

**Meeting Minutes**  
**Planning Board**  
Wednesday, March 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 6:31 p.m. and verified that all members and persons expected to be present were in attendance.

He then announced that this March 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." This Order suspends the requirement of the Open Meeting Law to have all meetings in a publicly accessible *physical* location and allows public bodies to meet entirely remotely so long as reasonable public access is afforded so that the public can follow along with the deliberations of the meeting. P. Paicos 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. Planning Directors Report**

M. Taylor said she had been in discussions with a potential developer of 7 Larkin Road. She noted there are some considerations relative to access which she will be discussing with Town Counsel, Lisa Mead, and said that this may be on the horizon soon.

The other project that is still pending is the Special Permit application for the solar project on the Town's landfill. She said that is still going through a permitting process with DEP for a Post-Closure Use Permit. The Conservation Commission has issued an Order of Conditions, but DEP had some comments, so there might be another round

**B. Liaison Reports**

L. Matthews reported that the Select Board's last meeting included an update on the plan for an Emergency Access route on Plum Island and discussion about the ability to get on to the Town's Website to schedule COVID vaccinations. L. Murphy reported that the Zoning Board of Appeals regular monthly meeting would be held the next night and would include review of the draft decision for the proposed Cricket Lane 40B.

**C. 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 team if they had any new information.

Chris York, Millennium Engineering, replied yes and shared his screen to show the revised site plans. He said they met with the Conservation Commission last week and based on some of their feedback, Kevin Whitney has agreed to reduce his building nine to ten feet in the back, to 65 feet deep by 100 feet wide. That allows them to move all of the disturbance farther away from the wetland and place the stone wall at 25 from the wetland edge. He said this seems to be what the Conservation Commission wanted to see for a setback. He said at the last Planning Board meeting there was discussion about making the northerly driveway a one way in and the southerly driveway a one way out, which they have agreed to do. He has added an entrance sign and a “do not enter” sign at the exit. He said the parking area for the trailers has been added to the site plan, as well as the location where he is going to store fittings and materials and where he will park additional vehicles. He said he updated the grading at the entrance to keep the ledge outcropping and to maintain the grading in that area as it is now.

P. Paicos recapped the changes that have been made. He asked C. York to explain the grading at the entrance and asked if the entrance will be the same as the road height. C. York said yes, the entrance will be at the same height as the road, which has been the intent all along. They were originally going to cut down and flatten the area just to the northeast of the entrance where the ledge outcrop is, but after the last meeting they plan to keep that area natural as best as they can. He said Kevin Whitney has to blast some of the ledge within the property boundaries to make the grading work on the site, but once they get to the property line the intent is to keep the grades as close to existing as they can.

L. Matthews asked if the reduction in building size was a reduction of depth or width. C. York said in depth – it is still 100 feet long and it is 65 feet deep now.

W. Knight asked for confirmation that they plan on blasting any ledge that needs to be removed. C. York confirmed that they would be blasting.

M. Taylor asked if they would be getting revised architectural drawings reflecting the new footprint. K. Whitney said, they just made these changes in the last week, but will be putting the revised architectural drawings together for a complete plan set.

M. Taylor asked what they think will be parked in the parking area. K. Whitney said 99% of the time their equipment stays on a jobsite, but occasionally a piece of equipment, such as a front end loader, a bulldozer, or an excavator, will be brought back to the building. He said most likely they would park inside the building - they just put equipment parking on the plan to indicate that there might be a possibility that they would be parking equipment outside. The property will not look like a used equipment parking lot.

Harmony Wilson, 1282 Broadway Haverhill, MA, said once again she is here on behalf of Merrohawke. She asked about the time period for blasting and whether would it be over days or weeks. K. Whitney said it would probably be over a month’s time, start to finish. He said it is hard to say because sometimes there is not as much rock as you think,

but he would anticipate a ballpark of a month. H. Wilson said that with the work going on at the storage facility K. Whitney has been great texting the teachers and the executive director to keep them informed. She said it would be great if we could continue to have that communication so that they can work around each other.

M. Taylor asked what their intention is with regard to the trees in the right-of-way, since they plan to leave the area in the right of way natural. K. Whitney said he would like to leave as many trees as possible, the only issue might be if there are any roots that get damaged.

L. Murphy asked if he was correct in thinking that K. Whitney is pretty much going to have to clear cut this property to put the building up. K. Whitney replied that he believes they are cutting about 60%. C. York said that trees will stay around the perimeter, but inside the site itself, most of these trees are going to go – the amount of grade changes will necessitate tree removal, since these trees aren't going to survive. L. Murphy said he is wondering if they should consider planting some buffer trees. C. York said they propose some out front as part of the landscape plan. He said it is about 100 feet from their property line to the driveway for the Reservation and that is all thick natural trees. L. Murphy said they will see your building though. C. York said in the summer he is not sure, but they probably will. He said they can add trees along their property line but he doesn't see how that is going to help.

M. Stohn asked what the buffer is for. L. Murphy said basically to hide the building from the abutting properties.

L. Murphy said as it is now, you can see through to Route 1. K. Whitney said that the trees that were removed aren't on his property. L. Murphy asked where the current construction easement to Newbury Self Storage is located. K. Whitney said it is about the center of where his building would be back towards the location for the dumpsters. C. York said they stayed outside the 100 foot buffer for the access to the self-storage facility. K. Whitney said that as the Storage facility builds the new buildings that are permitted, the grades of those buildings come up higher than the existing buildings, so you probably won't be able to see through.

P. Paicos asked if K. Whitney had concerns about the back of the property where the opening was created. M. Taylor said this plan shows the buffer and tree line running all the way along the westerly boundary at the property line. She said part of the question is whether there is going to be any restoration of the trees that have been removed there, because they have lost wildlife corridor as well as any visual screening between this property and Newbury Self Storage.

K. Whitney said Bill DiFrancesco does have an easement through his property. K. Whitney said he is not sure how he can plant trees when B. DiFrancesco could ask for access again. M. Taylor said the easement shown is much smaller than the construction access road that you have cut through there. K. Whitney said his easement is about 25 feet wide.

W. Knight asked about the easement shown and if they are going to put a roadway there or leave it natural, but acknowledged that it is still B. DiFrancesco's easement. K.

Whitney said it is going to remain natural, but B. DiFrancesco has the option to access the rear of his property through K & R's property, within reason.

P. Paicos asked how the buffer will be re-established where trees were removed for the construction easement. C. York said they had shown proposed trees in front, but where they are not going to be removing trees in the right-of-way, they could move them to the back to fill in the areas where trees were taken down as part of the access road or they could add a couple of white pines to fill in that area.

P. Paicos asked about how many trees were taken down for the access road. K. Whitney said probably about 20, but most of those were within the building footprint or the parking lot. He said at the actual buffer between the two properties maybe one or two trees were removed.

P. Paicos said there are two components of the Site Plan Criteria that they need to touch upon. One is the amount of cut and fill required for this project to work and the other is the significant amount of tree clearing. The area where the building, parking, and equipment storage will be located basically has to be cleared of all trees, so they probably need to think of some sort of tree mitigation plan. He said there have been a couple of different ways they have done that in the past. One way, as was done with Borrego, is to establish a mutually agreed upon tree fund replacement to the Town. C. York has already suggested moving some trees back there to reestablish a buffer, so that helps. He said with regard to the cut and fill, the entire project is cut and fill. He said the slope of the right of way has been addressed.

P. Paicos said the plan shows six trailers being stored outside and asked what size the trailers are. K. Whitney said they range from a trailer you would tow with a pickup to tractor-trailer sized. P. Paicos asked if there will be equipment stored on those trailers. K. Whitney said no. P. Paicos asked if there would be any storage trailers. K. Whitney said no. P. Paicos said it is an important question because if there is equipment with hydraulics and there could be potential spills in that area, it would affect whether or not the area is going to have to be paved and that would affect their stormwater. K. Whitney said that he doesn't get an exemption for drainage because he is using gravel instead of pavement. P. Paicos said the oil would go right into the ground. K. Whitney said they intend to use a recycled asphalt product, which is like gravel – it is rolled and compacted in place and it is very impermeable, it is an industry standard. P. Paicos said so you are using RAP (Recycled Asphalt Pavement). K. Whitney said that is what they would like to use. P. Paicos asked for confirmation that there will be no hydraulic equipment stored in the trailer area. K. Whitney said no there won't.

M. Taylor said the two most important criteria had been discussed. She then said that the Lighting plan and the Photometric plan will need to be redone to coordinate with the revised footprint of the building.

Regarding the concern with hydraulic equipment on gravel surface, L. Murphy asked if that had been discussed with the Conservation Commission. P. Paicos said it hasn't really been discussed much. M. Taylor said that she did have a discussion with Bill Holt, Conservation Commissioner, and Joe Serwatka, Town's Review Engineer, who both expressed some concern about it. What K. Whitney has described tonight may alleviate

some of that concern. She said she believes B. Holt will be bringing it up with the Conservation Commission.

P. Paicos summarized, saying the Photometric Plan and the Architectural Plan need to be revised and a tree mitigation plan needs to be thought about. He asked the Board if they were ready to direct M. Taylor to draft a decision with those caveats in mind.

L. Murphy said he thinks they are in a position to start thinking about a draft decision and the remaining Board members agreed that they could move forward.

**Motion:** A motion was made by L. Murphy and seconded by G. Morse to continue the Public Hearing on the 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 April 21, 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) – Site Plan Review Application, 3 Newburyport Turnpike (Map R47, Lots 38 & 39); Owner/Applicant: Bavaro Family Realty Two, LLC (continued from February 3, 2021)**

M. Taylor reported that the Applicant had submitted a written request that the Board continue the public hearing to March 24, 2021.

**Motion:** A motion was made by G. Morse and seconded by L. Murphy to continue the Public Hearing – Site Plan Review Application, 3 Newburyport Turnpike (Map R47, Lots 38 & 39); Owner/Applicant: Bavaro Family Realty Two, LLC to March 24, 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. 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 noted that L. Murphy has recused himself and M. Stohn, the Board's Associate Member, has been participating in the Special Permit Hearing. He said he believes they have not received any new materials.

A. Guba said he is not aware of any questions and there have been no revisions.

M. Taylor said they received one email today from Jack and Karen Barry, 12 Parker River Drive. That is the only one they have received since the last session of the public hearing

P. Paicos asked if there were any public questions or comments.

Kathy Spurling, 10 Parker River Drive, expressed her desire that the Board take into consideration all the public's comments to date.

Laura Brown, 11 Parker River Drive, said she comes out of Central Court every day and is looking at where this gas station would be. She said her problem is she can't physically see where everything is going to be. She asked if it would be possible for it to be staked out so they can have a better visual of what it is going to look like. She said she is worried about the one lane in and the one lane coming out.

M. Taylor said typically they will start staking out where the building would be, but that is usually after this process.

**Motion:** A motion was made by G. Morse and seconded by W. Knight to close the Site Plan Review public hearing. A roll call vote was taken. G. Morse, yes; L. Matthews, yes; W. Knight, yes; M. Stohn, yes; P. Paicos, yes.

**Motion:** A motion was made by L. Matthews and seconded by W. Knight to close the Special Permit public hearing. A roll call vote was taken. G. Morse, yes; L. Matthews, yes; W. Knight, yes; M. Stohn, yes; P. Paicos, yes.

P. Paicos said at this time they would start their discussion and deliberation of the draft Decisions.

B. Winner shared the Site Plan Review Decision on his screen. P. Paicos went through the Decision page by page and asked if there were any questions or comments from Board Members.

W. Knight pointed out an incorrect spelling on page two.

P. Paicos noted that on page six, paragraph 21 needs to indicate Triton Regional Middle School and High School.

On page seven P. Paicos said they need to list school busses, tractor trailers, and trucks somewhere in that narrative. He said there are multiple businesses in that area that use these types of vehicles. He said that he thinks they need to define the number of residences coming out of Central Court. M. Taylor said there are 25 residences total.

L. Matthews asked if there was any traffic identification for any traffic that comes off of 95 and heads east on a regular basis. She said she guesses that would fall into the school busses and things of that nature.

P. Paicos suggested that Newbury Elementary School be added on page eight under paragraph 25.

P. Paicos said on page ten, paragraph eight, where it says Triton High School, add the Middle School as well.

B. Winner summarized the changes that had just been made.

P. Paicos asked that they switch to the draft of the Special Permit Decision. The Board members went through the Decision page by page and made similar comments.

P. Paicos asked the Board Members if they were comfortable with all the changes that had been made. All confirmed that they were.

**Motion:** A motion was made by L. Matthews and seconded by W. Knight to approve the Site Plan Review Decision for 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. A roll call vote was taken. G. Morse, yes; L. Matthews, yes; W. Knight, yes; M. Stohn, yes; P. Paicos, yes.

**Motion:** A motion was made by G. Morse and seconded by M. Stohn to approve the Special Permit Decision for 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. A roll call vote was taken. G. Morse, yes; L. Matthews, yes; W. Knight, yes; M. Stohn, yes; P. Paicos, yes.

B. Winner added as a point of clarity that the Board just made a motion to approve and adopt the draft Decisions subject to the revisions that were discussed tonight. The draft Decisions, both Site Plan Review and Special Permit, are Denials. He said he will incorporate the revisions and circulate the Decisions back to the Board for signature. They will then be filed with the Town Clerk and the statutory process will be triggered.

M. Stohn asked how the Board members will sign the Decisions. M. Taylor said she will coordinate once she receives the amended copies.

**F. Public Hearing (Continuance) – Open Space Residential Development (OSRD) Special Permit Application, 105 High Road, Map R48, Lot 49; Applicant: DePiero, LLC; Owner: Mitchell Mantin (formerly Arthur & Sandra Costonis) (Continued from February 17, 2021)**

P. Paicos opened the public hearing and asked the Applicant or their representative to present the new materials that were submitted.

Jill Mann, Applicant's legal counsel, said they had submitted a revised and updated set of plans. She said after the last hearing it was very apparent to them that the Board had some comments and wanted them to go back, reevaluate the plans, go through all the OSRD purposes in the by-law, go through the design process again, and then resubmit. She said M. DePiero made an effort to address each of the purposes and to revise the plan. She said as they all know the purpose here is to demonstrate that there is public benefit with the OSRD as opposed to a conventional by right plan. Also this Board is obligated to make findings identifying each of those areas in which the OSRD is preferable and less detrimental than the conventional plan. J. Mann said they ran through all of the design criteria.

Steve Sawyer, Design Consultants Inc., shared the plans on the screen. J. Mann said they walked through the design process. She said their obligation is to identify all the conservation areas, both primary and secondary. They attempted to identify the areas so that you could readily see them. She said on this plan they identify what the primary conservation areas are, which are basically all the wetlands. She said all the uplands within that area are secondary conservation areas. She said they also recognized that the property has a lot of open field and that it is also considered a secondary conservation area.

The next step was to identify the development area. Because this is going to be a condominium, not a subdivision, the dwellings will not be on lots but on exclusive use areas, which are the areas that the condo owners are entitled to exclusively use. The open space will be open to the public as well as to the condo owners. She said exclusive use areas and the infrastructure have been identified.

She said then they went through the design criteria to make sure they hit everything properly because they have now increased the amount of open space and reduced the size of the development area to only 3.8 acres. She said they confirmed that they have sufficient drainage areas.

She said another important thing is screening. She said one of the goals is to make the visibility of the project less and cohesive with the community by providing some screening. She said from High Road you will still be able to see the existing home but the other homes will be fairly well obscured.

J. Mann said they also wanted to increase the amount of public amenities, not just open space, but the usability and attraction. She said M. DePiero asked S. Sawyer to make an access pathway that would be welcoming, with parking for six cars and a place for bikes. She said there will be some bird houses and the meadow will be a great place for nesting grassland birds. She said there is a woman who you will hear from later tonight that is an avid birder and who was thrilled that they were including the meadow in the open space.

She said something else that was important to them was to reduce the impervious areas and what can they do to reduce the amount of disturbance. That is what M. DePiero asked S. Sawyer to do and that is why you only see 10 units not 11. He made the cul-de-sac as short as he could – it was shortened 200 to 300 feet from the previous plan.

She said they wanted to make it clear that this is a public benefit. They increased the open space from 72% to 77%, adding almost an acre of land and by doing that they were able to increase the amount of upland.

S. Sawyer showed the comparison sheet from the plan set. J. Mann said under the Bylaw the requirement for an OSRD approval is that the Applicant demonstrate that it is preferable to what would be developed under a conventional subdivision plan. She said they didn't even compare it to the possible 12 unit plan, M. DePiero wanted to compare it to the 10 unit yield plan. She said they made comparisons through the purposes. They asked themselves how you get the best public benefit.

J. Mann said how do you create the most flexibility? A 10 unit OSRD plan gives the most flexibility to create a design that is going to blend the best, because with the conventional plan they essentially have to eat up the whole property. The OSRD allows them to beautifully landscape the front and to create that beautiful public amenity.

One of the other things they need to look at is how you encourage permanent open space. That as we all know is better under the OSRD. The next question is which is less sprawling. If you want a less sprawling development the OSRD allows that. She said they still maintained lots that are on average 12,000 square feet. She said the Conventional roadway is shorter but it is wider so there is less impervious area with the OSRD.

She said the OSRD allows them to minimize disturbance – the conventional plan does not as much. She said a Condominium Association will keep an eye on things more than a Homeowners association would and they will fine people. There will be a condo management company and the master deed will force compliance.

She said although there is no trail linking it, there are thousands of acres behind their property. This is open space where people ride their snowmobiles and horses. She said the Applicant is more than willing to open the property to horses because there are abutters with horses.

She said the final point is that are they going to be constructing all these elements in an economic fashion that is best for the community.

S. Sawyer pulled up an aerial photo of the property and the area surrounding it. All the homes in the area are showing in a light pink color. She said you can see that the general area here has all the homes close to the street. She said Riverview is a very dense development a short distance from this property, just a few houses down. She said that development has lots that are smaller than what they are proposing, she thinks they range from 10,000 to 13,000 square feet. She said the reason they wanted to consolidate is that they looked at where all the existing building and development are near this property. S. Sawyer pointed out where the limit of development would be for the OSRD. She said it ends where the barn next door ends. She said everything beyond that is open space.

J. Mann asked S. Sawyer if he wanted to go over any of the plan elements. He said she covered it pretty well and that he would just go through the sheets that were submitted. He said the first sheet is the view from High Road. He said the view will remain intact. He pointed out the improvements that would be made including a fence, gas lamp at the entrance, landscaping and a cobble apron. With the conventional plan the view looking back to the structures that would be built would be wide open.

The second sheet is a rendering of the OSRD sketch plan. He said even though the lots are small, it is a thoughtful layout with a lot of green on each lot. The conventional plan would be duplexes scattered throughout the property; this is a much more thoughtful design and more in keeping with a neighborhood design. He said the open space is screened from the neighborhood so it feels separate. He said M. DePiero is planning to hold this subdivision and design these homes. He said M. DePiero usually does a one and a half story house, sort of a bungalow style, much less impact as far as height. Typically they use no bright colors.

S. Sawyer said as far as the open space is concerned, the field area specifically, there would be a pollinator meadow wrapping around and the center area they would keep mowed. He said it would be an opportunity for neighborhood kids. He said there are two and a half acres of open space here.

The next sheet was the 10 unit yield plan with five duplex lots. He said they went over the yield a lot last time and he thinks it was agreed upon. He said they stepped back from the wetland crossing and the long driveways to the rear. He said you have long driveways in this plan that add to the disturbed area.

Next was the OSRD Concept Sketch plan. He said this gives an idea of the area and noted right now they are only developing 23% of the entire parcel. He said they have enough open space to qualify for a couple of bonus units but they are not asking for them – they have given that up. He said 69% of the upland area is in open space. S. Sawyer pointed out a red dashed line that represents the end of the development area and cul-de-sac shown on their last submitted plan. He said they were much farther back than on the current plan.

He said this would be a Condo area with exclusive use areas and a common use area. The road is private but the public is free to bike, walk, or drive down to access the open space.

S. Sawyer said the existing home would be 14 feet from the pavement of the cul-de-sac. He said he thinks in M. DePiero's other project three of the garages are 15 feet off the pavement, so this is not a noticeable difference. He said this is just at the corner of the house. He said he believes with a condominium there is no provision regarding the distance from the building to the pavement. He said what is stated is that they need 20 feet between the buildings; he said in all cases they have more than 20 feet between the buildings.

He said as J. Mann had noted, they have delineated their primary and secondary conservation areas. He said they have an extensive open space area; you can walk all the way all the way back to the marsh. He pointed out a red dashed line that represents where the Yield Plan's right of way would be. He said it would be shorter but it has a tremendous radius, all paved. He said they have kept all the development forward of the barns or substantial structures on the surrounding properties.

The next sheet was an aerial photo with the property outlined in red. He said land owned by Essex County Greenbelt and Parker River Wildlife Refuge is there, with acres and acres of land for use. Audubon Center and the Society for Preservation of New England Antiquities are over to the left. He said that he walked out there one morning for about an hour and you can walk out to the marsh. He said he thinks this open space could be valuable and well used if it is presented in a decent way.

He said he wants to share some pictures he took while he was out there. He showed a picture of what would be the open field portion of the open space and a picture of the woods. He said it is quite open, there almost appears to be an old work road that runs through it. He then showed a few pictures of the marsh.

S. Sawyer said that M. DePiero had a drone do a fly-over to give an idea of the site. As the video played he pointed out where the open space would be and noted that you can see that the woods are fairly open.

P. Paicos thanked them and said that was helpful. He said to be clear to the public this is a new plan that will supersede all previous plans. He said this is the first time the Board has seen this plan, so they will have to start their deliberations from the beginning.

He asked M. Taylor if she had any concerns at a first glance with this. M. Taylor said not at this point. He then turned to the Board Members and asked for comments and questions.

L. Murphy said that they have a lot to think about and noted that they would certainly like to ask the Fire Department to review this. He said if the Board should approve this, it is the Planning Boards option who would hold title to the open space. He also asked how they would handle the septic system. J. Mann said the septic system is in the secondary Conservation area and that under the Town's regulations, placement of those sorts of things is allowed in the Open Space. She said they were proposing that the condominium own the Open Space and the Newbury Conservation Commission hold the Conservation Restriction. L. Murphy said that would be subject to the Condo Association's right to go in and maintain the septic system. J. Mann said they would be obligated to maintain it. She said they would be obligated to maintain all the open space. L. Murphy asked if the septic system requires any above ground structure. S. Sawyer said it depends, it might need a vent, which could be hidden. He said they would probably try to do some meadow on top of it and have the play area more to the south. S. Sawyer said as far as any of the controls they would be in the cul-de-sac, underneath the pavement, so you would just see a couple of manholes to access it. He said they don't need any treatment, they would end up with just a two compartment tank.

G. Morse said he hasn't seen the revised Yield plan but he is certain that Town Counsel Brian Winner has. B. Winner said his understanding is that the Yield plan that was discussed at the last meeting was not revised, it's the OSRD that has been revised.

G. Morse asked if the bridges connecting the open areas are wooden. S. Sawyer said there are a couple of ways they could do it, either wooden bridges with gaps or thru-flow decking.

L. Matthews asked for some clarification for the public, there seems to be some misinformation through social media, on how many duplexes and how many single-family units there will be. P. Paicos said this new plan has a total of 10 units, which are 10 single family units, there is nothing else with this OSRD. S. Sawyer said that is including the existing house so that is nine new units.

M. Stohn asked if they would need to bring in any fill for the septic system. S. Sawyer said they are pretty close to not having to mound it for ground water. A pressure dose system is a very narrow cross section. He said it is beautiful soil out there. M. Stohn asked if the system would be raised. S. Sawyer said the grade may be six inches to a foot above grade, which would be graded out to blend in with the surrounding area.

P. Paicos said this is going to be a condominium and that there are going to be some things to work through as this goes through more review. This will need to go through Peer Review.

P. Paicos asked M. Taylor if there were any new emails or letters.

M. Taylor said since Saturday the 14th they have received emails in opposition from: Hugh and Alissa Rice, 7R Austin Lane; Lori Timony, 190 High Road; Noreen Scelzo, 47 Hay Street; Pam Jamison, 185 Middle Road; Dee Crowley, 44 Cottage Road; Olga Hutson, 43 Hay Street; Daniel Hutson, 43 Hay Street; Pauline Peters, 69 Boston Road; Kendra Beuparlant, 25 Withington Street; Mark Rao, 199 High Road; Ashley Rao, 199 High Road; Kettie and Russ Laky, 30 Riverview Drive; Irene Martyniuk, 30 Riverview Drive; Diane Tufts, 25 Pine Island Road; Peter Tufts, 25 Pine Island Road; Chris and Bonnie Simpson, 107 High Road; Peter Gantchev, 117 High Road; Ralph and Andrea Sargent, 23 Riverview Drive, and as Attorney Mann mentioned earlier they did receive an email in support from Sue McGrath in Newburyport.

Eric Towne, 1 Maple Terrace, said his family moved here 20 years ago. He said they moved to Newbury for the pastoral community and charming community. He said raising his boys here has been picture perfect and reminded him of his youth climbing the trees and scaling stone walls in Hamilton, except for technically that is called trespassing. He said they didn't do that, but played in a couple of man made parks, clear cut and unnatural, with no approved access to fields and streams, woods or marshes, but what a nurturing resource that could have been. He said from what he understands the Board has a conservation proposal before it to provide many acres of public land and access to hundreds more. He said that is a great opportunity.

E. Towne said what he also understands is that every private landowner has the right to subdivide their land in keeping with the traditional 1950's model of subdivision rules, which only leads to urban sprawl and locking up the land forever. According to the Yield Plan we saw, he believes the five two-family lots would be conforming. He said like many other towns on the North Shore, our community has identified, adopted, and encourages a preferred style of open space development, which balances natural population growth with conservation land donations which will benefit all residents of Newbury forever. He said he believes this is a gracious gift that a land owner is not required to offer. He said he is certainly disturbed by the rampant negative misinformation that is put out there on social media. He said as a Scout leader for 10 years he has seen the immense benefit of getting youth unplugged, outdoors, and physically active. Every Newbury resident should have the opportunity to enjoy our amazing natural resources, untouched and unspoiled, through conservation gifts like this one. The limited slope of this property makes it available to residents of all ages, not just the young and athletic. He thinks accepting this gift is in the Town's best interest.

Meg Alfoni, 15 Sunset Drive, said she has a couple of questions and a concern. She said she kept hearing the work duplex with the presentation, she is just concerned whether they are talking about 10 buildings with two units each. She also asked what the plans are for the big house on the corner.

P. Paicos said the units for the first question was based on the Yield Plan, which is what they can do as of right. Once the Yield Plan is validated that leads to the platform of an OSRD. He said what is before them now is an OSRD based on a Yield Plan. What is being proposed is a ten unit condominium with the majority of the development close to the road and the rest as open space in the back. He also clarified that to get to the open space beyond this property now, you do have to cross private land. M. Alfoni, said she doesn't understand why the word duplex was used numerous times. P. Paicos said that was for the Yield Plan, which shows five duplexes. P. Paicos said the existing house would be a single family home as well.

M. Alfoni asked if affordable housing has ever been considered for this development. P. Paicos said nothing would make this Board happier than to have one of their applicants come to them saying that they want to make one of their units affordable. He said it has not happened with this application, but the Board would welcome it. M. Alfoni asked if it is ever brought up by the Board when a developer comes to you, as a request or a question, or is it just left to the developer to make that decision. P. Paicos said informal discussions about affordable units do take place, but it is ultimately up to the developer. M. Alfoni said she knows this, but she would encourage that the Planning Board be proactive about speaking to new applicants about affordable housing. P. Paicos reiterated that informal discussions do take place.

Pam Wool, 16 Withington Street, asked if it is too late in the process to consider breaking up the existing house into three smaller affordable condos.

M. DePiero, Andover, MA, said that there have never been any plans to make the single family a two or a three family and they wouldn't consider it. He said they know that there is a terrible need in the Town, he said he proposed another project that would fill the need nicely. He said here he would keep everything as singles and they wouldn't change that plan. The one existing house and nine singles, no two-family use.

Kendra Beuparlant, 25 Withington Street, said they say they are going to maintain the easement, but asked how that is going to go through. She said that is not their easement to maintain. How can you go down with the barn there? She said she doesn't think there is going to be enough room to get down there. Why is no one thinking about that?

S. Sawyer said when he said maintain they mean they are maintaining the ability for them to access the easement. He said they are staying basically seven feet off that fence. He said Kathryn O'Brien will have the right and ability to use that seven feet. He said there will be no trees or structures to encumber that ability.

K. Beuparlant said it is going to use half the driveway to get down. She said if she decides to put something up, how are you going to come off High Street to get down.

S. Sawyer said J. Mann can explain the rights, but he doesn't believe she can build a structure on it.

K. Beuparlant said she can place something on it.

P. Paicos said he is going to head this off. He said that questions about the easement are really not in the purview of the Planning Board. He said the Board's responsibility is to look at the plan and make sure that it meets the requirements of the Town. P. Paicos asked Town Counsel to clarify. B. Winner said that is correct. He added that the easement is a private real estate instrument between parties that are not the Board or the Town of Newbury. To the extent that there are any questions, concerns, or comments regarding rights or obligations under the terms of the easement, the Board has no jurisdiction or authority over such matters, it's a private matter entirely.

Kathryn O'Brien, 103 High Road, said she had a question about a continuation of a meeting in December. In December there was no agreement on the Yield Plan and that was something that the attorneys were supposed to be working out. Then in January the meeting was cancelled and then in February there was still no discussion about the Yield and the 10-lot project came back again as it did today. She said she doesn't know why the Planning Board has not discussed the Yield. She said that she asked another person on a Planning Board not in Newbury. She said her representation in her Town is that the Yield plan shows five lots, each with a two-family structure. The applicant has taken that configuration and turned it into a 10-lot OSRD plan. She said she believes that five lots on a yield plan, with one structure on each lot, equals five lots on an OSRD Plan. The fact that Newbury Zoning allows for one or two-family dwelling units does not mean you can double the number of lots in the Yield plan. She said this is what she has been told in writing and verbally by engineers as well. She said she thinks before they discuss anything, the Yield plan has to be determined, and according to the Bylaw, it is up to the Applicant to defend the Yield, not the neighbors or the Planning Board. She said that hasn't happened.

P. Paicos asked B. Winner to clarify if there is a scenario where one unit or two units are allowable. B. Winner said the language of the bylaw specifically references units as opposed to lots and there is a certain exchange between them. He said that you have to look at every Town's Zoning Bylaw and the specific language that was adopted by Town Meeting. Newbury's references dwelling units and that is where you get your Yield derived from.

B. Winner said that Attorney Mann and he has a meeting on February 3, 2021, and they reported the sum and substance of that meeting at this Board's February 17th meeting. He believes that at that time the Board determined that the Yield plan was sufficient enough to move the conversation forward. He said that is not a final determination, but rather is to advance the discussion. They are still very much in the public hearing process and they just received a new plan. Final determinations don't get voted on until the end of this process, we are still pretty early on since they have just taken up a new version of the plan.

K. O'Brien said that the definition of a residence can be two units but it is still one residence. A two-family is two units with a residence. A residence can be a single-family or a two-family. Units however are the number of living spaces within a residence. She said that is why they count the number of lots, not the number of units.

Peter Gantchev, 117 High Road, said he has three questions and a comment. He said he thought that they had to have an approved Yield plan for a conventional development for

all of these discussions to occur. P. Paicos said that they have a Yield plan that appears to meet all the requirements. L. Murphy said that they had this discussion a few months back, and to K. O'Brien's point on lots versus units, the Board came to the consensus that they should stick with what they have done in the past, which he thinks is the correct interpretation, that it is the number of units that controls, not the number of lots. He said as to the Yield plan, he offered the opinion some time ago that although he did not particularly care for this Yield plan, he felt that it did technically comply with Subdivision control. The Board had then asked Town Counsel to take a look at it.

P. Gantchev asked who is going to manage the open space. J. Mann said that it will be managed by the Condominium Association and will be subject to a Conservation Restriction and the Town will have the right to oversee the open space.

P. Gantchev said he noticed there are no sidewalks on the plan and asked if those will be added later. S. Sawyer said at this time they had not indicated sidewalks – there is another step with this. If they are allowed the Special Permit for the OSRD, then they have to come back with Definitive Subdivision with detailed design. There are additional details that would be worked out there. He said he thinks they are at the point that they may put sidewalks down one side or just walk down the street.

P. Gantchev said the last thing was a comment. He pointed out an incorrect spelling on their plans.

Phil Dunn, 109 High Road, said they are abutters. He said with the misinformation out there they just want to express their positive feelings for this type of gift to the Town and access to those wooded areas. He said as a landowner he would much rather see what is being put forward, an OSRD, than multiple duplexes with a wide open view of them from High Road. He said it is the landowner's right to go that direction, but he thinks they are offering a much better opportunity for the Town.

Alana Dunn, 109 High Road, said that for them and other abutters, she thinks these beautiful homes are only going to increase the value of all of their homes along High Road and also keep our taxes down. She said they are looking forward to it.

Salina Chandler, 97 High Road, said she is an abutting horse farm. She said she thinks this is a great benefit to the public. She said she thinks it will be critical going forward. She said it is fantastic to be able to access a large amount of land. She said she thinks the plans are lovely. The homes are going to make it a nicer place. She said it will be nice to be able to ride horses as well.

P. Paicos then asked the Board for any further questions or comments. Hearing none, he turned to B. Winner and asked what the next steps are for the Applicant in this process.

B. Winner said that P. Paicos had mentioned Peer review, Department review, feedback from M. Taylor and himself on some of the design and compliance aspects now that it is clear it is going to be a condominium development. He said the Board needs those reviews back before they can move forward with their full consideration of this plan. That is just the first step.

P. Paicos asked if they were looking at April 21, 2021 for the continuance of this hearing. M. Taylor confirmed.

**Motion:** A motion was made by L. Matthews and seconded by L. Murphy to continue the Public Hearing – Open Space Residential Development (OSRD) Special Permit Application, 105 High Road, Map R48, Lot 49; Applicant: DePiero, LLC; Owner: Mitchell Mantin (formerly Arthur & Sandra Costonis) to April 21, 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.

#### **G. Proposed Zoning Amendments for Spring 2021 ATM**

M. Taylor said that their Public Hearing on the change to the Special Permit provisions in the Bylaw is scheduled for next Wednesday, March 24, at 6:45 p.m. The purpose of the discussion tonight is to determine how they would like to present this. L. Murphy said that he thinks that less might be more in this case and the other members agreed that the presentation should be simple.

**H. Planning Board Rules and Regulations:** The Board members agreed to defer this discussion to the next meeting.

#### **I. Liaison Reports**

P. Paicos reported on the last Conservation Commission meeting and noted the three projects that are on parallel tracks with Planning Board hearings: 2 Old Point just has some DEP items they have to get a hold of; 84 Boston Road, there was a Peer review to be discussed; 15 Coleman Road, there was a question about the back lot and they are going to be coming back. M. Taylor said that the Merrimack Valley Planning Commission (MVPC) Commissioners meeting is tomorrow, but the biggest news is that Theresa Park, the Executive Director, has left MVPC. She is now working for MassDevelopment. A search has begun for a new Executive Director.

A motion was made by L. Murphy and seconded by L. Matthews to adjourn the Planning Board meeting at 9:33 p.m. A roll call vote was taken. L. Murphy, yes; L. Matthews, yes; W. Knight, yes; M. Stohn, yes; P. Paicos, yes.

Respectfully Submitted,

Emily Noble  
Planning Board Administrator