

TOWN OF WEST NEWBURY PLANNING BOARD MEETING

Minutes

Tuesday, October 6, 2020 at 7:00 p.m.

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 Tuesday, October 6, 2020 electronically via Go to Meeting platform. Board Members Ann Bardeen, Ray Cook, Tim Cronin, Brian Murphey, Wendy Reed, Town Planner Leah Zambernardi, and Recording Secretary Kathryn C. Carr participated electronically.

Also participating electronically: David Brin and Erin Brin - 21 River Meadow Drive, Greg Hochmuth-Williams & Sparges, Middleton, MA, Tom Horgan – 33 River Meadow Place, Howard Hall – Cottage Advisors LLC, Kurt Umholtz, 115 Middle Street.

Call to Order

Chair Cook called the meeting to order at 7:01PM.

The roll call was taken. All Planning Board members, the Associate Member, the Town Planner and the Recording Secretary participated remotely.

Cook read Gov. Baker's Addendum to Meeting Notice regarding Remote Participation.

Addendum to Meeting Notice regarding Remote Participation^[1]
Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the West Newbury Planning Board will be conducted via remote participation to the greatest extent possible. Specific information and the general guidelines for remote participation by members of the public and/or parties with a right and/or requirement to attend this meeting can be found on the Town of West Newbury website, at www.wnewbury.org. For this meeting, members of the public who wish to view and/or listen to the meeting may do so by logging in to the website or by calling the telephone number listed below. GoToMeeting Instructions: Join the meeting from computer, tablet or smartphone using <https://global.gotomeeting.com/join/410160181>. OR^[1] By calling: +1 (646) 749-3122 and entering Access Code: 410-160-181.

Public Hearing, Modification to the Approval of a Definitive Plan, Sullivan's Court Extension, Estate Homes at River's Edge Recorded at Southern Essex Registry of Deeds in Book 34171, Page 236 and Plan Book 448, Plan 67, Re: Inclusionary Housing Requirements, Trails and Trail Easements (7:02 PM)

Motion

Cook moved to open the public hearing. Bardeen seconded.

A roll call vote was taken and the motion passed 5-0.

Cook stated that some language in the decision did not comply with the Inclusionary Housing Bylaw, Section 5.F.8. with regard to Housing Contribution Payments and trails and trail easements. Planning board members had reviewed documents sent by Zambernardi.

Motion

Cook moved to delete the language in the decision regarding this, thereby defaulting to zoning bylaw language. Murphey second. Bardeen presented a friendly amendment suggesting a language change retaining references to affordable housing and "as stipulated by Town regulations." Cook noted this as a

friendly amendment.

Cook read the new language of the motion.

The Planning Board shall deposit the funds with the Treasurer in an account solely for affordable housing purposes as stipulated by the Zoning Bylaw section 5.F.8.

Discussion

There was no further discussion by the Board. Cook asked for public comment. There were none. There were no objections to calling a vote.

Vote

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

The second part of the public hearing related to trails. Cook explained the plan contains two trails on Estate Homes at Rivers Edge; one beginning along the lot 6 driveway, splitting off by the storm water retention pond, ending near the river at a river overlook. The Board could relieve developer Tom Neve from this obligation to construct the trail, but still require he provide a trail easement to the Town. The second trail runs from the end of Sullivan's Court Extension to River Meadow Drive.

The original decision stated the wetlands crossing on the trail between Sullivan's Court Extension and River Meadow Drive must be ADA compliant, but the trail itself did not. The Building Inspector has determined that both the trail and bridge must be ADA compliant.

Cook proposed that Neve grant the trail easement to the Town, and in lieu of building the trail, cede an amount of money to the Town to be used for construction of the trail and related wetlands crossing structures. Cronin did not believe the Board had sufficient information related to original conditions and construction costs to set a monetary amount. Murphey noted the process had been lengthy, particularly as related to ADA compliance. The Board, Town Manager, and Building Inspector have been involved in these discussions.

Motion

Cook moved that the proposed modification to the definitive plan be approved: 1) with regard to the trail to focal point on the river at Lot Six driveway, the applicant will no longer be required to design and build the trail, but will provide the trail easement to the Town through the Conservation Commission as prescribed in the approval. 2) with respect to the trail between Sullivan's Court Extension and River Meadow Drive, the Applicant will no longer be required to design and build the trail, and will cede a trail easement to the Town through the Conservation Commission, as prescribed in the approval, and will pay the sum of \$10,000 to the Town to be set aside exclusively for the design and building of the trail and the related wetlands crossings between Sullivan's Court Extension and River Meadow Drive.

Murphey seconded the motion.

Discussion

Cook asked Board members for comment, thanking Cronin and Reed for their background information. Cook stated that \$10,000 would be insufficient to cover design costs and materials to build the trail, structures, and surface materials but that it would be a start.

At Murphey's request, Zambenardi reviewed how the bond amount had been ascertained. Neve had

presented the amount he deemed sufficient to cover the design and construction of both the trail and bridge. Cronin noted aside from ADA compliance issues, work done on public property should have been subject to a public bidding process and wage schedule. With this approval, the project returns to the public realm. Sufficient funds should be provided. The funds proposed are not sufficient and do not reflect the actual cost. Further, he noted that the Board should not rely on a dollar amount fixed in 2015 to satisfy this obligation.

Cook agreed with Cronin that the dollar amount was low, but believed it may be unfair to change the amount at present. \$19,910, plus interest is being held by the Town for completion of the entire project.

Zambernardi noted several outstanding items to be addressed: trail easements, acceptance of the As Built plan, and resolution of issues with the Lot 6 culvert.

Bardeen noted the two goals of the Public Hearing: to modify the decision and to establish the payment amount. \$10,000 was arrived at when the bond was posted in 2018. Reed noted a comparable boardwalk in town, built with volunteer labor, cost \$9,800 for materials alone. ADA compliance is not driving the cost; it appears to have been an insufficient amount for the project. Reed did not want to release the bond until the easements were granted.

Cook suggested Neve provide the bond amount of \$10,000 to the Town and the Board would then release \$10,000 from the performance bond. Cronin suggested the Board focus on the decision itself, not the financial component.

Cook stated the motion was to relieve Neve of building the trails and wetlands structure without getting something in return. At the time of the decision, both the Board and Neve believed \$10,000 to be sufficient.

Murphey concurred with Cook's description of Board expectations and accepted the \$10,000 estimate. A requirement to build a fully-compliant trail was not anticipated in the decision. Reed noted the Board's condition that the boardwalk be ADA compliant. The Building Inspector and Town Attorney decided that everything must be built at the same time. Reed wondered if different entities could be responsible for the different parts.

Neve noted his responsiveness to requests from many Town entities including the DPW and Building Inspector. He reviewed a number of add-ons he had provided at no cost to the Town. He did not believe funds should be tied to the project, but used more widely in town.

Cook noted the existing trail was damaging wetlands, presenting a liability to the Town. Zambernardi confirmed that a majority of the full Board is required to pass the motion.

Cook opened the Hearing for public comment.

Erin Brin, 21 River Meadow Drive asked for a clarification of the commitment. Cook said the decision requires that Neve must provide a non-ADA compliant trail and an ADA compliant wetlands crossing. Brin stated Neve's liability should be based on what he committed to do, if ADA compliance was not part of the decision, then Neve should not be held to that, but should be held to commitments within the decision.

Bardeen noted that since the \$10,000 amount was determined, the Town changed its parameters, requiring things that were not included in the decision. The Town will have to build the trail that the Town requires.

Cronin said the approval notes the bond is to secure all the obligations under the approval. The \$10,000 amount is inadequate to build to ADA compliance. He felt the responsible course would be to look at the language of the bond; it enables the Town complete the task.

Tom Horgan, 33 River Meadow Place asked if Neve was responsible for parking spaces at the end of the trail as they appear on the plan. Neve said they were complete. Horgan further asked for tree details; there were no plantings along the common driveway, only a small tree planting appearing in detail 1. Zambenardi will review the approval documents. Neve believed that plantings required Planning Board approval, and therefore had only planted a limited number.

There were no further comments from the public. Neve spoke again about the information he had provided to the Town, including easements, and properties deeded to the Town. Reed said the easements had not been filed. Neve will forward a trail easement for both trails with edits suggested by the Conservation Commission to the Conservation Commission for final approval.

Cook noted that his motion did not specifically address any reduction in bond amount. Should the motion to amend the decision pass, the Town would still be holding a \$19,000 bond until all issues are resolved. Reed asked if the dollar amount could be removed. The amount could be changed to another amount through an amendment to the motion. Cook noted that the landscaping is more directly related to the bond obligations and not related to the trail.

Cook asked the Board if would like to amend the amount of \$10,000 in the motion. Hearing none, he restated the motion.

Cook reiterated that the Definitive Plan Approval is to be modified as follows:

1. Section II.B. "Inclusionary Housing Requirements":

Cook made a motion to revise Section II.B. of the original Definitive Plan Approval by eliminating the requirement that "The Planning Board shall deposit the funds with the Treasurer in an account established for this purpose, with the restriction that the funds be spent only for Affordable Housing Purposes and only with the authorization of the Planning Board", and instead, requiring that the Planning Board shall deposit the funds with the Treasurer in an account established for this purpose, with the restriction that it be spent only for Affordable Housing Purposes as stipulated in Section 5.F.8. of the Zoning Bylaw. Ann Bardeen seconded the motion and it carried 5-0 (Ann Bardeen, Raymond Cook, Timothy Cronin, Brian Murphey and Wendy Reed in favor)(no one in opposition).

2. Section XIII. "Trails and Trail Easements":

Raymond Cook made a motion that the Definitive Plan Approval be modified as follows:

- a. That the developer, Thomas Neve of Walker Development, and his heirs, successors and assigns as their interest may appear (hereinafter "Mr. Neve"), shall no longer be required to design and build the trail to the river overlook that begins along the driveway to Lot 6. The related trail easement shall still be granted by Mr. Neve to the Town through the Conservation Commission as prescribed in the original Definitive Plan Approval; and
- b. That Mr. Neve shall no longer be required to design and build the trail between Sullivan's Court Extension and River Meadow Drive, and the structure thereon. The related trail easement shall still be granted by Mr. Neve to the Town through the Conservation Commission as prescribed in the original Definitive Plan Approval. Further, that \$10,000 shall be paid to the Town by Mr. Neve

and deposited by the Planning Board into a restricted fund set aside for the design, permitting, and building of the trail between Sullivan's Court Extension and River Meadow Drive, and not used for any other purpose.

Cronin seconded the motion and it carried by a vote of 3 to 2. Board Members Ann Bardeen, Raymond Cook and Brian Murphey voted in favor. Board Members Timothy Cronin and Wendy Reed voted in opposition. The motion was therefore approved.

Cronin asked if Town Counsel had issued an opinion on the gift. Zambenardi stated that Town Counsel said the procedure would be to release \$10,000 from the bond and then accept \$10,000 from Mr. Neve to be deposited into a gift fund. Funds would be held in a gift account as a new line item specifically for construction of this trail.

Cook asked the Board for any amendments.

Reed said that any funds remaining, after all obligations were met, should be designated to the trail. Cronin agreed and also felt it was premature to assign a dollar amount at this time.

There was no further discussion.

A roll call vote was taken.

Bardeen –aye, Cook-aye, Murphey-aye, Cronin-no, Reed-no.

The motion carried 3 -2.

Motion

Cook moved to close the Public Hearing.

Bardeen seconded.

A Roll Call vote was taken and the motion passed unanimously.

Related Documents:

Town Counsel Opinion 7-15-20 – emails from R. Cook to M. McCarron and response.

Trail to RMD Construction Estimate, SLS Landscaping to T. Cronin, 10-1-20

Bond information 10-6-20 email from L. Zambenardi to Planning Board members

Email 10-5-20 Zambenardi to and from Building Inspector re: Trails from Sullivan's Court Extension.

Draft Certificate of Vote 10-6-20

SLS Landscape Preliminary Budgetary Pricing list for Sullivan's Trail, West Newbury, MA.

Subdivision Approval Not Required Plans (ANR's)

a. 36 Coffin Street and 44 Coffin Street – Stephen J. Cutter & Paula L. Cutter and Severin Scott & Kelly Elizabeth Scott to divide two existing building lots into three building lots. ¹¹_{SEP}

Greg Hochmuth of Williams & Sparages represented the applicants and described the proposed to divide the two existing lots into 3 lots. Board members had reviewed related photos and plans. It was noted that a Notice of Intent from the Conservation Commission must be sought to allow access to one of the lots. Adequate access from the frontage into the lot can't therefore be proven.

Hochmuth stated he had a question regarding the applicability of the Scenic Roads Bylaw as it relates to developing Lot 3. He stated that the petitioners seek to provide access to the lot by relocating part of a stone wall to fill a gap in the existing stone wall. The Scenic Roads Bylaw requires a public hearing for

Demolition and Reconstruction of stone walls. Cook had reviewed the photos, and did not believe the proposal should trigger a Public Hearing. Zambenardi identified related language in the Town bylaw page 56, Section 10.32 of Scenic Roads bylaws regarding the tearing down and destruction of stone walls. Cook shared the screen and read the related content. In this case, the intention is that stones would be moved from the proposed driveway opening location and repositioned to fill existing gaps in the wall, not destruction of the wall. About 25 feet of wall would be involved.

Murphey and Bardeen agreed that shifting the wall was within the spirit of the bylaw. Repositioning does not create a problem with access.

The Board returned its focus to the ANR plan. A culvert is required and the Board of Heath and Conservation Commission must review Lot 1. A Planning Board decision on the ANR filing is required within 21 days of the applicant's filing, which was October 7. Board Members concurred that they would not vote to endorse the plan until an Order of Conditions for the access is issued by the Conservation Commission. The Board provided the applicant with the options. He may withdraw without prejudice, resubmit, and the Board could address it at another meeting. Extending the ANR deadline was discussed. Zambenardi stated that the statute did not allow for this. Hochmuth agreed to withdraw without prejudice.

Reed returned to the Scenic Roads discussion and suggested to the Board that the stone wall project should be subject to the Bylaw and require a public hearing. The public should be given an opportunity to comment. Board members concurred and advised Hochmuth to submit an application under the Scenic Roads Bylaw.

Motion

Cook moved that Hochmuth be allowed to withdraw the ANR request without prejudice.

Murphey seconded.

A roll call vote was taken and the motion passed 5-0.

b. Kimball Road – Graf Realty Trust, Donald B. & Norma V. Graf (Trustees) – Divide one existing building lot into four building lots. ^[1]Greg Hochmuth. Williams & Sparages representing Graf Realty Trust. The owners seek to create three new building lots along Middle Street, keeping 8 acres with the existing farm house. Covenants will be put in place. A notice of Intent will be filed with the Conservation Commission for grading within the buffer zone. There is adequate access. The area has been mapped for Blanding's turtle habitat, a conditional letter has been received from the Department of Wildlife and Fisheries.

There was some question about the Chapter 61A status of the property and whether the Right of First Refusal process should occur prior to the Board's endorsing the ANR. The Board had received an opinion from Town Counsel that this was not permitted.

Zambenardi had questions about wetlands and if approval of wetland crossings from the Conservation Commission were required. Hochmuth stated no wetlands would be crossed, but there will be grading and work in the buffer zone, which would require an Order of Conditions.

Kurt Umholtz, 115 Middle Street asked for more information on the 61A status and the Town's interest in the parcel. Cook stated that no sale can take place involving conversion to another use without notifying the Town so that it may determine whether to exercise its Right of First Refusal. Bardeen explained that when there is an offer to purchase a parcel that is designated Chapter Land, that amount becomes the

figure the Town would have to match. Cook explained that multiple boards have a chance to provide input to the Board of Selectmen and suggest possible uses for the land. An appraisal is secured by the Selectmen, and if they choose to proceed, Town Meeting must approve the purchase.

Greg Hochmuth asked for clarification on the State of Emergency's impact on deadlines, and how the decisions are being made. McCarron 1st thought timeline was waived on right of first refusal matters, then reneged. Cronin noted the Town could work with a land trust, such as Greenbelt, to help acquire the property. Community Preservation funds could also be used. Umholtz is looking at partnerships with Essex Country Greenbelt. Cook noted that the Right of First Refusal is up to the Board of Selectmen. Cook asked Bardeen to make a motion.

Motion

Bardeen moved to endorse the plan as one Not Requiring Approval under the Subdivision Control Law. Cook seconded the motion. There was no further discussion. A Roll call vote was taken and the motion passed 5-0.

Related Documents

Plan of Land in West Newbury, MA – 14 Kimball Road
Email to Town Planner from Town Counsel dated October 6, 2020.

Drakes Landing Open Space Preservation Development (Approved January 2018) - Daley Drive – Cottage Advisors, LLC

The Board had received a letter from Meridian Associates with the results of its site review and bond reduction recommendations. Howard Hall updated the Board on responses to recent rain events and other activities, including lawn stabilization, storm basin mowing, completed entry rumble strip, additional stone strips along all lots, planned gravel driveways for construction vehicles, sediment removal program for truck tires, and a sweeping program for Phase 2. He stated that the EPA was involved and they have addressed those concerns. Rain events have been documented. There is no sediment within the area or leaving the site. Paving should take place in mid-October.

The Board reviewed a letter from Meridian Associates (Oct. 6, 2020) with results of its site review. The summary was followed by a list of items reviewed and recommendations that Cook read into the record. Phase 1, Item 1: \$1,430 retained for erosion control and maintenance in Phase I, with funds to be held until the devices are removed. Phase II, Item 1: \$613 for erosion control device removal. Phase II Item 15 \$750 for hydro seeding and stabilization. These items total \$2,793.

Murphey was opposed to release of any bond funds at this time. He suggested the Board reconsider in November after the paving is completed and the stormwater system is working properly.

Motion

Cook moved to the table bond reduction at Drake's Landing until the Board's November 4, 2020 meeting. Cronin seconded. There was no further discussion.

A roll call vote taken and the motion passed 5-0.

Related documents:

Letter Oct 6, 2020 from Meridian Associates to West Newbury Planning Board regarding Open Space Preservation Development – Drake's Landing Phases I and II Analysis for Surety^[1] Daley Drive – Drakes

Landing¹¹_{SEP} West Newbury, Massachusetts (via email to L. Zambarnardi)

General Business

New Associate Member

There were three applicants for the Associate Member position. Zambarnardi explained the process for adding an Associate Member to the Board. She and the Board members will meet with all applicants. Board members will review the applicants' applications and resumes. Associate Member candidates will attend and meet Board members at the next Board meeting, at 15-minute intervals, following the 519 Main Street Subdivision Public Hearing.

Correspondence

This consisted of legal ads from other communities. Zambarnardi will email them to the Board.

Minutes

The Board reviewed the minutes of July 21, 2020.

Cook moved to accept the minutes as amended. Bardeen seconded.

A Roll Call vote was taken and the motion passed unanimously.

The Board reviewed the minutes of August 4, 2020

Cook moved to accept the minutes as amended. Cronin seconded.

A Roll Call vote was taken and the motion passed unanimously.

Other Items

Reed said the culvert issue on Lot 6 at Sullivan's Court had been resolved to the Conservation Commission's satisfaction. The only remaining item is a wall on top. Greg Hochmuth had supervised the work.

The next Planning Board meeting is November 4, 2020.

Adjournment

Motion

Cook moved to adjourn the meeting at 9:40 pm.

Murphey seconded.

A Roll Call vote was taken and passed unanimously.

Respectfully submitted,

Kathryn C. Carr, Recording Secretary