

Meeting Minutes

Planning Board

Wednesday, April 6, 2022

Virtual Meeting via Zoom

APPROVED

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

Peter Paicos opened the Planning Board meeting at 7:00 p.m. and verified that all members and persons expected to be present were in attendance.

He then announced that this April 6, 2022 Open Meeting of the Newbury Planning Board was being conducted remotely in accordance with Chapter 22 of the Acts of 2022, which extends the Governor's March 12, 2020 "Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A § 20," until July 15, 2022. 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 agenda.

- A. Liaison Reports:** L. Matthews reported that at its March 22, 2022, meeting the Select Board reviewed and approved the Warrant for the Annual Town Meeting and voted to accept grants and to approve meeting minutes. L. Murphy reported that the next regular ZBA meeting was scheduled for April 21, 2022. M. Taylor reported that at the March 17, 2022, MVPC Commissioners Meeting, MVPC announced that a new Community Planner had been hired and that MVPC has been designated a Regional Economic Development Organization (REDO). She reported also that the Planners meeting on March 24, 2022, was a kick-off meeting for review by MVPC of stormwater-related by-laws and regulations in all of the MVPC member communities. P. Paicos reported that at its April 5, 2022, meeting, the Conservation Commission voted to approve a three-year extension of an ORAD for 170 Orchard Street. He reported also that one of the Commission members had resigned that evening.
- B. Planning Director's Report:** M. Taylor reported that she made the required presentation on the MTBA Communities Multi-Family Zoning Guidelines to the Select Board on March 22 and had drafted and submitted the Town's comment letter on the Guidelines to DHCD, following review of the letter by Town Counsel. She then reported on several projects that are under construction. Tom Zahoruiko has informed her that installation of the septic system for the 15 Coleman Road OSRD is almost complete and has asked to be on the agenda for the next meeting to request release of Lots 1 and 8. He is working with his engineer on the ANR for the Witchstone/Father Stone parcel. John Colantoni has pulled all of his equipment off the 108 Main Street site and at present does not have a date for starting work there again. He is to inform M. Taylor, S. Holt, and J. Serwatka at least a week before he brings equipment

back on site. Adam True would like to do additional clearing at the 217 & 221 High Road/Gadsden Lane subdivision – M. Taylor, S. Holt, and J. Serwatka will meet him on site to discuss. The Governor’s Academy is ready to close out the French Student Center project and has submitted an As-Built Plan for review. M. Taylor has also received an As-built Plan for Newbury Golf Center – she will coordinate a review meeting with S. Holt and J. Serwatka. The As-Built for this project needs to be reviewed and approved before the Board can close-out the project and release the performance bond.

C. Public Hearing (Continuance) – Special Permit Application for Ground-Mounted Solar Photovoltaic Installation, 75 Boston Road (Newbury Landfill) (Map R36, Lot 27); Applicant: Alliance Newbury I LLC; Owner: Town of Newbury (continued from March 2, 2022):

P. Paicos opened this session of the public hearing, provided a summary of what had transpired to date, and noted that this session of the public hearing would focus on review of the revised draft Special Permit Decision and on any outstanding questions. He then asked the Applicant representative, Eric McLean, if he had anything new to present or any update on relocation of the firing range. E. McLean said he had no new developments to report.

P. Paicos asked the Board members if they had any comments or questions regarding the project. They had none. He then asked if there was any public comment. Hearing none, he asked M. Taylor to walk the Board through the revised draft Special Permit Decision. M. Taylor put the draft Decision up on her screen, summarized each section, and pointed out changes from the initial draft that had been sent to the Board, including revisions responding to input from the Applicant. She then read each of the Conditions.

M. Taylor noted with regard to Condition #2, that the Applicant had requested that the surety be required prior to issuance of the building permit rather than 30 days after issuance of the Special Permit. She also noted that the amount of the surety was still outstanding. P. Paicos suggested that they go through the rest of the Conditions and come back to this.

With respect to Condition #4, E. McLean said that discussion still needs to be had with the Town, as landlord, to determine who will be responsible for the firing range relocation and permitting – the hope is that the relocation can be worked into the construction contract, but the land lease still needs to be worked out. He said he understands that Board will want to make sure the work is done properly and that all necessary permits are obtained.

After review of all the Conditions, discussion returned to Condition #2 and the amount of surety that the Applicant should provide for decommissioning. P. Paicos noted that M. Taylor had received Mr. McLean’s decommissioning estimate only the day before and that the Board hadn’t had an opportunity to digest it. L. Murphy said that there might be some disagreement between the Board and the Applicant regarding the bond amount being proposed by the Applicant and noted that it does not seem to be the norm to factor in salvage value when calculating the amount of the decommissioning bond. He referenced the guidance that the Board had been given previously for determining the decommissioning bond amount for the Borrego Solar project at 136 Main Street – \$50,000/mW – and suggested that if the Board were to use that formula, the bond should be between \$25,000 and \$30,000. M. Taylor noted that since the \$50,000/mW figure was from 2018, there might be updated guidance on calculating the amount of surety and suggested that the bond estimate be given to

Town Counsel for review. All the Board members concurred with that suggestion. M. Taylor will follow up.

P. Paicos then asked for a motion to continue the public hearing.

Motion: A motion was made by G. Morse and seconded by W. Knight to continue the public hearing on the Special Permit Application for a Ground-Mounted Solar Photovoltaic Installation, 75 Boston Road (Newbury Landfill) (Map R36, Lot 27); Applicant: Alliance Newbury I LLC; Owner: Town of Newbury to Wednesday, April 20, 2022, at 7:15 p.m. via Zoom. There was no discussion on the motion. A roll call vote was taken: L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

D. Old Business:

1. 105 High Road OSRD:

a. Request for approval of proposed grading and utility layout changes and associated changes in Exclusive Use Areas 1, 2, 3, and 4, as shown on OSRD Grading/Drainage Plan, Sheets C1.21 & C1.22, prepared by DCI, revised 3/29/22:

P. Paicos summarized the discussion the Board had had at the previous meeting regarding proposed grading changes for Exclusive Use Areas (EUAs) 1 through 4 and noted that the Board members had concluded that some of the changes appeared to be major, at which point the Applicant had asked for an opportunity to revise and resubmit the plans. P. Paicos then asked S. Sawyer of DCI to present the revised grading plans for EUAs 1 through 4 that had been submitted to the Board for review. S. Sawyer put the revised Plans up on his screen and described the changes. He noted that the revised plans now show the approved contours on EUAs 1 and 2, as well as the proposed contours, so that the Board can see the difference between the approved grading and the proposed grading. The swale now mimics the approved plan and the drainage patterns have not changed. The proposed new retaining walls have been removed – the grading has been revised so no walls are needed and the grading matches the approved grading. Since the eave lines are low, drip edges have been added in appropriate locations to enhance stormwater infiltration on the site. In EUAs 3 and 4 the grading of the swale follows the exact grading on the approved plan. He added that he has gone through several rounds of review with the Board's review engineer, Joe Serwatka, who in his review letter to the Board said that the drainage shown on the revised plan meets the intent of the approved plan.

P. Paicos asked the Board members if they felt that the proposed grading revisions were minor or major modifications. All members said they felt they were minor modifications and that the Board could take a vote accordingly. P. Paicos then asked M. Taylor about conditions to be placed on the approval. She said that Conditions for 5 – 9 would mostly pertain and recommended that a condition regarding the infiltration drip edges be added. P. Paicos asked M. Taylor to start a draft with conditions for the next meeting.

b. Request for Approval of Legal Documents: Condominium Master Deed, Declaration of Trust, Declaration of Restriction, Public Access Easement, and Tripartite Agreement for “Seagate Condominium”

P. Paicos asked Lisa Mead, Town Counsel, to give an overview of the documents for which the Applicant was asking approval. L. Mead said that as part of the approved OSRD Special Permit Decision, the Applicant was required to get a sign off from the Board on the Master Deed and Declaration of Trust. In addition, in order to secure the rights to the required Conservation Restriction (CR) and to make sure that all buyers and lenders know about the CR, she is requiring that a Declaration of Restriction be recorded now, which forecasts that there will be a Conservation Restriction when approved by the State. She noted that the condo documents make reference to both the OSRD Decision and the CR. In addition, since the public must travel down a private road in order to get to the open space and the parking area, a Public Access Easement has also been drafted and has been reviewed and approved by her. L. Mead noted that the Applicant has been cooperative in making sure that the requested changes have been incorporated and said that there are just a few details and numbers to be added to the documents in order for them to be final – no substantive changes need to be made.

She then said that the language of the Tripartite Agreement has also been reviewed and approved by her office and the Bank, and that the Board’s engineer, J. Serwatka, has reviewed the amount to be held by the Bank – \$693,960.00 – and said it is accurate. The Bank will hold that money until the Board provides affirmation that funds can be released. She said that the Board could therefore vote to approve the documents and authorize the Chair to sign after they are finalized and reviewed by Counsel and all other signatures are received. P. Paicos asked if the Applicant’s attorney, Matt Gaines, had anything he would like to add. He said he appreciated Lisa Mead’s and Brian Winner’s assistance and that he was happy to answer questions, but had no other comments.

Motion: A motion was made by L. Murphy and seconded by L. Matthews to approve the Condominium Master Deed, Declaration of Trust, Declaration of Restriction, and Public Access Easement, subject to finalization by the Applicant and final review by Town Counsel. There was no discussion on the motion. A roll call vote was taken: L. Murphy, yes; G. Morse, yes; W. Knight, yes; L. Matthews, yes; P. Paicos, yes.

Motion: A motion was made by L. Murphy and seconded by W. Knight to approve the Tripartite Agreement and bond estimate and authorize the Chair to enter into same, subject to completion of the document and final review by Town Counsel. There was no discussion on the motion. A roll call vote was taken: L. Murphy, yes; G. Morse, yes; W. Knight, yes; L. Matthews, yes; P. Paicos, yes.

Returning to the proposed grading changes to EUAs 1 through 4, the Board took a vote to approve the changes as minor modifications:

Motion: A motion was made by L. Murphy and seconded by W. Knight to approve the proposed grading changes to EUAs 1 through 4 as minor modifications. There

was no discussion on the motion. A roll call vote was taken: L. Murphy, yes, G. Morse, yes; W. Knight, yes; L. Matthews, yes; P. Paicos, yes.

L. Mead noted that the next steps would be for the documents to be signed by the Bank and the Developer and given to Town Counsel and for the Easement to be accepted by the Select Board and the Conservation Commission – the required motions have been sent to M. Taylor.

E. New Business:

- 1. Preparation for Town Meeting – Proposed Wireless Communications By-Law:** The Board discussed having a PowerPoint presentation ready for Town Meeting if needed. M. Taylor will send the PowerPoint presentation from the public hearing to the Board's wireless communications consultant, David Maxson, for review and edits. M. Taylor will also follow up on D. Maxson's offer to attend the meeting to answer questions if needed.

F. Meeting Minutes:

Motion: A motion was made by G. Morse and seconded by L. Matthews to approve the meeting minutes of March 17, 2021, as written. There was no discussion on the motion. L. Murphy said that he would abstain from voting, since he had recused himself from the A.L. Prime public hearing. A roll call vote was taken: L. Murphy, abstain; G. Morse, yes; W. Knight, yes; L. Matthews, yes; P. Paicos, yes.

L. Murphy reported that, as authorized by vote of the Board, he had reviewed and approved the meeting minutes of November 7, 2018, December 5, 2018, January 16, 2019, February 6, 2019, February 20, 2019, and March 6, 2019.

There being no further business, P. Paicos called for a motion to adjourn. A motion was made by L. Matthews and seconded by L. Murphy to adjourn the Planning Board meeting. A roll call vote was taken: L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes. The meeting was adjourned at 8:07 p.m.

Materials reviewed at the meeting:

- Draft Special Permit Decision for proposed ground-mounted solar installation at 75 Boston Road; Applicant: Alliance Newbury I, LLC
- 105 High Road, revised grading and drainage plan for EUAs 1 through 4
- 105 High Road documents: Condominium Master Deed, Declaration of Trust, Declaration of Restriction, Public Access Easement, and Tripartite Agreement for "Seagate Condominium"

Respectfully Submitted,

Martha Taylor
Planning Director