Town Planner Leah Zambarnardi was also in attendance. All participated via Zoom Conference.

Updates Relative to Administration & Implementation of Stormwater Management Bylaw and Regulations

The Board discussed the Stormwater Authority relative to anticipated future filings. Zambarnardi introduced Miranda Gooding, attorney representing John and Jane Austin, owners of property on Poor House Lane. Zambarnardi provided background on permitting for the property including a variance, an ANR Plan and an Agreement between the Select Board, Planning Board, & the Austins (the “Agreement”). She stated that the Austins are looking to sell their two building lots and that in order to receive building permits, Poor House Lane would need to be constructed so that it provides adequate practical access.

Gooding stated that the Austins are trying to understand the Town’s current requirements and permitting processes for constructing the road. Zambarnardi stated that a Notice of Intent filing with the Conservation Commission is required for a majority of the road construction, and that the Town’s recently adopted Stormwater Management Bylaw is also applicable to this project. She stated the Board is being asked for its

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thoughts on whether the Conservation Commission would assume the role of Stormwater Authority under the exemption section of the Stormwater Management Regulations (the “Regulations”) in this situation.

Bardeen stated there have been discussions over whether a past variance has expired and whether the “Agreement” would still be in effect regarding improvements to the roadway and restrictions. She questioned the construction standards for the road and the permitting.

Gooding stated the Austins had previously accepted an offer from a developer who would build a denser project, but it did not advance. Gooding stated the Austins would like to work with the Town to come up with a revised roadway plan. Gooding stated that Hancock Associates has been hired to prepare plans. She stated that in order to market the property, there needs to be access. She stated that Hancock Associates has not finished engineering the project but has verbally stated that it would involve stormwater, drainage, and grading infrastructure including wetlands replication work. She stated that the roadway part of project is within the Conservation Commission’s jurisdiction, and the Austins hope to not need a separate stormwater permit from Planning Board.

The Board reviewed the exemption language in Section 5.B.2. of the Stormwater Management Regulations. Cook questioned why this would fall on the Planning Board. He stated that part of the road was abandoned, and up until that point it is officially a Town-owned road. Bardeen questioned if this is a Town matter. Zambenardi mentioned that the Planning Board signed the Agreement as well as the Select Board. Zambenardi stated that Sam Joslin, Town Building Inspector, indicated that he would not approve a building permit if one was requested at this time.

Murphey stated that the Planning Board oversees the creation of roadways and those that will become Town roads. Gooding stated her opinion that the Agreement is binding and the Austins are willing to accept that. Gooding stated that the Agreement needs to be amended to reflect the new roadway plans. She stated that the original plans referenced in the Agreement are out of date and cannot be located. She commented that the best path would be to go in front of the Planning Board and the Select Board to present a roadway plan, first having received signoffs from the Conservation Commission, DPW, and the Fire Chief.

Cook reiterated that it is a Town-owned road, and is not a new road being created. Bardeen agreed. She asked the Board Members if they agreed that the exemption section is in effect in this case and therefore, the Conservation Commission should manage the Stormwater Management Permitting. Murphey stated he does not support the exemption for this case. He stated the applicant should bring it before the Planning Board as the Stormwater Authority.

Gooding opined that the entire roadway project is fully within the jurisdiction of the Conservation Commission. She stated that the Conservation Commission is responsible for how the drainage and stormwater management is designed, and the reports and maintenance under the Wetlands Act. Bardeen clarified that the Regulations stated that the Conservation Commission is the approving entity only if the area is entirely under jurisdiction. Cook questioned what would happen if land beyond the wetlands is also part of the project. Gooding stated that the Conservation Commission would review the project in its entirety, not just the part within the wetlands resources. Gooding stated that Stormwater Bylaws in general are intended to give the Planning Board jurisdiction where the project otherwise would not be reviewed by the Conservation Commission. Murphey disagreed and stated that he is not in favor of an exemption for the first project before the Board. Cook commented that the cul-de-sac may not be jurisdictional, but would be part of the overall

drainage calculations. Gooding stated the drainage would not change if the cul-de-sac was not jurisdictional. Cook asked Hamilton, who previously served on the Conservation Commission, if the entire project is jurisdictional based on her previous knowledge. Hamilton stated that if the cul-de-sac is near the beginning of the Town forest, the last 50-feet would not be wetlands.

Resident Fredric Chanania, 47 Coffin Street joined the meeting and questioned if there had been a wetlands delineation. He stated that the jurisdiction should be established before the question of an exemption is addressed. Gooding stated Hancock Associates is in the process of having the area delineated. Bardeen stated the Board should know this in order to make an informed decision. She stated the discussion on this matter may not end tonight, therefore no decision should be made. Bardeen stated if this project is found to be exempt, other residents may question why they would need a separate permit from the Planning Board for their own project.

More discussion ensued regarding the delineation and it was generally agreed that the cul de sac would be outside of the wetlands and associated buffer zone and that if that is the case, the Planning Board would be the Stormwater Authority. Gooding stated that the Conservation Commission would have enormous involvement and she hoped that both boards can work together since almost all of the project is under Conservation Commission jurisdiction. She stated that at the end of the day, the project is going to be subject to Town and State Stormwater Management Standards.

Murphey stated that the Planning Board has worked well with the Conservation Commission in the past. Cook reiterated that the wetlands should be delineated to see whether or not the entire project falls within the jurisdiction of Conservation Commission.

Cronin questioned whether the delineation plan presented for this project will be strictly for the roadway, and if they would be seeking a Stormwater Management Permit strictly for the roadway construction. Gooding affirmed and explained that it is difficult to predict what the potential buyer(s) will decide to do with locating homes within this project. She stated there are possible home configurations that would avoid the wetlands all together. She stated that the engineering for this site is very significant. Cook stated building the road and the engineering will be very expensive and questioned whether the Austins had considered conveying the land to the Town or Greenbelt. Cook suggested that all options for this property should be explored, and Murphey agreed. Chanania pointed out that jurisdiction issues should be settled first due to public interest in this property.

Documents Reviewed: Poor House Lane background summary, assessors map, 1980 variance, plans, 1985 agreement.

Discussion on Professional Engineering Services

Zambernardi stated that at a previous Planning Board meeting, there was discussion and concern expressed over the Town's hiring an engineering firm to assist single family projects that are currently in the permitting/construction phase that may need near-term assistance to comply with the Stormwater Bylaw/Regulations. She stated that at its June 9th meeting, the Stormwater Working Group whittled down the list of properties to two projects, which were Tom Cook's and Daniel Follansbee's Middle Street lots. These owners have no plans on developing the properties in the near future. She stated that the Town's Health Agent, Paul Sevigny contacted both owners to make them aware of the new Bylaw/Regulations and the need to obtain

permits.

Zambernardi stated that Meridian is conducting an educational meeting with the Planning Board and others on stormwater management. Meridian will also develop uniform inspection guidelines and forms. She stated the Town is also hiring Meridian for on-call technical advisory services.

Zambernardi stated that the Town has also been working with Horsley Whitten Group on MS4 compliance, and they will be conducting an in depth review of the Town's Bylaws and Regulations for consistency with the Stormwater Management Bylaw and Regulations.

Notification to Local Building Professionals (engineering, environmental, contractors, legal, etc.);

Zambernardi stated a letter would be sent out as an FYI to people about the passage of the Stormwater Management Bylaw. She stated that she could also post the content on the Board's webpage. Murphey questioned if the Building Inspector Sam Joslin had a notice in his office for residents who come in regarding projects and permits. Zambernardi stated that Joslin is working on adding a page to the PermitLink website, which identifies the various permits that may be needed, including Stormwater.

Review Proposed Amendments to Planning Board & Subdivision Regulations relative to Application Fees & Forms, and requirements for submission of CAD files.

Bardeen stated this item will be put on a future agenda.

General Business:

- **Updates – ANR Plan for 0 & 2 Middle Street in West Newbury & Groveland, 519 Main Street, 87 Main Street, Drakes Landing, Recent Court Ruling regarding protection afforded to solar energy systems in G.L. c. 40A, s. 3.**
 - ANR plan for 0 & 2 Middle Street – Bardeen questioned if the Groveland Planning Board has signed off on the ANR. Zambernardi stated they were scheduled to review the plan this evening (6/21/22).
 - 519 Main Street – No updates.
 - 87 Main Street – Zambernardi read a summary for the record from Conservation Commission Agent Michelle Greene.
 - Drakes Landing – Zambernardi will follow up with Meridian on the punch list items.
 - Court Ruling Regarding Protection Afforded to Solar Energy Systems – Tracer Lane II Realty, LLC v. City of Waltham, No. SJC-13195 (Mass. Jun. 2, 2022), Zambernardi stated that on 6/2/22, the Mass Supreme Court issued a decision regarding statutory protection for large scale solar generation systems
- **Minutes – May 3rd, 2022, Other if any**
 - No minutes were reviewed.
- **Correspondence**
 - No correspondence
- **Administrative Details**
 - July 15th expiration of Chapter 22 of the Acts of 2022 allowing for Remote Participation: Bardeen noted that the Order expires on July 15th and that the next Planning Board meeting is July 19th.
 - Administrative Assistant: Katelyn Bradstreet, part time DPW administrative assistant, has begun working in the Planning Department for 6 hours per week.
 - Associate Planning Board Member Search: Zambernardi stated that she will check with the Clerk's Office on the status.

- MHP Housing Institute meeting – Zambarnardi attended one day of the training remotely.
- Virtual Training on 6/22/22 on MGL Ch 40A, S. 3 re: Exemptions under the zoning act. Zambarnardi will attend this session.
- **Placement of Items for Future Planning Board Agendas: Steep Slopes Bylaw; Accessory Dwelling Units Bylaw, Stormwater Educational Session**
 - Future agenda items were discussed with board members.
 - The August 2nd meeting was moved to August 1st. The August 16th meeting was moved to August 23rd
 - Hamilton had questions about John Gorman’s construction of a driveway on one of his Middle Street lots. Zambarnardi stated he received a Scenic Roads Permit from the Planning Board to remove a portion of stone wall and has an Order of Conditions from the Conservation Commission. Murphey confirmed that the Planning Board approved the access point, and permits beyond that are go to the Building Department
 - Murphey provided an update regarding the Merrimack Valley Planning Commission and related that it received portion of a grant towards the Regional Housing Production Plan project.
- **Items not Reasonably Anticipated by the Chair 48 Hours in Advance of a Meeting**
 - There were no items

Adjournment:

**Bardeen moved to adjourn the meeting at 8:33 P.M. Seconded by Hamilton.
Roll call vote was taken, and the motion passed 5-0.**

Respectfully submitted,

Katelyn Bradstreet, *Administrative Assistant to the Planning Board*