



**Town of West Newbury  
Planning Board  
Tuesday, June 1, 2021  
381 Main Street, Town Office Building  
[www.wnewbury.org](http://www.wnewbury.org)**

**Minutes of Meeting**

**Open Session:** 7:00 p.m. by remote participation (see below)

**Addendum to Meeting Notice regarding Remote Participation**

*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 limitations 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 into the website or by calling the telephone number listed below:*

**GoToMeeting**

Phone: (646) 558-8656

Access Code: 945 9520 5424

Passcode: 727188

Or from computer, tablet, or smartphone:

Join at: <https://zoom.us/j/94595205424?pwd=Tjl2ZFVlRGlfZ0p0TU5kY2pBczY0QT09>

*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, Brian Murphey, Jake Cormier, Ray Cook, and Tim Cronin. Town Planner Leah Zambenardi was also in attendance. The meeting was held via Zoom Conference.

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**1. Definitive Subdivision Plan - 519 Main Street & 0 Stewart Street, Assessors' Map R14, Lots 36 & 54 - Owner/Applicant: Deer Run Land Development LLC, 6 Mechanic Street, Kennebunk, Maine - Approved April 2021 - Next Steps and Trail Easement:**

Cronin reviewed some changes to the proposed trail easement including a minor language change, and whether the Town should be called out as the successor to the easement if the Essex County Trails Association were to give it up. He stated that Town Counsel Michael McCarron sent an e-mail dated 5/17/2021 suggesting the minor language change. The developer, Michael Crowe stated he was in agreement with the change. Regarding the Town's control of the easement, Cronin stated it was McCarron's conclusion that it was the discretion of the Board. Murphey stated he does not support having the Town involved in the trail easement.

Zambernardi read from the trail easement, which states, "In the event that ECTA is dissolved or determines that it no longer desires to perform its obligations hereunder, grantee shall have the right to assign all of its rights and obligations under this easement to West Newbury Town and/or to a nonprofit land trust created for the purposes of preserving and protecting trails in the Town of West Newbury and/or in Essex County." It also stated that the Town has to give prior written consent if it's given to somebody other than the Town.

Deb Hamilton, 227 Middle Street, Vice Chair of ECTA, stated that the ECTA membership is entirely in support of the trail easement and looks forward to working with Mr. Crowe. She stated that they're not going anywhere, but in the unlikely event that they did, they do have a successor, and that is often Greenbelt.

With regards to the Meridian proposal for inspection services, Cronin stated he didn't have any comments, sees that it's a fair number of hours and as far as the scale of development in West Newbury, this is a significant one. He stated that billing is based on the hours that are devoted to the project, with an estimated amount of \$16,120. Murphey stated that the amount is excessive.

Zambernardi added that the estimate for the peer review for this project was similar, and much higher than she's used to seeing from Meridian. She stated that Meridian has new management that is making some changes, including accounting for everything that might be needed in the scope estimate. She stated that what when the peer review was completed, they had not spent nearly as much as the estimate. Murphey stated he'd be in favor of knocking that back a bit in dollars with the provision that the applicant will need to fund extra costs. Crowe inquired about the frequency and nature of inspections. Zambernardi stated that there is a schedule provided in the subdivision regulations, "Inspections, Section 6.5," and she suggested that could be worked into the scope or Certificate of Vote. Cronin deferred this topic to the next meeting, and suggested there be a follow-up with Meridian to get a better understanding of the scope, delineation of the rates, explanation as to what the hours are, and incorporating the requirements that are in the Board's rules and regulations. Crowe stated that he's agreeable to whatever the number is because he doesn't want a delay.

Zambernardi suggested that the Board do something in the interim that could be signed in order to get going with the preconstruction meeting, have Meridian there to do that. Cook stated that it sounds good to him and would hate to see Meridian's lack of clarity delay a

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project. Board members were in agreement with that. Zambenardi stated that she would call David Kelly from Meridian to convey tonight's discussion and invite him to the next meeting to clarify.

Cronin asked about the 8-month construction schedule. Crowe stated that his objective is to get the road built to binder so that he can start construction of houses in the fall. Once the binder is in and the services and the detention basins are built, there's going to be months where there is nothing done on their part because final pavements and things like that won't happen until the earliest probably a year from now. He stated that it could be 8 to 12 months.

Zambenardi stated that Mr. Crowe has submitted most of the documents for recording at the registry of deeds, including the trail easement, the homeowner's association, and the access easement to the abutter. She stated that they have not yet received the performance guarantee. Mr. Crowe asked for clarification on whether they can build homes while they are under the covenant not to convey. Zambenardi stated that the developer will request a release of a unit from the Covenant Not to Convey if it's ready to sell. If all improvements are not complete, the Board requires another form of surety in its place, such as a tri-party agreement or a cash bond, based on an estimate of the remaining construction. Cook suggested modifying the boilerplate language to reflect this. Crowe and the Board Members discussed other components of the Covenant Not to Convey and the requirement for a pre-construction meeting.

Cronin asked about the start date for construction. Crowe stated he would like to begin as soon as the paperwork is settled. He stated he first needs to set up erosion control around the property, then removing trees. He stated that the road is not complicated to put in, as there are very little fills and cuts.

**2. 14 Kimball Road - Graf Realty Trust, John A. Graff, Trustee - Planning Board Recommendation on exercising Right of First Refusal for land that is valued, assessed and taxed under Chapter 61A:**

Cronin stated that the Board's role is to respond to the Select Board in their request for input on whether the Town should exercise its right of first refusal and proceed with purchase of the property. He stated that the documentation was provided to the Board with the notice on the Planning Board website. He stated that the land includes three previously approved ANR lots, and that the purchase price is reflected as \$1.1 million.

Murphey inquired as to whether the \$1.1 million is just for those three lots, to which Board members agreed that is correct. Murphey stated that lot 4 is not included at this point. Bardeen stated that for now it will remain as chapter land. Cronin stated that it is a unique parcel, a very striking and a very iconic site, so he can see why it's such a valuable piece of property. Cook stated that he is conflicted about this property, and thinks there could be value to the Town to buy it and keep it as open space in order to preserve the rural character, etc.

Cronin inquired as to how Board Members considered the purchase price in relation to the request. Cook stated that there is a procedure in place where the Select Board would have to seek its own appraisal. Murphey stated the Planning Board is being asked to speak to

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whether there is intrinsic value to the Town, but acknowledged that it's hard to not look at it with dollars and cents in mind.

Bardeen stated that if this were 50 acres adjacent to a school, it might be easier to make a compelling argument that it could have value to the Town. Cook added that it's a beautiful piece of land that everyone loves, but he doesn't know that it would have any value to the Town as a public park. He stated that the Town has already acquired a lot of open space, and this would probably be a hard sell at Town Meeting. Bardeen added that what's unfortunate about this is that the remaining piece, lot 4, is going to be less interesting once it's looking down into three back yards. She stated it seems to devalue itself as it gets broken up. Further discussion ensued as to things that are already underway in this area.

Murphey stating that he does not see the value to the Town, noting that it is lovely land, but the Town should not buy every piece that comes available. He is not in favor of purchasing. Bardeen stated it is a beautiful hillside, though there's a lot of Greenbelt land in the area, and protected land at the Cherry Hill Nursery, all of which are arguably larger parcels contiguous to other protected parcels, so she doesn't feel this purchase is necessary. Cronin concurred that it's beautiful property, but there's no unique habitat or archeological element to this, so he's not in favor.

Hamilton added that the horse community has a vested interest in the most westerly edge of Lot 1, heading back through to Lot 4, and then down to property on Ash Street. She stated the Myopia Hunt Club rides through there probably four times a year, and the people in town who are accustomed to riding trails, whether they're official trails on public land, trails with bonafide easements, or trails with landowner permission, this is a trail of long standing that Myopia has maintained, mowed, built fences, and a jump onto Middle Street on both sides of the road. She understands trails have to get altered when new houses go in and take up the spots where the trail went, but she would love to see that a trail easement along the westerly bound of the property be a part of any subdivision, even though it may be too late for that.

Hamilton concurred with Cook, that this would make a magnificent park of some description, whether it's a dog park or a play space. She noted that these are the three most beautiful lots available in town, and consequently, with her realtor hat on, she does see that they're worth the asking price to the Town.

With regards to an easement, Bardeen stated that would probably involve someone approaching the Graff family to try to nail down an easement before it conveys, and then to hope that the landowners have an informal thing and approach the new owners and explain what is normally done in the area.

Cook stated that he feels it's important that when the Planning Board makes recommendations on land purchases to the Select Board, that it be taken seriously and not recommend that the Town buy every parcel that comes up. He stated the Planning Board has been good about this in the past, which is another reason not to recommend the purchase of this land.

Cronin suggested it would be important for the Board to put some explanation in its recommendation letter regarding the Board's preference that the property be preserved, but

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noting that there is nothing specific about this parcel that the Board could see as having unique nature. Further discussion ensued with Murphey stating that there is another house across the street that will come up for sale at some point, and that lot 4 is not part of this project. Bardeen and Cook concurred.

Cook also stated this land is land-locked with no connections to other public land. He would also add Hamilton's point regarding the traditional use of the westerly portion of lot 1. He stated the Board might recognize the value there. He stated that at this time, he does not think the Planning Board should recommend the Town purchase the land.

**Motion: Cook made a motion that the Planning Board does not recommend the purchase of this land at this time, and that Zambenardi draft a letter expressing the points that were raised during the meeting. Seconded by Cronin.**

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

**3. Review of Statute and Regulations Governing Subdivision Approval Not Required Plans (ANR's):**

Cronin stated this was put on the agenda for a learning session for the Board relating to property on Archelaus Hill Road where a decision of the Board to endorse an ANR was ultimately overturned by the Court.

Murphey explained that when considering an ANR, the Board studies the plan and if a defect is seen, it would be remedied before a vote is taken. He was surprised that the Board's ANR decision was overturned, and the Court determined that the ANR should have been denied because the Board should have required an Order of Conditions (OOC) to prove practical access, which is noted in the Zoning Bylaw. He noted that requiring an OOC was talked about, but the Board ended up accepting an opinion from the Conservation Agent as opposed to an actual OOC. He stated that it's a fine line but he feels that it's worthy that the Board understands what they probably should have done so that we don't repeat this in the future.

Zambenardi displayed the ANR and stated that she took some time to review the ANR Handbook in the context of the plan and the Court's decision. With regards to this ANR, the Board approved the plan in 2017, and the issue was whether there is practical access from the Middle Street frontage onto lot 3 and lot 4 on the plan. The Board asked this question because there are wetlands along the entire frontage of both lots 3 and 4. In addition, the Board looked at whether or not it could require an Order of Conditions. The Board endorsed the Plan as an ANR. Zambenardi stated that the judge overturned the Planning Board's decision finding that an OOC was required to prove adequate access.

She went on to discuss cases that influenced this decision, beginning with Corcoran v. Planning Board of Sudbury, where the Planning Board denied endorsement of an ANR plan for 6 lots because regulatory approval for a wetland had not been obtained by the Applicant to prove there was practical access to the building sites at the read of several lots. On appeal the Land Court reversed the decision indicating that the plaintiffs were entitled to an ANR because the Subdivision Control Law is concerned with access to the lot, not to a house site.

The Appeals Court then reviewed the case and found that 3 of the 6 lots had no direct access  
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across the frontage of the lots to the main buildable part of those lots, without an appropriate official approval for wetlands alterations, and therefore found that the proposal should be treated as a Definitive Subdivision and not an ANR.

Zambernardi stated that in instances involving wetlands, practical access can be found to exist if the applicant has a valid Order of Conditions at the time of application. However, if the applicant comes forward without an OOC, the Board has to make its decision on the plan being presented at the time of application.

Zambernardi further discussed the case of Poulos v. Planning Board of Braintree, explaining that Poulos applied for an ANR plan for 26 lots with frontage along an existing roadway. She noted that the lots could not be accessed from the road because there was a guardrail installed by the State DPW along the boundary. The Planning Board denied the ANR based on the fact that there was no practical access at the time of application. On appeal the Court reversed the decision of the Planning Board finding that if necessary grading changes were made to the lot, the State DPW could take down the guardrail and the lots would then have practical access. This court ruling was reversed on appeal with reasoning similar to Corcoran, that access has to exist at the time of application.

Zambernardi stated that the Planning Board should therefore consider the conditions that exist at the time of application, not that might exist in the future if certain impediments are addressed. Cook stated that it's not necessarily only the conditions on the ground, but it's also documented approval or permission to modify those conditions to show you have access. He further stated that the access doesn't have to be physically there, but you have to show that you have already received permission to modify the situation on the ground. Further discussion ensued with Planning Board members regarding past ANR requests and the Board's rationale for their recommendation in this case.

A conversation also ensued among the Planning Board members regarding whether stone wall removal that is subject to a permit under the Scenic Roads Bylaw is an impediment to practical access. Cormier noted that it would make sense for the applicant to first obtain a permit under the Scenic Roads Bylaw, then seek ANR endorsement. Board members offered their opinions and different ways to handle these situations, including what the Planning Board should require for approval of future ANR requests.

#### **4. General Business:**

##### **- Updates: Sullivan's Court:**

Zambernardi had a conversation with the developer, Thomas Neve regarding pending completion items and the Members went over each item. The Board generally felt that as things move forward with plantings, Mr. Neve should be required to report updates to the Board.

There was also discussion regarding the trail easement and changes recommended by the Conservation Commission, which Neve does not support. Cronin noted that he had reviewed the document and had suggested changes. Zambernardi and Cronin indicated they would reach out to the Conservation Commission to help move the matter forward.

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With regards to parking spaces for trail access, Cronin provided an update on his observations of existing conditions, and added that future maintenance should be discussed with the Town's DPW. He stated that the Board should consider asking DPW to review the roadway and parking area for input on the adequacy and future maintenance. Suggestions were offered by Planning Board members as to what they would like to see put into the area in order to maintain it in a safe and adequate way, perhaps adding railroad ties and signs pointing people to the trails, etc.

Regarding the as-built and the street acceptance process, Zambenardi stated that Mr. Neve's surveyor is working on the plans. She stated that he has been given the plan requirements. Upon receipt of the plans, the Board would have Meridian conduct a review and make recommendations to the Board. Once Meridian's review is concluded, the Board will vote on acceptance of the plans and a recommendation to Town Meeting on Street Acceptance.

With regards to the release of the performance bond and acceptance of \$10,000 from Neve to be put toward design and construction of the trail between Sullivans Court Extension and River Meadow Drive, Zambenardi stated that Finance and Legal Counsel will advise on how to proceed.

- **Correspondence:**

Zambenardi stated that the Board received three notifications of public hearings in Haverhill and Groveland.

- **Administrative Details: Associate Member Search, Minutes Taker Update, Re-Opening Update:**

Zambenardi stated a few people have expressed interest. She stated that the Town Manager's Office would soon put out a notice listing all of the open volunteer positions in Town, including this position.

With regards to the Minutes Taker update, Zambenardi stated she has a call scheduled with an interested person tomorrow.

With regards to the Re-Opening update, Zambenardi stated that the building opened officially to the public today, that masks are still required in the public spaces such as hallways and is open for regular office hours. In terms of meetings, she spoke to Jennings today, and the state of emergency order will be lifted on June 15<sup>th</sup>, and he stated that in-person meetings are going to be resumed as of that date. He is seeking feedback, including the option of hybrid meetings.

Zambenardi also inquired of the Board as to their preference of in-person meetings, with Murphey stating that he'd rather wait until September to discuss conducting in-person meetings, with Cook stating that he would do it, though he is somewhat uncomfortable. The remainder of the Board members agreed with Cook. Zambenardi read a post in the Zoom Chat from Jen Solis of the Daily News indicating that "there was discussion at this West Newbury Planning Board Minutes, June 1, 2021. Approved December 7, 2021.

afternoon's Select Board meeting and Wendy Reed proposed each committee and board needs to make their own decision regarding in-person meetings and it's still under discussion.”

- **Items Not Reasonably Anticipated by the Chair 48 Hours in Advance of a Meeting:**

Members of the Board discussed the summer schedule and decided to cancel the July 6<sup>th</sup> meeting due to the July 4<sup>th</sup> holiday. Zambenardi suggested that if something time sensitive comes up the Chair could call for a special meeting.

**Adjournment:**

**Cook moved to adjourn the meeting at 9:00 p.m.**

**Seconded by Murphey.**

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

Respectfully submitted,

Susan M. Lobie, Certified Electronic Transcriptionist  
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