

## **TOWN OF WEST NEWBURY PLANNING BOARD**

### **Meeting Minutes**

**Tuesday, February 2, 2021 at 7:00 p.m.**

*by Remote Participation (see below)*

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, February 2, 2021 electronically via Go to Meeting platform. Board Members Ann Bardeen, Ray Cook, Tim Cronin, Brian Murphey, Wendy Reed, and Associate Member Jake Cormier, and Town Planner Leah Zambenardi participated electronically. Also participating electronically: Mike Capachietti-Meridian Engineering; Jen Solis – Daily News; Vanessa Johnson-Hall – Greenbelt; Deb Hamilton-227 Middle Street; Michael Crowe-Deer Run Land Development, Kennebunk, Maine; Chris Sparages – Williams & Sparages- 189 North Main St., Suite 10, Middleton, MA; Michael Migliori, Attorney for Deer Run Land Development.

#### **Call to order**

Cook called the meeting to order at 7:00 PM

The Roll Call was taken.

All members and the associate member were present.

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

Addendum to Meeting Notice regarding Remote Participation 00Pursuant 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](http://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 provided.

#### **Subdivision Approval Not Required Plan – Rogers Parcels on Middle Street (Assessors Map 27, Lots 27, 28, 28A & 29 “Assessors Lots”) – Preston E. & Debora M. Rogers – Divide and Reconfigure Existing Assessors Lots into 2 Lots.**

Vanessa Johnson-Hall from Greenbelt is present to discuss the plan. She stated that Greenbelt is purchasing approximately 38 acres from the Rogers Family on Middle Street. She stated that an ANR Plan is needed to provide a more accurate representation of the land being purchased. She stated that the Assessors Maps show the property as being comprised of 4 lots; 27, 28, 28A & 29. She stated that the deeds for the property do not reflect this 4-lot configuration. This plan is being submitted to reflect the configuration of the property as described in the deeds. Cook displayed the plan on the screen and stated that this plan would result in 2 lots; new Lot 1 corresponds to the property lines for Lot 27, while new Lot 2 is comprised of Lots 28, 28A, & 29. Johnson-Hall stated that Greenbelt is purchasing Lot 2 and the Rogers will retain Lot 1. Bardeen noted that the existing dwelling on Lot 1 (Map R27, Lot 27 is located on the property line and encroaches upon Map 27, Lot 27C. Johnson-Hall stated that the Rogers own both parcels and that this is a pre-existing issue that is not being addressed by this plan. She added that no change is being made to the lot lines for Lot 1 (Map R27, Lot 27).

Bardeen made a motion to endorse the plan as one not requiring approval under the Subdivision Control Law. Cook seconded the motion. There was no further discussion and the motion carried 5-0.

**Continued Public Hearing: Definitive Subdivision Plan – 519 Main Street & ) Stewart Street, Assessors' Map R14, Lots 36 & 54 Owner/Applicant: Deer Run Land Development LLC, 6 Mechanic Street, Kennebunk, Maine – Subdivide one existing building lot into four new building lots (8 total units), including a new roadway with associated utilities and improvements.**

#### **Motion**

Cook made a motion to open the public hearing.

Murphey seconded the motion.

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

Zambernardi read the public hearing notice for the record.

Michael Crowe, Chris Sparages and Michael Migliori were present to discuss the project. Cook updated the Board and stated that Meridian Engineering conducted a peer review of the plans and submitted a comment letter dated 11/10/20. Williams and Sparages submitted a response package on 1/15/21. Meridian Engineering submitted their response to Williams & Sparages 1/15/21 package with a new letter dated 1/29/21. Cook noted that Michael Capachietti from Meridian was present and he suggested that Sparages review the 1/29/21 letter with the Board.

Sparages stated there are 3 waivers being requested:

Section 4.2.4.9 minimum frontage on the existing street. Sparages stated that the existing frontage at Main Street is 142.52-feet, where 150-feet is required (approximately 7-1/2 feet short). He stated they positioned the road dead center to provide the maximum buffer to the abutters.

Section 4.2.4.10 distance of road centerline to the sidelines of the property lines. Due to the length of the frontage being about 7-1/2 feet short of the requirement, the distance of the road centerline to the sidelines of the property is also short. The distance on each side is 71.26-feet on each side where 75-feet is required.

Section 4.4.11 minimum distance between stormwater basin embankments from roadways and property lines. Sparages stated that embankments abutting stormwater basins must be a minimum of 25-feet from roadways and property lines. He stated that ponds 3P, 5P & 6P are each within 25-feet of a property line.

Cook noted that Meridian's letter states that waivers of these requirement are needed or the plan should be revised to comply with the requirements.

Sparages stated that the rest of the comments are minor editorial changes.

Sparages addressed some other matters. One involves placement of the street trees in relation to the right of way of the road. He stated that typically street trees are placed in the right of way near the edge of the pavement of the street. He stated this poses a problem because root structures and limbs tend to damage sidewalks and utilities over time and it becomes the Town's responsibility to maintain them. He stated that they located the street trees just outside of the right of way on the properties of the lot owners. Cronin asked if this requires a waiver. Sparages stated it does not.

Sparages stated that the abutter at 525 Main Street, Stacy Vuylsteke, owns a back lot of about an acre. He stated she keeps bees on the back lot and that access to the back lot through her own lot is challenging. He stated that Vuylsteke asked that an easement be granted to allow that her to access the back lot using the new roadway. He stated that Michael Crowe, the developer, has agreed and will provide an easement over Lot 1 for this purpose

Sparages stated that the proposed trail initially ran between the property line of Lots 1 & 2. They have revised this trail location to hug the driveway of Lot 2, to be outside the edge of the 100-foot buffer zone.

Murphey asked about construction of the trail along the edge of the Lot 2 driveway. Crowe stated for the most part the trails are already in place and that maintenance will involve mowing. He has been in discussion with Essex County Trails Association, who would be granted the right and jurisdiction to maintain the trails. Murphey asked about how the trail along the driveway will be distinguishable. He asked if there would be a sign or some other type of marker. He requested that this portion of the trail be constructed so there is no question. Crowe stated that he will probably do that.

Miglioni then addressed the issue of maintenance of the stormwater management areas. He stated they agree to create a home owners association (HOA) that would be responsible for maintaining all of the system. He stated that the HOA would hire 1 company that would perform all of the maintenance based on an approved Operation & Maintenance Plan. He stated he will prepare a document for the Board's review.

Cook asked the Board Members for their questions and comments. He began the discussion by stating that the waivers being requested did not seem to be significant as long as the public benefits. He listed some benefits including diversity of housing, more housing and contributing to the Town's trail network.

Cronin asked if the road would be widened at Main Street. Sparages pointed to the points that the pavement of the new road would be rounded out and widened where it intersects with Main Street. He added they would also need to obtain a street opening permit from MassHighway.

Murphey referred to the waivers being requested and stated that the Board may grant them if it finds that it would be in the public interest to do so. He stated he would like a response from the developer in writing making a case for why the Board should grant waivers. He stated that the abutters and the Townspeople need to know what the benefits are to the Town. Sparages stated he could provide this in writing. He stated that there is a desperate need for more housing and for diverse housing in the state and in Town. He stated a unit in this project would be less expensive than a single-family home. He stated the developer would contribute to the Town's affordable housing coffers. He stated they would provide an additional trail that will better connect the existing Town trails. Murphey asked the Applicant to elaborate on what he will do to ensure that the trails will be available.

Bardeen stated that her comments are more philosophical in nature. She stated that just because it is a large parcel does not mean it is ok to develop. She stated that the property has enormous constraints such as wetlands, slopes and power lines. She noted the need for drainage structures on privately owned lots located within very narrow strips of land. She commented that the proposal might be overdeveloping the land given what is needing to happen to make this project work. She added that this frontage waiver does not exist in a vacuum.

Sparages asked a question about the Board's requirements for pavement thickness. He stated that Section 5.2.3 requires 3 courses amounting to 6" of pavement: 2-1/2" binder course, 2" binder course, 1-1/2" top course. He stated this is more than is typically required. The Board's engineer, Capachietti agreed that 6-inches is excessive. Cook stated that the DPW director should be consulted on this.

Sparages stated that another more minor waiver being requested is not to have to show large trees on the whole property. He stated that much of the 30-acre property will not be disturbed and he would like to show only those trees located in the area of disturbance.

Murphey asked for the pavement thickness that was recently approved for Daley Drive. Later in the meeting Zambarnardi reported that it was 4-inches, with a 2.5-inch binder course and a 1.5" top course.

Murphey asked Sparages to describe how the water will flow through the site. Sparages described the proposed watersheds and direction of flow for the Board. Murphey stated that he is concerned about the front section of the road near Main Street and excess water flow during heavy rains. Sparages explained that for projects between 6-9 units, DEP requires that the developer meet the stormwater management standards to the maximum extent practicable. He stated they did their best to meet all 10 standards. Capacietti concurred that they have done their best to comply with MassDep to the maximum extent practicable. Sparages stated they are not discharging to a critical area, and there is no increase in the rate of run-off and that there is = or lesser volume going off the site.

Cormier asked if there would be excess water shedding off to Main Street during such storms. Sparages stated there would not be. He stated there is a catch basin connecting to a 25-inch clay pipe in Main Street. He stated that the low point at the edge of the new road is set up higher than Main Street so the water from the development is directed to go into the project's system. Cormier stated he is concerned that there might not be enough of a pitch to have the water flow in this way, noting that the pitch is 1% from the high point toward Main Street. Sparages stated the intent is to grade the proposed road to be higher than the gutter line of the road. Sparages stated that he would lay out very clearly what the design intent is with a worksheet that includes spot grades and also add it as a detail called out on the plan.

Murphey noted that the Town's DPW Director does not agree that this should be a Town road. It was clarified that Town services would not include maintenance and repair of the stormwater management system. It would involve plowing, roadway paving and maintenance and maintenance repair of the water line in the right of way.

Zambarnardi stated her understanding that the Board's Subdivision Regulations set out the standards for new roadways in Town. She questioned what the Board's rationale would be for not recommending that the road be accepted as a Town road if it complies with the regulations. She stated the DPW would have more practical concerns, such as funding, staffing and proper equipment. Both entities would make recommendations and Town Meeting would ultimately decide whether or not to accept the road as public. Board Members asked if DPW would revisit the question with the current information. Murphey stated he is not opposed to the Town taking over the road so long as it is clear that the HOA is responsible for the stormwater management system.

Discussion over the trails resumed. Crowe stated he would turn responsibility for the trails over to the Town or to the Essex County Trails Association (ECTA), whichever is preferred.

Bardeen discussed other responsibilities of the HOA such as landscaping and maintenance of the street trees. Zambarnardi stated the HOA budget would need to fund these items. Migliori stated he would provide a draft HOA document to the Board. Sparages noted that the Operation & Maintenance Plan for the stormwater management system would be included in these documents.

Murphey stated that he would like a document submitted that would summarize the details and particulars for the trails. Cook requested a sketch showing the existing trails that the new trails would connect to, and the planned trail network. He stated that no metes and bounds were necessary, but color-coded lines mapping out the network.

Cronin asked if the open space provided would be limited to the trails. He understood that the lots could not be further subdivided because the new road would not provide the required frontage for additional lots. Cronin

asked if any of the lots would have land that is restricted in any way. Crowe stated that there is potential for open space on Lot 1, though it would be privately owned. He stated that there are natural restrictions such as wetlands and 2 sets of easements that would make further development prohibitive.

Sparages stated that a trail easement runs through Crowe's property to the west. The easement runs northerly to 495 Main Street and is dedicated for equestrian use only. Crowe stated he will open that easement up to the public regardless of whether the abutters agree to open theirs up to the public. It was noted that there is another part of this trail that is an old path that Crowe does not intend to continue and he stated that he will have that taken off the plan.

Reed asked to discuss the situation with ownership of the septic systems. Sparages stated that each lot has 2 units and 1 septic system to serve both units. A condominium would be established for each lot and the condominium would be responsible for the septic on its own lot. The condominium would also be responsible for the landscaping on its own lot.

Bardeen asked that the responsibilities be summarized. Migliori stated that there would be 4 condominium associations, each with two homeowners. Each condominium association would be responsible for the septic system and the landscaping on its own lot. Migliori stated there would be one home owner's association (HOA) with all home owners in the project having membership. The HOA would be responsible for the stormwater management system, landscaping at the top of the road, and the landscaped island at the cul de sac turnaround.

Cook asked if there were any members of the public who had questions or comments.

Deb Hamilton, 227 Middle Street stated she is on the Mill Pond Committee, she is the Vice President of the West Newbury Riding & Driving Club, and the Vice Chair of ECTA. She stated that ECTA is eager to help with the care of the trails. She views these trails as providing a significant public benefit. She added that ECTA is good with building bridges. She supports Crowe drawing more than just equestrian users to the trails.

Cook stated that the Conservation Commission had asked Sparages to respond in writing to comment letters submitted by Valerie Gingrich and Kate Day. Sparages stated that he would review the letters and provide responses, which he would share with the Planning Board.

### **Motion**

Cook moved to continue the Public Hearing to February 16, 2021 at 7:15.

There was no further discussion .

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

### **Discussion with Building Inspector of Potential Zoning Amendments Regarding the Floodplain Overlay District, in Compliance with New FEMA Regulations**

Building Inspector Sam Joslin addressed the Board and stated that the State through FEMA is requiring that cities and towns update their floodplain bylaws. He stated essentially, the changes requested are improvements to ensure these bylaws match the building code. He stated there is a model bylaw and communities are being asked to update their current bylaws to reflect the model. He has a draft prepared and can share it with the Board. There is risk that residents of cities and towns that don't comply could lose access to government subsidized flood insurance (National Flood Insurance Program). He stated there are not many properties in Town that are impacted and that developable lots are even fewer.

Members of the Board indicate they will sponsor the Zoning Amendment for Fall Town Meeting. They also ask for a redline version of the Bylaw.

### **General Business**

- Updates: Storm Water Bylaw in Compliance with MS4 Permit Requirements – Zambarnardi provided a brief update on work she has completed since the last meeting including reviewing the model bylaw and regulations, reviewing bylaws of nearby communities and speaking with the Groveland Town Planner about their stormwater program.
- Correspondence: Advisory from Mead, Talerman & Costa, LLC re: Act Enabling Partnerships for Growth, Changes to Zoning Act, G.L. Ch. 40A – Zambarnardi stated that changes have been made to the Zoning Act, Chapter 40A and that West Newbury might be affected. She stated that cities and towns with public transit or that are served by public transit will be required to provide areas with by right multi-family zoning. She stated that DHCD is developing guidelines and that she will keep apprised of the matter.
- Minutes: December 1, 2020; December 15, 2020; January 5, 2021; January 19, 2021  
Board Members reviewed each set of minutes and made edits. After completing the review and edit of each set, Cook made a motion to approve the document with edits, seconded by Murphey. A roll call vote was taken each time and all 4 motions carried 5-0.
- Administrative Details: Spring Town Meeting Article Submission Deadlines – Zambarnardi reviewed the timeline with the Board.
- Items not Reasonably Anticipated by the Chair 48 Hours in Advance of a Meeting – There were none.

### **Adjournment**

Cook moved to adjourn the meeting at 9:30 pm

Bardeen seconded the motion

The Roll call vote was taken and passed 5-0.

Respectfully submitted,

Leah Zambarnardi

Town Planner