

Meeting Minutes
Planning Board

Wednesday, February 17, 2021
Virtual Meeting via Zoom

APPROVED

Members Present: Peter Paicos, Chair; Larry Murphy; Leslie Matthews; Woody Knight; George Morse; Mary Stohn (Associate Member)
Staff Present: Martha Taylor, Town Planner; Emily Noble, Planning Board Administrator
Town Counsel: Brian Winner, Mead, Talerman & Costa, LLC

P. Paicos opened the Planning Board meeting at 7:02 p.m. and verified that all members and persons expected to be present were in attendance.

He then announced that this February 17, 2021 Open Meeting of the Newbury Planning Board was being conducted remotely consistent with Governor Baker's Executive Order of March 12, 2020, suspending certain provisions of the Open Meeting Law due to the current State of Emergency in the Commonwealth due to the outbreak of the "COVID-19 Virus." He stated that the Planning Board was convening by video conference via Zoom, as posted on the Planning Board's agenda, and provided information on how people could view and join the Zoom meeting and participate when public comment was invited. He concluded by stating that each vote taken in the meeting would be conducted by roll call vote.

Following the opening remarks, P. Paicos turned to the first item on the agenda.

A. Definitive Subdivision Plan – Performance Guarantee and Endorsement: 108 Main Street; Applicant/Owner: Triple Q, Inc.

M. Taylor said the appeal period for the Decision on this Subdivision has passed and John Colantoni is requesting approval of a Performance Covenant as his form of Performance Guarantee. Requested actions tonight would be a vote by the Board to approve the Performance Covenant and endorse the Subdivision Plan, as well as a vote to authorize the Chair to sign both of those documents on behalf of the Board.

Motion: A motion was made by L. Murphy and seconded by W. Knight to approve the Performance Covenant for 108 Main Street; Applicant/Owner: Triple Q, Inc. A roll call vote was taken. L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes; M. Stohn, yes.

Motion: A motion was made by L. Murphy and seconded by L. Matthews to endorse the Definitive Subdivision Plan for 108 Main Street; Applicant/Owner: Triple Q, Inc. A roll call vote was taken. L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes; M. Stohn, yes.

Motion: A motion was made by L. Matthews and seconded by W. Knight to authorize the Chair to sign both the Subdivision Plan and the Performance Covenant for 108 Main Street on behalf of the Board; Applicant/Owner: Triple Q, Inc. A roll call vote was taken. L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes; M. Stohn, yes.

B. Liaison Reports

L. Matthews reported that at its last meeting, the Select Board discussed the Newburyport Turnpike project and Plum Island. L. Murphy reported the Zoning Board of Appeals regular monthly meeting is tomorrow night; they will be taking up the 40B again. He also noted that it might be of interest to the Board members that Seacoast Canine appealed the ZBA's Decision that their use is not a Customary Home Occupation. M. Taylor had nothing to report on the Merrimack Valley Planning Commission. P. Paicos reported that the Conservation Commission had met the previous night and the main item of discussion was the proposed modifications to the Wetland By-Law. P. Paicos said the buoy was successfully removed from the beach and he will continue the rest of his Conservation report after the public hearings.

C. Concurrent Public Hearings (Continuance) – A. L. Prime Gas Station and Convenience Store with Coffee Shop Tenant with Drive-Thru Window Operation, 23 Central Street (Map R20, Lot 28); Applicant: A.L. Prime Energy, c/o Anthony Guba, P.E.; Owner: R & E Realty Trust, Ronald & Edna Pearson, Trustees (Continued from January 6, 2021):

- 1. Site Plan Review Application**
- 2. Special Permit Application (gas station & drive-thru operation)**

P. Paicos opened the public hearing and reiterated that L. Murphy has recused himself. He said he believes they have not received any new information from the Applicant and asked A. Guba if he had anything to present.

A. Guba said at one of the previous meetings there was a quick photo of a gas station's lighting and another of Dunkin Donuts' architecture and he said he did submit something on the lighting since then, basically saying the lighting they are proposing to use is exactly the same as what is in that photo that the Board indicated was something it would like A.L. Prime to try to replicate.

He said he would like to do a quick review of the highlights of the project before the Board reviewed the draft Decision so that the Board could consider those points during the review process.

He said they are proposing a permitted use. They are not requesting any waivers or variances. They meet or exceed all the Zoning dimensional requirements, setbacks, parking lot coverage, snow storage and signage. They meet or exceed all of the Town and State Stormwater requirements for a project that is being classified as new development. They meet or exceed all of the requirements for the underground storage tanks, the fueling facility, and the fire suppression system on the self-serve pumps. He said they are not located in any buffer, wetland, or resource area. They have addressed and satisfied the engineering and traffic peer reviews. He said they do have support of all the immediately abutting property owners. They have made numerous revisions to the plans since they first submitted it. They agreed to changing the driveway configurations, to realign the Central Court intersection, to move the curbing and adjust the striping on Central Street to provide a bypass lane. They have added a sidewalk from the property to Fruit Street. They have changed the roof line and the siding on the building. They

increased the landscape plantings. They made revisions to the plan to satisfy concerns that the Fire Department had. They revised the lighting plan so that it meets all the Town requirements. He said they have a bike rack that was suggested by the Traffic Peer Reviewer. They changed the traffic flow around the building to be one way. He said they made a number of technical revisions that were needed to satisfy the peer review comments. He said they continue to be willing to discuss specific changes the Board might want, except for the changes they have already considered and reconsidered in depth regarding moving the fueling operation to the rear of the property and accessing the property from Fruit Street, which he said they just really can't do.

G. Morse asked if the fence they have goes all around the property. A. Guba said they can do that, but they are currently showing fencing on the east side – the back and the west side are not fenced in. G. Morse said he was asking in case of an emergency for personnel to be able to exit the property quickly.

M. Taylor confirmed that she had received the email that A. Guba spoke of about the lighting. She noted that she had received a couple of comments from Christopher Murphy, which she thought had come in before the last meeting, and one from David Melchionda, which had come in since the last meeting.

P. Paicos then opened the hearing to public comments. He asked for new comments or new information.

Kathy Spurling, 10 Parker River Drive, said she doesn't have anything new but wanted to note again that over 200 people have signed a petition opposing the project and there are several abutters who are against the project, even though A. Guba says that the immediate abutters are in favor. She said although the lighting may meet requirements, there will still be light trespass from headlights into the neighborhood. She said they still have issues with the building, it is too big for the site. She said they would like another project on that site, just not this gas station. She referenced the traffic issue that was brought up at the last session of the hearing and the "do not pass" sign which was put up by the State, according to Erik Miramaldi, and said she doesn't understand how widening of the road could be allowed.

Christopher Morris, 9 Central Court, said A. Guba had said that the road will be widened to include a bypass lane, but wanted to clarify that it is not a bypass lane as designed – it will not be striped as a separate lane, all they are doing is making the road wide enough so that if people choose to drive off the side of the road to go around a turning vehicle, they can. He said where you are asking people to drive off the road there is a bus stop where students wait for the school bus.

He said the traffic report didn't include anything about students going in to the facility to get coffee in the morning and then have to come out and turn left through a lane of people waiting to turn into the gas station when people from Parker River Drive and Central Court are trying to get on to Central Street to go to work. He said there is no number of additional accidents and injuries that is acceptable.

Avery Woodworth, 19 Downfall Road, asked for a clarification that a special permit is required by default because it is a gas station. P. Paicos replied that the project requires

both Site Plan Review Approval and a Special Permit. A. Woodworth said if you look at the criteria he doesn't believe the project meets them in a favorable manner.

Chris Murphy, 9 Parker River Drive, said he just wanted to update the Board on the fact that the petition against the gas station has more than 275 signatures.

G. Morse asked if the Board on its own could authorize the widening of Central Street and the realigning of the intersections and the addition of the sidewalks. M. Taylor said that the Applicant would certainly need to coordinate with the DPW and might need to seek permissions from the Select Board as well. B. Winner said typically if a road is going to be altered, the Select Board's approval is needed.

M. Stohn asked if A. Guba could address the issue of the size of the proposed development in relation to the space available. She said it has come up quite a bit that there is a lot going on in a small area. A. Guba said that includes a number of issues. From a zoning perspective, he said one of the safeguards that that Town has in the By-Law to control this is lot coverage. He said for this zone they are allowed 50% lot coverage and they are not even using 20%. They are well under the lot coverage as far as buildings. He said they meet the parking requirements and noted that's usually another problem if you overuse a property – parking spills off of the property and onto the street. He said they have more parking than is required. He said they also have more queue space than is found to be required for that kind of operation. They are proposing a number of fuel dispensers not for any other reason than to make the operation more efficient and reduce any possible queues. He said from that standpoint they are not overusing the property. He said they meet all the setbacks and there are no variances requested. He said he understands the concern and said it is rare that you would not have people with concerns with a commercial project like this.

Karen Barry, 12 Parker River Drive, said that they spent the majority of the previous meeting talking about the traffic concerns. She said A. Guba brought up that they would widen the road and add a sidewalk, and it concerns her that he would say this without verifying any of the permits that would be required to do this. She asked if there is a "no passing" sign, why the road would be widened.

As a recap, P. Paicos said that at the last meeting the Board went through the Site Plan Review Decision Criteria and Board members were polled to get a sense of the Board in order to direct Town Counsel and the Planning Director to start the draft Site Plan Review and Special Permit Decision based on that sense.

B. Winner said that, at the Board's request and instruction, he has reviewed materials and started working drafts of the Decisions and that M. Taylor has provided some substantive comments. He noted the drafts are based on the feedback the Board provided. When reviewing the Decision Criteria, the Board noted a number of criteria it had concerns about and the draft reflects that. He noted that unless the Board makes affirmative positive findings for each one of those criteria, the Board is not in a position to grant an approval.

G. Morse said the fire station is 10 seconds to the east of the project site when driving at 35 miles per hour. He expressed strong concern about impact of traffic from the project

on fire response times to areas in Byfield west of the highway and adjacent areas in Georgetown.

Janet Nicholaisen, 6 Central Court, said that as a member of the Newbury Fire Department, and someone who drives the ambulance, she has come across that part of the road and hit the fowl that are in the road. She said she has significant concerns about the cars turning in and out of this proposed project. She said you have the possibility of two ambulances, two engines, and a ladder truck just from the Byfield station that will come over that way. There isn't a lot of space from the curve from the entrance to the gas station. She reiterated that as someone who drives the equipment, it is a huge concern for her.

Connor Beaumont, 65 Larkin Road, asked about the calculation for the lot coverage. He said they have 18.5%, and asked if that is truly total lot coverage or is that building coverage. A. Guba said it is building coverage and he thinks that is the normal way of looking at it, unless there is a separate requirement for open space or pervious/imperious surface ratio. C. Beaumont said that in his experience lot coverage refers to the total amount of lot that is covered, but he recognized that it is not specified in the By-Law.

Motion: A motion was made by G. Morse and seconded by W. Knight to continue the Concurrent Public Hearings – A. L. Prime Gas Station and Convenience Store with Coffee Shop Tenant with Drive-Thru Window Operation, 23 Central Street (Map R20, Lot 28); Applicant: A.L. Prime Energy, c/o Anthony Guba, P.E.; Owner: R & E Realty Trust, Ronald & Edna Pearson, Trustees: Site Plan Review Application and Special Permit Application (gas station & drive-thru operation) to March 17, 2021 at 7:15 p.m. A roll call vote was taken. L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

D. Public Hearing (Continuance) –Open Space Residential Development (OSRD) Special Permit Application, 105 High Road, Map R48, Lot 49; Owner: Arthur & Sandra Costonis; Applicant: DePiero, LLC (Continued from January 20, 2021)

Jill Mann, Applicant's Legal Counsel, said that she and B. Winner had met to discuss two key points that the Board wanted to be flushed out. One was the yield plan and its classification as being by right. She and B. Winner reviewed that and discussed the fact that it had also been reviewed by the peer review Engineer. She said they also discussed the open space component of the By-Law. She said B. Winner asked that they provide the Board with a very simple open space plan showing the area being created. She said she didn't submit any new material, but she created an outline of the key residual issues.

Steve Sawyer pulled up the Open Space Plan without a lot of the additional information shown on the previous plans. This Plan simply shows the open space and the development area. He then pulled up the outline J. Mann spoke of.

J. Mann said that it would be best to address the issues in the most commonsense order, which is the Yield plan question first. She said one of the purposes of her meeting with B. Winner was to discuss whether or not the Yield plan showed a plan that is by right. Pursuant to the terms of the Open Space By-Law, the Applicant needs to show the basic

maximum number of units that would be permitted for an OSRD and the way to do that is to provide a conventional subdivision plan that does not require any waivers. She said she thinks based on their discussion, they demonstrated there was no need to waive any requirements.

J. Mann asked if B. Winner could weigh in and asked if he agrees with what is written here.

B. Winner wanted to make clear that this document is not something that they agreed to, but is something J. Mann created after their meeting. J. Mann agreed.

B. Winner then said that they had a lengthy conversation by Zoom and the first topic, as requested by the Board, was the Yield plan itself. His comment, which he thinks is fairly reflected here, is that no areas of technical deficiency were brought to the Board's attention from any Town Department or Peer Review Consultant. He said there are considerations other than just technical compliance, there are some considerations that are more discretionary. He said also this is only confined to the Yield Plan for the OSRD. If a conventional Definitive Plan is submitted for this Property at some point, they will have to look at that at that time.

J. Mann then turned to the Open Space requirements, which she said she and B. Winner also discussed. She said it was suggested that they lay out what the requirements are in the actual By-Law provisions and then address them so that the Board can see clearly and concisely how the proposed project meets them.

She said the Applicant team's position is that the open space contains more than 50% of the upland area and is connected by a trail, which means it is contiguous. She said they also say that they have met the conditions or provisions of 97-5(c)(12)(a) open space. What do they need to provide? She said there has been a lot of confusion. The text says a minimum of 50% of the upland shown on the development plan must be open space. The property has a total area of 710,367 square feet, a total upland area of 532,008 square feet. The open space has a total area of 506,453 square feet and of that 328,094 square feet is upland. The requirement is met, they exceed 50% - 50% of 532,008 square feet is 266,000 square feet. She said the Open Space Parcel consists of 71.29% of the total area and contains 61.67% of the upland areas.

She said the next point is that the open space has to be contiguous. She said that contiguous, pursuant to Newbury's By-Law, has to be defined as being connected and that open space will still be considered connected if it is separated by a roadway or an accessory amenity. An accessory amenity is any feature that can be added over a principal use to make it more useful. The upland areas of the open space are most certainly connected by walking trails and are contiguous. They are proposing to put in Boardwalks that connect all of the open space. She said they assert that they provide sufficient open space pursuant to the By-Law.

She said now they come to the question of the bonus. She said this is where the By-Law gets a little muddled. She said it is discretionary of course. She said the question is whether this project is eligible for a density bonus. Their position is, yes, it is absolutely eligible because they have set aside more Open Space than what is required under the By-

Law. She said they are requesting one bonus unit. She then outlined how they determined that. We look at 97-5(c)(11), for each additional 10% over the required 50% you are entitled to a bonus unit. She said the petitioner is required to dedicate 50% of the total upland, 266,000 square feet, and they have provided more than that, they have provided 11% over. She said she just wanted to point out that it doesn't say 10% of the site upland it just says of the site, and noted that if each additional 10% is based on the total area they set aside in the open space, then they would actually be eligible for three bonus units. She said they are not asking for that, but she wanted them to see that this is how the By-Law is written and reads.

She went through how they are interpreting it as 10% of the upland areas over the required 50%. She said 266,000 square feet satisfies the 50% upland requirement and they have 62,050 square feet in excess of that, which is 11.67% of the total upland area.

J. Mann then said they are asking the Board to review the way they have walked through the Open Space component, to go through the yield first and take a vote whether you accept the yield plan, and then determine if they can proceed with the OSRD or not. She said they are hopeful that the Board will accept this and give them the 11 unit OSRD plan.

J. Mann asked S. Sawyer to show the OSRD Plan. She said if it is an OSRD it will be a condominium, if it is a traditional subdivision they will be individually owned lots. She said one thing they would put into all of the condominium documents for each of the condominium owners to approve is a Right to Farm notice.

She said the Plan shows the trails. She said while they don't have any authorization to connect to the trails for the abutting property owners, all of those trails are open, they are public trails. She said they are going to provide trails that will go to that publically available property.

She said the proposed road way will remain private in perpetuity. She said there will be one septic system that will be controlled by the condominium.

P. Paicos said since they just got these materials a couple of hours ago, the Board members would take time to review it and take this information into consideration. He asked if this is the first time they have heard about the condominium. M. Taylor said she thought it had been mentioned before.

L. Murphy asked if the Applicant could provide the Board with a breakdown of each of the areas of upland. S. Sawyer said that a plan was submitted at the last meeting. He shared the plan on his screen.

G. Morse said that he understands Town Counsel has not had the opportunity to review what has been presented by J. Mann and he would like something in writing from Attorney Winner.

B. Winner said that he had not seen the written submissions, but that they are reflective of the conversation that he and Attorney Mann had, so he is generally aware of information presented. He said the question is whether the Board has had enough time to digest this

information. He noted that he had had an opportunity with Attorney Mann to go through this information question by question, but that the Board has not had that opportunity. He said he would make himself available to the Board if they have any questions once they have had a chance to really review information presented. He added the Board has probably seen all of this information during the process, but not in this form.

J. Mann said that she only submitted this information to facilitate discussion and would not have submitted it if she thought it was going to cause a delay. She said she did not add information, but just pulled it out of what they already have so that they could go through it all. It was simply meant to be a tool, not a submittal.

S. Sawyer said he has always had an OSRD land area summary on the plan, which is basically what J. Mann just extrapolated and went over in detail. He said usually you provide a table and that is the extent of it.

P. Paicos said he appreciates that, but the Board has not seen it summarized as a narrative. He said this is the first time he has seen this and it is something that came out of the discussion between the Attorneys. He said that his hope was that the narrative was going to be presented to the Board so that the Board would have time to digest it and not make a decision on it tonight.

G. Morse said he would not have expected to make a decision tonight. He wanted to hear from both of the Attorneys on what was discussed to determine how we should move forward.

L. Matthews said she would like some time to review it.

W. Knight said they need time to review it. He said he is bothered by one thing that he has heard a few times. He said we keep talking about trails that will connect to trails on public land behind it. He said there are no trails behind this lot that are on public land. He said if you go out in those woods there is not a trail system there. There is a trail at Spencer-Pierce on Little's Lane but not behind this property.

M. Stohn said she would like a little more time as well.

M. Taylor said they have received a few emails since the last meeting. They were from Carol Rice, 330 High Road; Will Roberts, Salisbury; Chris and Bonnie Simpson, 107 High Road; a couple from Kathryn O'Brien, 103 High Road; Diane and Peter Tufts and their family, 25 Pine Island Road; and Nancy Soward, 29 Old Pine Island Road.

P. Paicos opened the hearing to public comment, he asked for new information.

Kathryn O'Brien, 103 High Road, wanted to know when someone submits a Preliminary subdivision Plan, how far in advance they have to get it in to the Planning Board for it to be considered.

M. Taylor said generally a draft is submitted two weeks ahead of time so that it can be reviewed by staff to make sure it meets all the submission requirements before it actually gets submitted. Assuming the submission is complete before the agenda is set, a week

before the meeting, it is included on the agenda and is formally submitted to the Board on the night of a meeting.

K. O'Brien said that she would like to suggest that because they have a brand new owner, they have a brand new applicant on this project, and this needs to start from the beginning. She said Mr. Manton was not the applicant and Mr. DePiero never owned the house.

P. Paicos said that they have received documentation transferring those rights. B. Winner confirmed that, saying that the applicant is required to show continuity of site control, not necessarily ownership. He said they now have appropriate and sufficient documentation showing authorization to proceed.

K. O'Brien asked why it is that the Town, the Planning Board, and the Attorneys seem to be trying so hard to work for M. DePiero to get this subdivision approved. She said it seems like every meeting, there has been some sort of a meeting that has not been part of an open meeting or hearing. She said she is concerned that there has been a one-sided approach to this subdivision despite the fact that there have been so many residents opposed to it. She said there has been very little attention to our comments, our letters haven't been read, how do we even know you have read them? No one has gotten an answer from anyone. She thinks it is blatantly prejudiced in Mr. DePiero's favor. She said he told her personally that he gets everything he wants in Newbury because Newbury loves him. She said this is a perfect example of it. She asked why is the Board helping him? You are working for the residents of this Town. She said that she has had many people calling her angry and she wanted to go on the record to say it has been very one-sided. She said it is a poor subdivision, it has been faked from the beginning with the number of lots that are on there. She said she cannot believe that the Planning Board doesn't know the yield, that they give it to attorneys to figure out. Why doesn't this Board know what a yield is?

There being no further public comment, the Board began review of the purpose and intent of an OSRD with respect to this project.

P. Paicos shared his screen and showed the purpose and intent of the Open Space Residential Development By-Law from Chapter 97-5(C).

C. Open Space Residential Development.

(1) Purpose and intent.

(a) The Primary Purposes for the Open Space Residential Development (OSRD) By-Law are the following:

- 01) To allow for greater flexibility and creativity in the design of residential developments;
- 02) To encourage the permanent preservation of open space, agricultural land, forestry land, wildlife habitat, other natural resources including aquifers, water bodies and

wetlands, and historical and archaeological resources in a manner that is consistent with Newbury's open space plan;

- 03) To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision;
- 04) To minimize the total amount of disturbance on the site;
- 05) To further the goals and policies of the open space plans;
- 06) To facilitate the construction and maintenance of housing, streets, utilities, and the provision of public services in a more economical and efficient manner.

(b) The Secondary Purposes for OSRD are the following:

- 01) To preserve and enhance the community character;
- 02) To protect the value of real property;
- 03) To provide for a diversified housing stock;
- 04) To provide affordable housing to persons of low and moderate income;
- 05) To provide open space lands managed for passive recreation which are accessible to the public.

L. Murphy said as far as (a) 01) is concerned, he is not sure how this project advances that goal. He said to 02), certainly it would be desirable to keep that back lot as open space, but they have to weigh that, it is not the only consideration. To 03) he said with the conventional subdivision plan we have a 500 foot cul-de-sac, but what is proposed here is more than doubling the length of the cul-de-sac and breaking ground for an additional five structures, so he said he is not sure if that goal is met. He said he has the same comment for 04). To 05) he said the open space plan does favor OSRD forms of development, but he said calling something an OSRD doesn't mean it meets all the goals. On 06) he said he comes back to the issue of the length of the cul-de-sac – the proposal is constructing five more structures on what is a fairly restricted parcel of land. He said the problem to him is that they have a very difficult site that they are perhaps trying to do too much with.

L. Murphy then moved on to the secondary purposes. With reference to (b)01), he said he doesn't know if they are preserving or enhancing the community character. In reference to 02) he said he find this difficult to deal with – the property owners have a right to develop their property and he wouldn't want an obnoxious use to go in, but residential use is not this in his mind. With reference to 03) and 04) he said he doesn't know if they

are providing a diversified housing stock or affordable housing. He said as far as the open space lands management, 05), he comes back to what W. Knight said about connecting trails. He said if you can get some written commitment from Spencer-Pierce that they would like to connect to the project's trails, that may help.

G. Morse said his comments would effectively be very similar to L. Murphy's.

L. Matthews said that she doesn't think the project as designed is an enhancement of the open space landscape and the style of the road. She said a lot of the points that L. Murphy made reflect the way she feels.

W. Knight said that a lot of what he would say has been covered. He agrees with L. Murphy. He said, as he said before, it is incorrect to imply that there is access to a trail system – it doesn't exist, those trails don't exist now. He said there hasn't been anything mentioned about affordable housing and that is a concern of his.

M. Stohn said, going back to the issue of the public getting access to the open space, she has always wondered where the public would park and how they would get there.

P. Paicos said they have not looked at this portion of the project before and so he thinks it is important that they look at the purpose and intent of the By-Law. He said there are concerns that have been articulated. He asked L. Murphy for guidance on next steps.

L. Murphy said they spent a lot of time on preliminary matters such as the yield plan. He said they haven't really had a meat and potatoes discussion on the actual merits of the OSRD. He said they have just highlighted some concerns that the Board members have and he thinks it would be appropriate to give the developer an opportunity to respond to them. He said to K. O'Brien that he is not sure that M. DePiero agrees that they are bending over backwards for him; if anything he probably feels just the opposite.

B. Winner said they have been spending a lot of time making sure all the boxes are checked. He thinks getting into the merits of the OSRD makes a lot of sense. He said he doesn't think they have heard perhaps as much as the Board would like on the merit and suggested that J. Mann could take an opportunity to do that now or in written form at the next meeting. He said the next step for him is for the Board to give him enough information to start working on a draft decision. In order to do that he is going to need a sense of the Board on each one of those criteria. He said he is not sure if the Board is there in terms of the public hearing process.

L. Murphy said Section 13 of the By-Law is pretty straight forward – they may grant an OSRD Special Permit if they determine that the OSRD has less detrimental impact on the tract than a conventional subdivision after considering seven criteria that the Board will want to go through at some point. Some of these criteria are very similar to what they talked about with regard to the purpose and intent section. He said at some point the Board will need to go through those and take a straw vote.

P. Paicos said he is not sure if they are there yet. He said he thinks the purpose and intent is probably a better directing point for them. What he has heard from the Board is that there are concerns and reservations about whether this is more detrimental than a

conventional subdivision. P. Paicos asked M. Taylor's opinion on when it would be appropriate to go through the decision criteria.

M. Taylor said it is up to the Board. She said it might make sense to digest the information that was provided this evening, in terms of the open space calculations and then go into detail with the decision criteria at the next session of the hearing.

L. Murphy agreed and said that would also give the developer an opportunity to respond to what the Board has said.

L. Murphy urged the applicant to take a look at section 10(b) of the By-Law, particularly the front and side yard setbacks – he thinks they have a problem with the existing structure. He said from what he can see on the OSRD Plan, the structure is only about 4 feet off the right of way. He said he thinks because it is a reduced dimensional lot they would need to take their frontage off of Surrey Lane, which would require a 20 foot front yard setback, but even if you look at it as a side set back, you don't meet the 10 feet that is required. He said he is not looking for a response right now, he just didn't want to ambush them with that at the next meeting. He said he also thinks this lot may be nonconforming as to the set back from High Road and if you are changing the lot dimensions then you may also be losing that grandfathered status.

J. Mann asked to respond to some of the comments. She said she agrees that the Board has to review the purpose and intent and make a determination. She said it appears that the Board is not in favor of this OSRD at all and that there wasn't any positive response to any degree, which was kind of surprising. She said she thinks they need to focus on those issues because there is no point to even consider the yield plan or open space plan if the Board does not believe this particular project is acceptable. She clarified that she never said that the trails connect, she said that their trails lead to that conservation property and it is about access. She said relative to the affordable aspect, she agrees there is none, there is no requirement in Newbury's By-Law and they are not proposing any because they are probably not going to get anything relatively substantial in regards to density.

J. Mann said if the Board doesn't think that the rear land is going to be a material improvement to the residents of Newbury, then there is no open space benefit. When they do a conventional subdivision there will be no access. That is the only real benefit, that they are going to provide that land.

She said with regards to less sprawl, they are really eliminating that with the OSRD plan. She said with the conventional plan they go all the way to the back and develop all the upland.

She said as far as enhancing neighborhood quality, it is a small subdivision. She said she understands that there is a lot of angst with regards to the neighborhood. She knows that at one point K. O'Brien wanted to sell and develop her land. She said everyone has the right to develop.

She said she would love to hear somewhat of a straw vote because it is a lot of time and money. She said she thinks the Board is fatigued and M. DePiero is. She thanked the Board for the opportunity to respond.

Mark DePiero, Andover, said that he has never said that Newbury is in his back pocket. He said if you have been to the last 14 meetings you would see that that is not the case. He said when he first went to see M. Taylor about this project she asked if they were considering developing the back part of the property and he said no, that they wanted to keep everything up front. He said it is only four and a half acres of the sixteen that they are developing. He said in response to L. Murphy's comment that they have the same spacing on Wilshire Road from the buildings to the road, he said it has worked amazingly well. He said when it is an OSRD, these requirements – frontage, side yard and rear yard – are relaxed because you are taking homes and packing them into small areas so that the Town and residents get the open space. He said they have never wanted to go out back. He said it has been many, many meetings, a lot of energy. He said the time to make a decision has come for them. He said it does back up to Historic New England and you can walk out there, it is all public land.

Arthur Costonis 105 High Road, said he wanted to address a couple of things. He said they are going to be heading out of Town shortly. He said they have sat here for a year and a half. He said first of all, aren't we supposed to be talking about the open space, this is 16 acres where M. DePiero is only going to be using four for development. The rest will be available to the public. Isn't that what open space development is about? He said in regard to the trails, there are beautiful trails on this property. He said he doesn't know why they need to connect to Historic New England. He said that HNE is in favor of it, but they cannot formally take a position on it. He said that the property is going to be developed, a property owner has the right to develop their property under the Zoning By-Laws. What he thinks they should look at is what they want developed here. The property is a perfect piece of property for development, it is all sand, there is water, access. There is no reason why this property won't be developed. It will just be developed by right or by OSRD. He said if the Board passes on the OSRD, that is a right they have, but you cannot stop development of a piece of property, it is private property that has rights. He said the "crazy making" needs to stop and some wisdom and insight needs to happen here with regards to what happens to this property.

P. Paicos thanked A. Costonis and reiterated that the property owner does have the right to develop their property and do what they can within the appropriate regulations and By-Laws of a community. There will be one of two things happening here and what the Board has not done throughout this process is to actually contemplate the actual purpose and intent of the OSRD with respect to this project and so the Board is doing that right now. He said it is a helpful exercise. He said applicants come before us and ask what we want and he said they are not in the position of telling them what we want as a Board. He said he thinks they are at a point where the Board needs to digest this conversation and information, and consider whether this project is consistent with the OSRD purpose and intent or if a conventional subdivision is the way that this property should be developed. He said it is an arduous process and he understands how frustrated people might be. He said he is glad L. Murphy started the discussion of the issues with the OSRD and he thinks you are getting a feel of where the Board is with that.

L. Murphy agreed, but said he would add one thing, which is that he doesn't think it is a binary choice between an ORSD and Definitive subdivision. He said if we find that this ORSD would be inappropriate it doesn't mean that any OSRD would be inappropriate. He said the biggest problem the Applicant has it is not the acreage, it is the shape of the lot. He said you have a lot of activity going on in that front piece. He said he is being candid and sharing his reservations.

M. DePiero said he would love for L. Murphy to go deeper on that. He said the idea with an OSRD is to make it as compact as possible so there is as much open space as possible. He said there would be no other way to do it than how they did it. He said they have stayed out front where there are no trees, rapid absorption, they don't cross wetlands, and they keep it very compact. He asked if L. Murphy could help him more with what he has to say. He said they are down to 11,000 - 14,000 square foot lots. He said if he could help, he thinks he is missing something there.

J. Mann clarified what the question is. L. Murphy said he thinks that it is awfully dense. J. Mann said the number of lots is based on a fiscal need.

L. Murphy said he doesn't think that the property lends itself well to a condominium, but that may require an OSRD. J. Mann said she can do a condominium with a conventional plan.

Motion: A motion was made by L. Matthews and seconded by W. Knight to continue the Public Hearing – Open Space Residential Development (OSRD) Special Permit Application, 105 High Road, Map R48, Lot 49; Owner: Arthur & Sandra Costonis; Applicant: DePiero, LLC to March 17, 2021 at 7:15 p.m. A roll call vote was taken. L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

E. Public Hearing(Continuance) – Site Plan Review Application for a new office building and site contractor storage, 84 Boston Road (Map R36, Lot 23A); Applicant: K & R Construction Company; Owner: Sled Road, LLC, Kevin Whitney & Ryan Greenwich, Managers (Continued from January 20, 2021)

P. Paicos opened the public hearing asked the applicant if they had any new information.

Chris York, Millennium Engineering, said yes, that he does have new information to share and he shared his screen. He said after the last Conservation Commission hearing they made some plan revisions based on the Con Comm's comments. He said they pulled the retaining wall a little bit further away from the wetlands. They added another row of stones to the top of the wall to serve as a barrier. He said they got rid of the guard rail and added a fence along the top of the wall. He said other than that not much has changed. He said they do need to add some spot grades. He said this is the same plan that was before Conservation last night. The plan with the trailers was a supplemental plan for the Conservation Commission.

P. Paicos asked M. Taylor if she had any comments. She said the plan with the trailers would be helpful because she thinks they have been given the impression that there wouldn't be anything stored outside. P. Paicos asked if C. York could bring that plan up.

L. Murphy said that he was told that the Conservation Commission is looking for peer review. P. Paicos said he would recap last night's meeting. He said they are looking for a little bit of guidance because they are not very comfortable with a couple of components, so they have suggested peer review.

L. Murphy said he has a plan showing outdoor trailer storage, and was not aware previously that that was being contemplated.

P. Paicos said that was news to us that came from the previous discussion with Conservation. He said they had asked if there was going to be storage of materials and their understanding was that there was not going to be any exterior storage.

Kevin Whitney, K & R Construction, said from the beginning he has always been parking trucks and trailers on the property.

P. Paicos said he thinks it was the fittings and casting and hard materials that had never been discussed with Planning.

L. Murphy asked what type of trailers these are. K. Whitney said equipment trailers, flat bed, and he said they have a couple dump trailers.

G. Morse asked how many trailers. K. Whitney said currently they own six.

W. Knight asked if all the trailers have wheels. K. Whitney said yes.

M. Stohn asked if they will have more trailers. K. Whitney said he doesn't see the need for more but they could possibly have more.

M. Taylor said she received an email from Harmony Wilson, who runs the Merrohawke Children's Program on the opposite side of Sled Road. She said she forwarded that to the Board. H. Wilson has some concerns both about the impact of construction activity on the programming for the kids.

P. Paicos said he has a couple of comments. He thinks they are going to have to have a little bit of patience to see what the Conservation Commission comes up with after they have had their peer review. He then asked C. York about the two points of entry into 84 Boston and their relation to the entrance and exit of the Transfer Station. He confirmed that the exit from the Transfer Station is directly across from the northerly entrance to this site. He said people exiting the Transfer Station would potentially have on-coming traffic from the site because that is destined to become an exit. C. York said that will be unlikely but possible. P. Paicos said people are going to be coming and going and that will be something new on this section of road. He said they are creating a potential area of conflict and he is wondering if they do in fact need two points of access to this site. He said you are going to have to take a big chunk out of the right of way down to 24 feet. He asked if it makes more sense to leave that part of the right of way undisturbed, have the retaining wall that is going to be constructed on your property line. Visually there would be no impact from what the roadway looks like and they wouldn't have a potential site conflict from people leaving the Transfer Station. He asked how necessary the two points of entry are.

K. Whitney said they really would like to have the two driveway access points because of the tractor trailers. He said it is easy to pull in one, go around the building, and pull out of the other one. He asked what the hours of operation for the Transfer Station are. P. Paicos said 7:00 to 3:00. K. Whitney said typically their trucks will be leaving by 7:00 and arriving after 3:00.

P. Paicos said this is as long as this site remains K & R's site. He said if the property changes hands to a different type of business with different hours and traffic, then there may be a conflict. There are some benefits. He said since we are talking about changing the grading within the road right-of-way significantly to bring it from 30 to 24 to meet the needs of your property, would it make more sense to leave the right of way the way it is. That way no hearing is required for tree removal, the road will stay the way it is and visually those on the roadway won't see what is going on with your operations because there will be a knoll. It would hide the appearance of the building and blend it in some. He said otherwise what you are doing is basically flattening the earth and natural features, opening up a right of way, and potentially creating a traffic conflict. He said he started think about what they had to do to plan for the possibility that the property might change hands.

K. Whitney said they would really like to have two driveways and he doesn't want to have to redesign the plan. He said it doesn't have to line up with the Transfer Station exactly but that just made sense to them. P. Paicos said either way it will create a traffic conflict.

C. York asked if this site changes hands would it require Site Plan Approval for a change of use. P. Paicos asked what if they don't want to change anything and it becomes a facility with a lot more in and out activity. C. York asked if they would require site plan approval.

M. Taylor said if it was just a new owner coming in and they were going to keep everything the same, it wouldn't trigger the Site Plan Review process. For example, if some small manufacturing business went in and there were no changes to the site or the building, it wouldn't require any process. If it was a use that requires a Special Permit, then a process would be required.

P. Paicos asked the applicant to think about it. He said the Board would not be acting on this tonight because they will be waiting for input from Conservation. He said if in fact you decide it maybe makes more sense to just have one entrance/exit, then we have addressed the whole berm, Tree Warden, public hearing, removal of trees issue.

K. Whitney said it was his understanding at the last meeting that a decision was being drafted.

P. Paicos said it is not complete yet and the hearing is still open in case there is any new information.

K. Whitney asked if this process cannot come to a completion without Conservation coming to a completion.

P. Paicos said they are two separate entities, however if one stops and says we are not going to go forward, it brings a little bit of caution to this Board to say what are they going to do if Conservation has reservations.

K. Whitney asked what happens if Conservation does not grant him approval and he has to go to Mass DEP.

P. Paicos said you're going to be delayed and it is going to be an expense. He said that was the reason for Conservation's discussion about a Peer Reviewer, who would be able to say if it would work or what to do to make it work. K. Whitney said that he understands, but asked if that stops the Planning Board from moving forward.

M. Taylor said the concern is that if the Planning Board approves the project as shown and a significant change to the project comes out of the Conservation process, you will have to come back before the Board. If the change is big enough, it will require another public hearing. That is potentially a greater delay for you then allowing the two processes to run in parallel.

L. Murphy said under the circumstances he understands his frustration, but it would be the exception rather than the rule for them to go forward and issue a decision while you have the Conservation Commission pending. Depending on what they come up with, it could dramatically change everything.

G. Morse asked if it would make any sense to have one access be an entrance and the other be an exit?

K. Whitney said the reason he is not dedicating one or the other is in case, for example, a piece of equipment is parked in one driveway you can still enter through the other so that there is no truck staging in the roadway. C. York said the southerly entrance is 20 feet wide and the other is 24 feet wide.

L. Matthews said that she agrees with a one way in and a one way out set up. She said she thinks it would become confusing traffic wise if it was not one way.

W. Knight said he understands what they are trying to do. He saw the berm work as a benefit, but since we have had this discussion, he can see how it would be beneficial to leave it and not have to do the work in the right of way. It could be a one way in there and so you would not need that line of site. He said it is just something we should all think about. He said there are a lot of things up in the air with Conservation and he thinks they should wait to see what happens.

M. Stohn said she thinks it is important for K. Whitney to have some time to think over what everyone has been saying.

P. Paicos asked if there was anyone from the public who would like to speak. Harmony Wilson, 282 Broadway, Haverhill, said she is on the Board for Merroshawke Nature School. She said currently they have 10 kids enrolled, but could have up to 20 or 30 kids a day, pre-pandemic. She said she has done her homework watching the previous

meetings and thinks some of her concerns have already been addressed. The truck traffic shouldn't be a big issue for them, since their drop off and pick up times should be in between the time trucks would be leaving or returning. Regarding light pollution, she said she knows the plan has changed to take away the pole lighting and that they appreciate that, it will benefit them. She said their programs are during the day, but they occasionally have family events at night and camp outs. She said they did not get into the process for the storage facility, but the noise has been incredibly impactful and they do have concerns about the amount of ledge on this current project and how ledge removal will impact their programs. She said if this project moves forward, they would like to know when any heavy blasting or hammer drilling will be happening so they can work with it. She said if there was any way to leave some screening or plant something on the Sled Road side, that would be incredibly helpful. She said she likes the idea of potentially leaving that knoll. She noted that the landscaping plan is very minimal, which they think it great, more native the plantings are, the better. She said they are in favor of the sign as described, reusing a piece of rock. Regarding the road, she said people fly along it and said installation of signage, such as "turning trucks," would be beneficial. She said anything to slow down the traffic would be greatly appreciated.

P. Paicos asked C. York if they are going back to Conservation on March 9 to talk about peer review. C. York said yes to talk about the details of peer review and possibly make a decision about what route they are going to go. P. Paicos asked if it would make sense for them to come back to the Board April 7 after their meetings with Conservation.

C. York asked if they could try for March 17 and continue if they are not ready.

Motion: A motion was made by L. Matthews and seconded by L. Murphy to continue the Public Hearing - Site Plan Review Application for a new office building and site contractor storage, 84 Boston Road (Map R36, Lot 23A); Applicant: K & R Construction Company; Owner: Sled Road, LLC, Kevin Whitney & Ryan Greenwich, Managers to March 17 at 6:45 p.m.. A roll call vote was taken. L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

F. Proposed Zoning Amendments for Spring 2021 ATM

M. Taylor said that she has submitted the Special Permit Regulations to the Select Board and requested that they be referred back to the Planning Board for public hearing. She said she had a brief discussion with JR Colby, Alicia Greco, and Tracy Blais to explain what the proposed amendment is about and why it is being recommended.

P. Paicos asked where they are with the Rules and Regulations. M. Taylor said she forwarded to the Board an example from Newburyport and said that they could do something as simple as guidance for people in terms of submissions.

B. Winner said his preference is to have formal Rules and Regulations so if they ever come into play in a material way, the Board can rely upon them.

L. Murphy said there was some simple language that they had looked at. If that works in the short term fine, but if we need something more comprehensive that will take some

time. They discussed the merits of adopting them as they come, working on the most important first.

L. Murphy read the simple language that they had discussed. They discussed adding some language regarding deadlines and a few other things that needed to be filled in.

A motion was made by M. Stohn and seconded by L. Matthews to adjourn the Planning Board meeting at 10:12 p.m. A roll call vote was taken. L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

Respectfully Submitted,

Emily Noble
Planning Board Administrator