

**WEST NEWBURY PLANNING BOARD**  
**MINUTES OF MEETING**  
May 16, 2017

Pursuant to a meeting notice posted by the Town Clerk that was delivered to all Board members, a meeting of the West Newbury Planning Board was held on May 16, 2017 in the 2<sup>nd</sup> floor Planning Board Office at the West Newbury Town Offices, 381 Main Street. Board Members Ann Bardeen, Brian Murphey, Raymond Cook, John Sarkis, and Richard Bridges were in attendance. Town Planner Leah Zambarnardi and Associate Member Dennis Lucey were also in attendance.

The meeting was called to order at 7:00 PM

**Resubmission of Archelaus Hill Rd/Middle Street SANR – John Gorman**

The Board had received their requested letter from the Conservation Commission, which helped them in their decision on whether to endorse the SANR. Bridges read the letter from the Conservation Commission to the public as well as section 6.A.9 from the Zoning Bylaw. Bob Blanchette, Civil Engineer from Cammett Engineering, presented the driveway access to the buildable portion of lots 3 and 4. The plan presented an estimated 3000 sq ft of disturbed wetland. Blanchette shared that the proposed alternate access, which would be from Archelaus Hill Rd. The Board agreed that a vehicle could pass from the frontage to the buildable portion of the lot with the proposed plan that was presented. Lots 1 & 2 have proper frontage and do not require a special permit. Blanchette stated that a Notice of Intent would be filed with the Conservation Commission if they proposed work within 100 feet of the wetlands.

Zambarnardi shared her discussion with Town Counsel about questions that arose at the previous meeting on this issue. The first question was regarding whether the Board can consider practical access from the road to the buildable portion of the lot when determining whether an ANR lot has sufficient frontage. It was determined that the Board can consider that. Zambarnardi stated that it was established through a review of cases cited in the ANR Handbook, that for an ANR lot to be considered buildable, a prerequisite is that it must have “adequate access” from the designated frontage to the buildable portion of the lot. Particularly, *Gates v. Planning Board of Dighton*, 48 Mass. App. Ct. 394 (2000) concluded that the existence of wetlands which prevent practical, safe and efficient access from the road frontage to the buildable portions of proposed lots is a valid reason for denying endorsement of an ANR plan.

In the previous meeting the Board discussed if they can condition its approval on the Applicant’s obtaining approval from another Board. Zambarnardi stated that the Board cannot condition its approval in that way. Zambarnardi stated that seeking feedback from the Conservation Commission on whether they would favorably consider a wetlands crossing would not be an example of this. Rather, such feedback informs the Planning Board in making its decision. It is evidence collected and considered during the review and discussion.

It was also discussed during the 5/2/2017 meeting if the Board has to collect such information from the Conservation Commission. Zambarnardi stated that Section 6.A.9 allows the Planning Board to collect and consider such information. She stated that if the Board receives feedback it does not agree with, it does not have to follow along with it though the reasons should be stated. Further, she noted that the Planning Board does not have to seek such feedback at all.

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Zambernardi stated that from an engineering perspective, constructing a wetlands crossing on Lot 4 is practical and feasible. From a permitting perspective, the Conservation Commission would likely reject access from Middle Street in favor of access from Gorman's property fronting Archelaus Hill Road. She stated that the question should be whether known regulations of other Boards, which would likely prevent such access on Middle Street, are considered physical impediments per 6.A.9. It is Zambernardi's opinion that the practical access standard has been met because: 1. a regulatory barrier is not a physical impediment; and 2. a wetlands crossing could realistically be built in this location. She noted that the driveway study done by a registered engineer showed that a driveway could be constructed along the grade at a reasonable slope.

Cook stated that if the Board makes a decision that could be deemed arbitrary, then there are methods of recourse for the applicant which can involve legal actions that could cost the town. He stated that when making the decision the Board tries to abide by the law as best as they can, which is protecting the towns best interest. Bridges stated that while they don't make their decision in fear of a lawsuit, the Board is very thorough in their decision about whether to endorse an ANR.

Raymond Tiezzi, 2 Archelaus Hill Rd., questioned if the Board could rescind their decision. Zambernardi stated that she would need to discuss with Town Counsel. He stated case law shows that a Board cannot rescind a decision on an ANR. Zambernardi stated that the decision could be appealed by the applicant or a party in interest. She she stated the writ of certiorari is the mechanism to challenge an ANR. Sarkis stated that although rarely used, there is a 60-day appeal period under certiorari. Cook recommended to view [mass.gov.com](http://mass.gov.com) for further research and Zambernardi stated that this advice given on appeal procedures should not be considered legal advice in place of legal advice from an attorney.

Charles Metrakis, 9 Archelaus Hill Rd., questioned if approving the SANR will allow the applicant to freely build what they want. Sarkis stated that the approval of the SANR is approving subdivision of the land into parcels, and that it doesn't permit buildability. Cook stated that the lot doesn't get created until the plan is recorded with the registry of deeds. Metrakis shared his concern as an abutter to the potential development, and asks the Board to consider the affected citizens when making their decision. Cook stated that the Board cannot legally consider how the neighbors are affected when it comes to determining endorsement of the SANR. Sarkis shared that if the applicant requests a Special Permit to utilize Archelaus Hill Rd. as access to lots 3 and or 4, there would be a definitive plan or a special permit, and that would include a public hearing. Metrakis stated that within the plan layout, two of the lots show the proposed building, and he asked if the public should be able to view the buildings being built on the other two lots. The Board stated that it is not necessary since it is not part of the decision making for the SANR.

Richard Baker, 48 Middle St, questioned if abutters can sue the town. The Board replied that they can. He questioned Bob Blanchette on how he got 3000 sq.ft. of wetland being disturbed, and the Board shared how that was calculated. Baker shared that he figured there was 8000 sq.ft. of disturbed wetland, and that the Conservation Commission has a limit of 5000 sq.ft. He also shared his opinion on where the actual buildable portion of the lot is. He questioned how a septic system could be designed given the way the plan is proposed. Sarkis stated that the definition of the buildable portion of the lot could be a building that doesn't need septic. Bridges stated the plan may require approval by the Board of Health and the Conservation Commission. Cook re-stated the requirements from section 6.A.9, which the Board abides

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by in their decision making. Bardeen stated that the ANR process is very particular in Massachusetts and that most states don't have the ANR process.

Sarkis made a motion to endorse the plan as one not requiring approval under the Subdivision Control Law. Bardeen seconded the motion, and the motion passed 5-0-0.

### **Planning Board Goals and Priorities FY17 & FY18**

Sarkis suggests that the Board focus on designing pre-checklist and follow-up checklist as a guideline for administrating and reviewing projects. He also proposed that the Board notify abutters of changes to an approved plan proposed. The Board discussed if they are legally able to notify abutters, and will research it further. Bardeen recommended that they put on the agenda a date as to when they can review a checklist draft. Bridges will ask Zambarnardi for an update. The Board discussed better defining duplexes, and accessory apartments. The Board agreed that defining duplexes should be completed before working on the OSPD. Bridges proposed that there be a meeting of the minds with certain groups in a formal setting to discuss land use in the town, and that he will discuss this with Zambarnardi.

### **General Business -**

*Sullivans Court Extension –*  
There were no updates.

*Follinsbee Lane Updates –*  
There were no updates.

### **Minutes -**

The Board reviewed the Meeting Minutes for 4/4/2017, 4/18/2017, and 5/2/2017.

Bridges made a motion to approve the 4/4/2017 meeting minutes with minor corrections. Murphey seconded the motion and it carried 4-1-0, with Cook abstaining.

Bridges made a motion to approve the 4/18/2017 meeting minutes with minor corrections. Cook seconded the motion, and it carried 4-1-0, with Sarkis abstaining.

Bridges made a motion to approve the 5/2/2017 meeting minutes with minor corrections. Cook seconded the motion and it carried 5-0-0.

### **Vouchers -**

The Board signed multiple vouchers.

### **Correspondence –**

There was no correspondence.

### **Administrative Details –**

The Board signed an extension for the Tripartite agreement for Cottages at River Hill.

The meeting was adjourned at 9:00pm

Submitted by,

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Lori Dawidowicz  
Recording Secretary