

## **Meeting Minutes**

### **Planning Board**

Wednesday, May 19, 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 7:00 p.m. and verified that all members and persons expected to be present were in attendance.

He then announced that this May 19, 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 agenda.

#### **A. New Business - 66 Parish Road OSRD, Georgetown – Status Report**

M. Taylor said that, as she had mentioned at the previous meeting, construction was scheduled to start on a 10 unit OSRD development in Georgetown which is accessed off of Larkin Road – the property and permitted project have been purchased by John Colantoni, the developer of the 108 Main Street Subdivision in Newbury. She reported that she had attended the pre-construction meeting on May 6 and that she has received a number of emails raising questions about the project which will need to be addressed. She said that there is nothing that requires action from the Board right now, but it seemed appropriate to discuss this project as an agenda item in case Board members get questions. Issues raised so far include the fact that the water main from Georgetown serving the site will be installed within Larkin Road, which was repaved a year ago – there is a five year moratorium in Newbury on street openings after streets are paved.

She said that the previous developer for this property had reached an agreement with the Newbury Select Board back in 2016 by which the developer would rebuild the Larkin Road culvert over Wheeler Brook if the Town would then pave it. The culvert went through permitting with the Conservation Commission and the Order of Conditions was extended to 2022.

M. Stohn asked if there had been any discussion about Newbury being involved in this process or if it was primarily Georgetown.

M. Taylor said when this project was going through its most recent permitting process with the Georgetown Planning Board, she had talked to Town Counsel to see whether the

project also needed approval from the Newbury Planning Board. The property is entirely in Georgetown, and no new lots or roads are being created in Newbury, so there was no need for a subdivision application for this project to come to Newbury.

M. Taylor said she has been told by the Georgetown Planner that construction may start as soon as next week or the week after. The developer is planning to use Larkin Road exclusively for access to the site during construction, even after the culvert is rebuilt, which will be in the middle of the summer.

#### **B. Planning Director's Report**

M. Taylor said Governor Baker is easing COVID restrictions and she anticipates that they will be getting some guidance next week about what that means for the Planning Board meetings.

#### **C. Liaison Reports**

L. Matthews said that at its last meeting, the Select Board discussed the 2/8R Old Point Road/Sunset Club liquor license. L. Murphy said the Zoning Board of Appeals regular meeting was scheduled for the next night – there are five Special Permit Applications on the agenda. All are seeking to modify single family homes in the Plum Island Overlay District. M. Taylor said the May Merrimack Valley Planning Commissioners meeting was scheduled for the next day and that the Commissioners might be voting on a new Executive Director. P. Paicos reported on the Conservation Commission meeting, which included discussion of the 15 Coleman Road project. He said also that the Town is searching for a new Conservation Agent.

#### **D. 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 April 21, 2021)**

P. Paicos opened this public hearing session. He announced for the record that he had watched the video of the April 21, 2021 session of the public hearing and had provided the required certificate to the Planning Director.

He then said Attorney Mann has requested that the hearing be moved from first to second on the Agenda due to a conflict she has with a meeting in Boxford. He asked the Board members if there were any concerns – there were none.

P. Paicos checked to see if the Applicant team for the next public hearing was present. They were, so the Board moved on to that hearing.

#### **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 April 21, 2021)**

P. Paicos opened the public hearing. He announced for the record that he had watched the video of the April 21, 2021 session of the public hearing and had provided the required certificate to the Planning Director.

He asked if the Applicant had any new information to present to the Board.

Chris York, Millennium Engineering, said that they do not have any new materials, and that they have just started reviewing M. Taylor's second draft Decision.

P. Paicos asked the Board members if they had questions or comments – there were none. There also were no members of the public present with any questions or concerns. He noted that they have not received any written comments or concerns.

P. Paicos moved on to reviewing the draft Decision. M. Taylor shared the draft on the screen. He suggested that the Board go through it section by section with regard to the Findings and Decision.

M. Taylor said they had received an updated narrative last week, which was forwarded along to the Board, along with an email from Kevin Whitney, Manager, regarding the hours of operation. She highlighted a couple of those things under the project description. She said the narrative was revised to indicate that it will be a 6,500 square foot building. She said that she noted that the retaining wall will be up to 10 feet high, which is shown on the drawings. She said the narrative was updated to indicate that the vehicular traffic will be one way, entering through the northern driveway and exiting through the southern driveway.

M. Taylor said the next paragraph gets into the hours of operation. She said the original application said the hours of operation would be 7:00 a.m. to 5:00 p.m. Monday through Friday with occasional Saturday hours. K. Whitney requested last time that the Board consider proposed hours of operation from 6:00 a.m. to 6:00 p.m. Monday through Saturday with some occasional off hour work for emergency utility work. She said this was discussed previously during the public hearing but never fully agreed to. The extended hours proposed are to allow employees to access the site before and after business hours in order to load and unload construction vehicles for the day's work.

P. Paicos said he would like to hear the Board members' thoughts on this, keeping in mind that the transfer station is open Tuesday, Thursday, Saturday. He said Saturday is a very busy day there, so traffic will be busier through that area on Saturday than any other day.

L. Murphy said he thinks the Transfer Station Closes at 3:30 p.m. on Saturday. P. Paicos said yes, the hours are 7:30 a.m. to 3:30 p.m. L. Murphy said he thinks some Saturday hours are reasonable. He said he has no problem with the requested hours.

G. Morse said the 6:00 a.m. to 6:00 p.m. Monday through Saturday hours need to specify that this does not include the office, since the hours of the office are 7:00 a.m. to 5:00 p.m. Monday through Friday with occasional Saturday hours.

L. Matthews said she is not sure if she agrees with G. Morse on this. She asked if, at the end of the day, the employees that were on the road are required to turn in paperwork to the office

K. Whitney said he originally said 7:00 a.m. to 5:00 p.m. because those are the typical hours that office staff will be in the office. Then he realized that if they needed to pick up a truck or trailer to go to a job site that is an hour away, he didn't want to be outside his rights to start that truck at 6:30 a.m. to drive it off the site. He said that is the only reason he requested the change in hours. He said yes, at the end of the day, the truck driver will need to open the building to put his keys on the hook and drop off any slips for work that was done that day. He said there wouldn't be office staff there to process it, but it would go in a box or a folder. He said the Saturday hours are mostly if he wanted to go and wash his truck or if he has a little bit of office work to do, he didn't want to be outside his rights.

P. Paicos said the only comment he will make is that once they do this, it is done, and if Mr. Whitney sells the business and the new owner has a different perspective, they have to look at how the hours might migrate in the future.

W. Knight said he thinks the hours are reasonable.

M. Stohn said 6:00 a.m. to 6:00 p.m. seems pretty clear to her. She said the details seem to be irrelevant.

P. Paicos asked the Board members their thoughts on distinguishing between hours for the office and for the entire site.

L. Murphy said he would take it out; he doesn't see any reason to distinguish between a truck driver and a secretary.

G. Morse said it is fine to take it out; he just didn't want to create confusion.

L. Matthews said it can be removed.

W. Knight said take it out.

M. Stohn said 6:00 a.m. to 6:00 p.m.

M. Taylor asked if it would be simpler to take out the language specifying the office hours and just say the hours of operation will be 6:00 a.m. to 6:00 p.m. The Board members agreed with this suggestion.

M. Taylor said a question had come up regarding waivers – the By-Law says that the Planning Board may require a Traffic Impact Assessment, Environmental Impact Assessment, and Community Impact Assessment. However, no waivers had been requested for these for this project – the Board typically asks for waivers from these assessments if they are not going to be provided. She said she is flagging that to see how the Board feels about that.

P. Paicos asked for the Board members' thoughts.

After some discussion, L. Murphy said, given the scope of this project, he thinks these waivers would be appropriate and suggested asking the applicant to submit a letter requesting waivers on those items.

M. Taylor said she thinks that would work.

G. Morse, L. Matthews, W. Knight, and M. Stohn all said they were comfortable with that.

C. York asked if this would push them back two more weeks.

M. Taylor said the Board would just need to go through the waivers to determine if they are acceptable or not in anticipation of receiving the letter requesting the waivers.

The Board went through all the waiver requests including the anticipated ones.

P. Paicos asked about waiver request A.

L. Murphy said this waiver was requested from Section A)4)b)08), which requires that the Plan identify all trees over eight inches in caliper due to the fact that the site is entirely wooded. The Applicant instead shows general tree lines.

L. Murphy suggested that if anyone wants to put a hold on any of these waivers for discussion, indicate that. He asked if there were any holds on waiver A. There were none.

L. Murphy moved on to waiver B. Traffic Impact Assessment: What was the reason for a waiver from this requirement?

C. York said that they have few employees working on site every day and the traffic flow will be minimal.

L. Murphy asked if there were any holds on waiver B. There were none.

L. Murphy moved on to waiver C. Environmental Impact Assessment: What was the reason for a waiver from this requirement?

C. York said that the impact of the project will be minimal on ground water, noise, and light.

L. Murphy asked if there were any holds on waiver C.

P. Paicos asked if the lights were dark sky compliant.

C. York confirmed that yes, they are dark sky compliant.

L. Murphy moved on to waiver D. Community Impact Assessment: What was the reason for a waiver from this requirement?

C. York said that they are not using any Town utility infrastructure on this site.

L. Murphy asked if there was any further discussion on any of these waivers. There was none.

L. Murphy asked if the Chair was prepared to take a motion.

P. Paicos said yes.

**Motion:** A motion was made by L. Murphy and seconded by L. Matthews to approve the requested waivers as stated. There was no discussion on the motion. A roll call vote was taken. P. Paicos, yes, L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes.

L. Murphy moved on to the Findings section of the Decision. He said he has no issues here. He asked if there was any discussion on any of these Findings. There was none.

L. Murphy then moved to the Conditions of Approval. He read through the conditions and asked for any discussion after each.

A. Site plan approval by the Planning Board shall not be construed as approval from any other Board, Commission, official, or department. The Applicant is responsible for obtaining all required approvals and permits for the proposed project.

No discussion.

B. Approval is contingent on final approval by all other relevant Boards, Commissions, and agencies of the Town. Any approval which imposes conditions inconsistent with this Site Plan Approval shall require a revision of the site plan. A request for such revision must be submitted in writing to the Planning Board.

No discussion.

C. A pre-construction meeting with the Planning Director, the Planning Board's engineering consultant, the Conservation Agent, and other representatives of the Town shall be held prior to the commencement of site work. The limit of work and the limit of tree clearing shall be clearly identified prior to the pre-construction conference. Any work beyond these limits without prior approval shall be cause for immediate enforcement action.

L. Matthews asked how that will work, since the Town is without a Conservation Agent.

M. Taylor said the Commission Chair and Vice Chair are filling in as needed and Bill Holt is coming in on Fridays to help. She said they may have someone in place by the time K. Whitney begins construction. J. Serwatka will be there anyway and has said he can fill the role temporarily.

D. A detailed construction schedule shall be provided to the Planning Director at or before the pre-construction conference and the Planning Director shall be notified of any changes to the schedule as site work and construction proceed.

No discussion.

E. The Planning Board reserves the right for itself and its Agent(s) to enter the site at any time for the duration of the Site Plan Approval to determine compliance therewith.

No discussion.

F. Construction inspections shall be carried out by an Agent designated by the Planning Board, and the costs of all such inspections shall be borne by the Applicant. If said inspections find that work is not being done in conformance with the approved plans, the Board may suspend the site plan review approval until the work in question is repaired, or may take any other action the Board deems appropriate to encourage compliance with the approved plans in all respects, and to enforce compliance if necessary, all in the sole discretion of the Planning Board.

No discussion.

G. Construction activity shall be limited to the hours between 7:00 a.m. and 5:00 p.m., inclusive, Monday through Friday, and, if weekend hours are needed, between 8:00 a.m. and 2:00 p.m., inclusive, on Saturday. There shall be no construction activity on Sundays.

No discussion.

H. Blasting shall be done in accordance with 527 CMR 1.00 and all other relevant Federal, State, and Local regulations. No blasting shall occur until and unless the Newbury Fire Department has issued a Permit to Blast. A copy of the Permit to Blast shall be provided to the Planning Director.

No discussion.

I. Exterior lighting shall be limited to building-mounted wall packs, shielded and designed to direct light downward and to prevent spillover of light off the project site; there shall be no pole-mounted light fixtures. The color temperature of the light bulbs shall be no higher than 3000K.

No discussion.

J. A tree buffer at least 10 feet deep, consisting of native species compatible with the existing woodland trees, shall be planted along the northwesterly property boundary to replace trees that were removed for the temporary construction access road between Boston Road and the Newbury Self Storage site. A landscape plan showing size, spacing, and species of trees shall be provided to the Planning Director for approval.

P. Paicos asked who will be determining the tree buffer density and whether the Board wanted to have a plan for that. The Board members all agreed to this.

M. Taylor amended the condition to reflect this by adding, "A landscape plan showing size, spacing, and species of trees shall be provided to the Planning Director for approval."

All members approved of this change.

K. Whitney said he believes the plan already shows the plantings along Boston Road and asked if these plantings would be along Sled Road.

M. Taylor said no, these would be bordering Newbury Self Storage.

P. Paicos said they would like to recreate the buffer that was there before the access road was created. He said work with M. Taylor to facilitate and if anything come close to Conservation, work with the Agent at that time.

C. York said it should be outside the 100 foot buffer because they checked with Conservation when creating the access road.

K. To mitigate the impact of the extensive tree removal necessitated by the proposed use on the site, the Applicant shall provide the Town with a contribution to the Town's Tree Fund in the amount of \$1,000.00.

No discussion.

L. Hours of operation of the facility will be limited to the hours between 6:00 a.m. and 6:00 p.m., inclusive, Monday through Saturday. Limited occasional off-hour operation may be allowed when the Applicant is called on to do emergency utility work for local municipalities.

No discussion.

M. No site construction materials such as gravel, sand, loam, or stone shall be stored on site. On-site storage of hard materials such as pipes, castings, and fittings will be allowed only in the area designated on the Plans.

No discussion.

N. At the discretion of the Building Commissioner, with the concurrence of the Planning Board, recording of a certification of the Town Clerk and the Decision of Site Plan Review at the Southern Essex Registry of Deeds may be included as an additional condition precedent to the issuance of any building permit.

At the Board's request, M. Taylor amended this condition to make it a clear requirement.

O. No modifications to the approved site plan shall be made without prior approval of the Planning Board. Requests for modification shall be submitted to the Board in writing and shall in most cases be subject to the same submittal, review, and hearing procedures as was the original filing.

No discussion.



P. Duration Of Approval: Site plan approval for this project shall lapse after two years from the date of issuance, not including time required to pursue or await determination of an appeal referred to in G.L. c. 40A, §§ 8 and 17, unless approved construction work shall have commenced and proceeded in good faith continuously to completion, except for good cause. In such case a request for extension of the date of completion shall be submitted in writing to the Planning Board.

No discussion.

P. Paicos asked if there were any additional questions or concerns from the Board. There were none. He asked if there were any additional questions or concerns from the Applicant. There were none.

**Motion:** A motion was made by L. Murphy and seconded by W. Knight to approve the Decision as amended and grant Site Plan Approval for 84 Boston Road (Map R36, Lot 23A); Applicant: K & R Construction Company; Owner: Sled Road, LLC, Kevin Whitney & Ryan Greenwich, Managers. There was no discussion on the motion. A roll call vote was taken. P. Paicos, yes, L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes.

**Motion:** A motion was made by G. Morse and seconded by W. Knight to close the Public Hearing for 84 Boston Road (Map R36, Lot 23A); Applicant: K & R Construction Company; Owner: Sled Road, LLC, Kevin Whitney & Ryan Greenwich, Managers. There was no discussion on the motion. A roll call vote was taken. P. Paicos, yes, L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes.

**F. Public Hearing (Continued from earlier in the meeting) – 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 April 21, 2021)**

P. Paicos reopened the public hearing from earlier in the meeting. He reiterated that he had watched the video of the April 21, 2021 session of the public hearing and had provided the required certificate to the Planning Director.

P. Paicos said that they needed to advance this process and suggested that they begin tonight's session by viewing this project with regard to the OSRD Criteria and Requirements. He said that he also wanted to state that all public comments and materials are distributed to Board members, that it is the Members' responsibility and duty to read all email and public comments, and that they do so. Additionally he wanted to supplement and support L. Murphy's comment from the last meeting that the role of this Board is not to determine whether or not development will happen on this property –what is under the Board's purview is consideration of the project in relation to the Town's Rules and Regulation and By-Laws.

L. Murphy added that the Board members take all of the comments very seriously and noted that there has been an inordinate amount of interest in this project. The Board has received a lot of outright calls for a ban on any sort of development on this property. He said he thinks it is worth reiterating that the Board does not have that kind of authority. The Board cannot tell the owner and applicant that they don't have the right to develop

this property – the owner and applicant have that right under the Subdivision Control Law. If they proceed with an application under the Subdivision Control Law and they check all the boxes, they are entitled to approval. The OSRD is an alternative to a Conventional Subdivision Plan and is something that was adopted by the Town at Town Meeting. Many communities have similar By-Laws. He said the OSRD is a Special Permit, so the Board has a lot more discretion in granting it or denying it. He said OSRDs are not as of right as a Conventional Subdivision Plan would be. He said the purpose of OSRD is to encourage the preservation of Open Space by confining construction to a reduced area of the parcel in exchange for keeping a large portion of the parcel forever available as Open Space, so that it can't be developed and built on. He said what these proceedings have been about since the very beginning is to determine whether or not it is in the best interest of the Town to permit the OSRD in exchange for the preservation of Open Space or to leave the Owner and the developer to their rights to proceed under the Subdivision Control Law. These proceedings have never been about whether something can be built on the property, they have always been about what can be built on the property. He said he is sympathetic to the position that many people have taken, that they would like to see this property remain in its current condition – he said he would too, but it is not the Board's job to tell them they can or cannot build on this property.

P. Paicos clarified with M. Taylor that the Master Plan actually supports OSRD as one of its recommendations. M. Taylor said yes.

P. Paicos then said that they had received a new submission the previous week, but that there were no significant changes – it was a refinement of what was submitted previously. M. Taylor confirmed.

P. Paicos said, that being the case, it would be appropriate to review the OSRD Decision Criteria. He asked the Board members if they were comfortable with that. All agreed.

M. Taylor shared the criteria on the screen.

P. Paicos asked L. Murphy to read through them.

L. Murphy read:

(13) Decision of the Planning Board.

- (a) The Planning Board may grant a special permit for an OSRD if it determines that the proposed OSRD has less detrimental impact on the tract than a conventional development proposed for the tract, after considering the following factors:

01) Whether the OSRD achieves greater flexibility and creativity in the design of residential or unit developments than a conventional plan;

All Board members were comfortable with 01).

02) Whether the OSRD promotes permanent preservation of Open Space, agricultural land, forestry land, other natural resources including water bodies and wetlands, and historical and archaeological resources;

All Board members were comfortable.

03) Whether the OSRD promotes 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 subdivision;

P. Paicos said he believes this project achieves this. The Board members agreed.

04) Whether the OSRD reduces the total amount of disturbance on the site;

P. Paicos and L. Murphy agreed that there is a lot going on, but yes this project achieves this. The remaining members agreed.

05) Whether the OSRD furthers the goals and policies of the Open Space and master plans;

All Board members said yes, this OSRD does.

06) Whether the OSRD facilitates the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;

All Board members were comfortable.

07) Whether the Concept Plan and its supporting narrative documentation complies with all sections of this zoning By-Law.

All Board members agreed that this project complies.

P. Paicos asked M. Taylor if there were any other components that he needs to discuss with the Board.

M. Taylor said those are the major ones.

P. Paicos said he would like to talk for a moment about the Yield Plan. He said the Board had previously determined that the Yield Plan is technically compliant with the Subdivision Rules and Regulations and zoning. He said he would like to confirm that that is still the case.

L. Murphy, G. Morse, L. Matthews, W. Knight and M. Stohn all said yes.

P. Paicos asked, with regards to the Open Space, if the proposed Open Space meets the By-Law requirements. He said this is where we get into the requirement that the Open Space must be a minimum of 50% of the upland on the property and it must be contiguous. He said the area appears to be sufficient, but the concern has been that the upland is not contiguous. He said he would like to get a feeling from the Board, if they feel a waiver would be necessary to achieve this component of the Open Space requirement.

L. Murphy said he does believe that a waiver would be appropriate to be able to address this.

G. Morse asked if the Board can waive this.

P. Paicos asked Brian Winner, Town Counsel, to answer this question.

B. Winner said he doesn't have it in front of him but his understanding is that it is within the Board's jurisdiction to do that.

L. Matthews said she thinks a waiver would be in order.

W. Knight and M. Stohn also agreed that a waiver would be appropriate.

B. Winner added from the By-Law in section 97- 5 (12) (a) 01): "The Planning Board may waive this requirement for all or part of the required Open Space where it is determined that allowing noncontiguous Open Space will promote the goals of this By-Law and/or protect identified primary and secondary conservation areas."

P. Paicos said ownership of the Open Space has been discussed. Who will own the Open Space, will it be the HOA, or the Town, or another entity? He asked, if the Town or another entity, would the Open Space be deeded as a separate lot?

M. Taylor said there are different ways that it could be done. One would be to carve out a separate lot and convey that to a non-profit or another entity. The other is to keep it as part of the property and put a Conservation Restriction on it which could be held by a non-profit or the Town's Conservation Commission.

P. Paicos asked if B. Winner had any recommendations or insights.

B. Winner said that M. Taylor's description is correct. He said if the will of the Board is that the Open Space be conveyed in fee, for example, to the Conservation Commission, then it would need to be deeded out, and to be deeded out it would need to be a separate lot. He noted that you accomplish something similar by just having a Conservation Restriction on it. The interest held by the Town or the third party is just rights under the Conservation Restriction, they don't own the land and the actual fee would be owned by the HOA presumably.

P. Paicos asked L. Murphy for any thoughts.

L. Murphy said he is not sure if they are in a position at this point to be making that type of decision. He asked B. Winner if it would be appropriate to craft a condition that it be offered to the Conservation Commission or the Town or a non-profit at some future point. He said he doesn't want to delay this process.

B. Winner said one of the things that can happen is that, in order to obtain the fee, the Commission needs to take a vote and the Select Board needs to approve it. He said if the Board is interested in potentially obtaining a fee in the land, one way he has approached that is to do something similar to what you have suggested, a condition that the land be

offered, but if for some reason the Town or whoever it is offered to decides not to accept it, it just reverts back to the HOA. That way the applicants fulfill their obligation. He said you wouldn't write that condition if it wasn't of interest to this Board or the Town generally to have the land.

L. Murphy said once we approve the OSRD, assuming it will be approved, there will be further review. Can we make that decision at that point in the process?

B. Winner said he thinks the Board can hold it open. He said once you make it a condition of the OSRD, the next filing would have to comply with that condition.

P. Paicos said he just wanted the Board to start to think about this. He asked the other Board members if they had any thoughts. The Board members had no comments on this at this time.

Continuing on, P. Paicos asked, with regards to the purpose and intent, is the proposed OSRD consistent with the purpose and intent of the OSRD By-Law?

All Board members said they were comfortable that it does.

P. Paicos said now he would like to touch on the Design Process. He asked the Board members if they were comfortable that the Applicant has followed the OSRD Design Process.

All members replied yes.

P. Paicos moved on the Design Standard. He asked if the Board feels that the Applicant has met all the OSRD Design Standards laid out by the By-Law.

All members replied yes.

P. Paicos said as of now the applicant has no stated waivers, but we may have this waiver with regards to the contiguous upland issue. He asked the Board if there were any other concerns with waiver issues.

All members said no.

P. Paicos said he thought that their review of the Decision Criteria allows them to have an appreciation that this does meet the threshold for an OSRD. He then asked if the Applicant had any comments or questions regarding their discussion.

Jill Mann said she appreciates the Board going through the criteria, it was very helpful. She said she has one follow up regarding the ownership of the Open Space and imposing a condition. She said the Board has the complete right to tell them if they want them to own it or not, but there needs to be an appreciation of the fact that they need certainty in the Decision. This is because they cannot have a Condominium Association maintain the Open Space if they don't own it. She said someone will have to mow the front field and someone will have to maintain that gravel approach and parking area. She said the

Condominium Association is not allowed to maintain land that it does not own. She said she just wants to make sure the Board understands that.

P. Paicos asked B. Winner if he had any comments.

B. Winner said he generally agrees. He said there are costs and benefits to the different options. He said with ownership comes responsibilities, but it also comes with a lot of control in terms of the direction and future of the Open Space. He said that is part of the deliberative process that the Conservation Commission and the Select Board would have to undertake to figure out if the Town would really want this land. He said we don't have the answer to that today.

J. Mann said in her estimation that process takes six to nine months. There has to be certainty in the Decision and it can't be subject to a condition that is not in the control of the Applicant – this wouldn't be, and that creates problems for permitting, sale, everything. She said she doesn't mind if this Board wants to make a decision one way or the other, but not a condition that is open ended. She asked B. Winner when they accept the land, she knows it is a gift, but do they have to have any type of Town Meeting vote when there is an obligation to maintain. She asked Attorney Winner how that works.

B. Winner said if it were offered to the Conservation Commission, a Town Meeting vote would not be required. He does this often. It would be a condition of the Permit that the applicant offer the Open Space to the Conservation Commission. Since we don't know if the Select Board will approve it, he would write the Condition in such a way that the Applicant's obligation is to offer it. If the Town elects not to accept it, then all the obligations just revert to the Homeowners Association.

The hearing then moved on to public comment. M. Taylor said they had received four emails – from Eva Jackman, Kendra Beauparlant, Bonnie and Chris Simpson, and the Tufts Family – since the last meeting. These were all in opposition to the project.

P. Paicos opened the hearing to public comment.

Kathryn O'Brien, 103 High Road, said she has a few questions, most having to do with how the Yield was determined and when it was defended by the Applicant. She noted in December it hadn't been decided whether the Yield should be based on number of lots or number of dwelling units. She asked if the Board had tasked Attorney Mann and Winner with determining the Yield.

P. Paicos said no, the Board had not tasked anyone with determining the Yield. He said for clarification that the Board has discussed this, they are comfortable with the Yield, and have accepted it.

K. O'Brien said she is not comfortable with the Yield plan because in the By-Law it says one dwelling on one lot. She said a two family is considered one dwelling. She said the number of lots is the Yield, not the number of homes. She said she went back and looked up all the other OSRDs that had been before the Planning Board. She said in all of them except one, another DePiero project, the Yield was one lot, one dwelling. She said this shows her that the Yield is not the number of living units, it is the number of lots.

P. Paicos asked B. Winner to clarify this point.

B. Winner said this question came up many meetings ago, as to whether the formula required consideration of the dwelling units or the lots. He said this was looked at and there were many comments on it. What was concluded was that the language of the By-Law requires that you look at the dwelling units. A legal review was conducted and the Board considered it and made a decision.

K. O'Brien said that is good enough for her to appeal the Decision. She said it is up to the Applicant to defend the Yield and instead we have a representative of Town Counsel.

P. Paicos said these points have been discussed and vetted, Town Counsel has given their opinion, and, that being the case, there is no room to discuss this any further. He then invited Ms. O'Brien, if she had something new or different to submit to the Board, to please do so now.

K. O'Brien said she does have a couple of other things. According to the Rules and Regulations, the OSRD must substantially comply with the concept plan – she said in this application this is not true and referred to Chapter 112 (5) d.

She said one of the things that has been brought up over and over is that the Open Space and the forested area will never be built upon. She said of course it won't, it is all wet, you can't build back there. She said if the Board didn't approve the OSRD, the Owner would still be entitled to a definitive plan, which is his right. However he would only have four lots and he wouldn't build, it would cost too much. She said you can't say that one of the benefits of the OSRD is that the land will never be built upon. She said the house would have to be moved because it is too close to the road.

P. Paicos said the Board has reviewed all of these points and is comfortable with what has been presented. He asked if there is something new that the Board needs to know about.

K. O'Brien said she would review the meetings to see when this was discussed and reviewed.

Peter Gantchev, 117 High Road, said he has a short presentation he would like to share, but it seems that a lot of the material has already been covered. He said he would like to concur with K. O'Brien – he is a little uncomfortable with the Yield plan, going from five lots with duplexes to 10 lots of single family homes. He said he doesn't think that this is the right location for this project. He knows Mr. DePiero is a good developer of residential properties, but the density is too high. He said he thinks it is similar to the Colby Farm Development in Newburyport and when you look at that you just see a wall of houses surrounded by beautiful meadows.

David Reczek, 6 Wilshire Road, said that he appreciates the Board giving their time. He said he just wants to comment on his experience with M. DePiero. He said Wilshire Road is one of the last developments that M. DePiero did here. He said that he thinks it is a really nice development and that it is a nice addition to the Town. He thinks all the people

that live here love it and he thinks that they did a nice job with the common open area. He said he is happy to answer any questions.

Angel Beauparlant, 25 Withington Street, asked why the Board is not considering how many people are opposed to this project. She then asked how the developer can make this long road, given the seven foot easement.

P. Paicos said the Planning Board's role does not involve the easement, it is not in their purview.

B. Winner said this issue came up early in the process and resurfaced in the middle. He said they looked at the easement and tried to determine if it played any role as a legal matter in their deliberative process under the law and determined that it was a civil matter between parties and not in the jurisdiction of the Planning Board. It was examined, they spent a great deal of time on it, and it is not in the Board's jurisdiction.

A. Beauparlant said it has been to Civil Court and it is K. O'Brien's, so how can the developer take some of that?

P. Paicos said that if there is a Civil Land Court Decision, then that is where that is addressed. He said they are addressing what is before them.

A. Beauparlant asked how it can be approved if that is not looked at.

P. Paicos said it is not in their jurisdiction to look at that, they are here to look at whether this meets the OSRD criteria in our By-Law.

A. Beauparlant asked again why they don't look at all the people that are against this project.

P. Paicos said he appreciates the sensitivity of developing farm land. One of the reasons he moved to this Town was the rural nature and the agriculture base that the Town has. He said property owners have the right to do something with their property. He noted that, as L. Murphy indicated at the beginning of this hearing, the Board's role is not to say yes to development or no to development. What they have to do, when an applicant comes before them with an application for a particular project over which the Board has jurisdiction, is say yes it meets the criteria or no it doesn't. They can't say yes, you can develop this, or no, you can't develop this. He said OSRD follows the Master Plan for this community.

P. Gantchev said in the April 21, 2021 hearing for 15 Coleman Road, a matrix was presented showing the contiguous upland, etc. He asked if we could get something similar to that for this project.

P. Paicos said that has been provided and presented.

B. Winner said the Open Space calculation was discussed with the Board at the February 17, 2021, session of the public hearing.



P. Gantchev asked when the Yield plan was approved.

B. Winner said the Yield plan was discussed at the following meeting.

P. Gantchev asked doesn't the Yield plan affect the bonus lot calculations?

B. Winner said there is a provision that allows the Board to consider bonus lots if they are asked for. He said they discussed that when the revisions to the Plan were made and the applicant changed their position on what they were asking for in terms of bonus lots.

P. Gantchev asked what percent of land needs to be put in the OSRD for the 10 lots to be approved.

M. Taylor said 50% of the upland, which needs to be contiguous, needs to be set aside as Open Space. She said in this case the Applicant had previously requested bonus units, but is no longer requesting them. The 10 units that are being shown are based on the 5 two families in the Yield plan.

P. Paicos asked the Board members if they had any questions, comments, or concerns.

W. Knight said in the Open Space where the septic system is going to be, there is a proposed pollinator meadow. He said he has concerns with the neighboring hay fields. A lot of these species spread really easily and he wouldn't want to see these neighboring hay fields disturbed by these pollinator plant species reseeding there. He said in light of that he would like to see it planted in a grass, not a pollinator mix with milkweed, etc.

P. Paicos asked how we handle this, do we restrict that situation so that doesn't occur?

M. Taylor said that there needs to be an Open Space management plan that would be developed. In that plan there might be some provisions. She said she doesn't know if the Applicant's Landscape architect might be able to make some recommendations on how to contain seed from the pollinator meadow.

W. Knight said there are native species that could be planted that are pollinators and could be mowed bimonthly.

P. Paicos asked B. Winner about the next steps.

B. Winner said the next step would be to start thinking about what kinds of conditions and requirements you would like to see in a draft decision so that he and M. Taylor can start drafting something for the Board to consider. He said alternatively we can start a first draft and the Board can add to it as we go.

P. Paicos said that is a good recommendation to get a draft started on the OSRD Special Permit Decision and then we can review and discuss at our next meeting. He asked the Board members if they felt the same way. All agreed.

**Motion:** A motion was made by L. Murphy and seconded by G. Morse to direct B. Winner and M. Taylor to begin drafting a Decision for the 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). There was no discussion on the motion. A roll call vote was taken. P. Paicos, yes; L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes.

**Motion:** A motion was made by L. Murphy 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; Applicant: DePiero, LLC; Owner: Mitchell Mantin (formerly Arthur & Sandra Costonis) to June 16, 2021 at 7:15 p.m.. There was no discussion on the motion. A roll call vote was taken. P. Paicos, yes; L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes.

**G. Public Hearing – Site Plan Review Application, 3 Newburyport Turnpike (Map R47, Lots 38 & 39); Owner/Applicant: Bavaro Family Realty Two, LLC (continued from May 5, 2021)**

P. Paicos opened this session of the public hearing. He said that they had received revised Architectural Drawings.

TJ Melvin, Millennium Engineering, said there are no additional materials to be presented at this point.

P. Paicos asked the Board if there were any questions at this point. There were none.

The hearing was opened to public comment. M. Taylor said they had not received any comments from the public and noted that no one from the public in attendance at the meeting was asking to speak.

P. Paicos moved on to reviewing the revised draft Decision. M. Taylor shared the document on the screen.

P. Paicos went through modifications that had been made, including the final count of units in the building, confirmation that approval from MassDOT is still pending, an added condition referencing the signage, and tonight's hearing date.

M. Taylor asked about the Community Impact Assessment.

L. Murphy said he is fine with this waiver. The remainder of the Board members were ok with it as well.

P. Paicos said a waiver request should be submitted in letter form.

TJ Melvin explained the justification he would include in the letter. The utilities will be provided through Newburyport. The residential units and commercial unit will offset any financial burdens in the way of tax revenue.

P. Paicos said the only condition they need to review is the addition to C. "In addition, a final Site Plan shall be submitted to the Planning Board upon approval from MassDOT showing any and all improvements required by MassDOT for the access permit."

All Board members were comfortable with this.

M. Taylor said she doesn't believe there has been any discussion about construction activity.

P. Paicos read condition H. "Construction activity shall be limited to the hours between 7:00 a.m. and 5:00 p.m., inclusive, Monday through Friday, and, if weekend hours are needed, between 8:00 a.m. and 2:00 p.m., inclusive, on Saturday. There shall be no construction activity on Sundays."

P. Paicos said this is language the Board has used in the past.

M. Taylor said the only thing to consider is the location of this project and if that affects this at all.

L. Murphy said this is standard. He said unless the Applicant feels this is inadequate, he is fine with it. G. Morse, L. Matthews, W. Knight, and M. Stohn all agreed.

P. Paicos said there was a clarification on lighting.

M. Taylor said if the Board is ok with it, she will change N. to be the same language as the condition in the 84 Boston Road Decision. All Board members approved.

M. Taylor said that there had been some concern about the area that is labeled "tenant gymnasium" and the desire to make sure that it not be used for commercial or retail space in the future. She said the question is whether there should be any condition to that effect.

L. Murphy suggested something to the effect of any change of use of those spaces would require modification of the Site Plan Approval.

TJ Melvin asked if they could make the language so that if the type of commercial or retail tenant changed in the designated space it wouldn't require a modification, such as if it changed from a Doctor's office to a retail space.

The Board discussed how to achieve this.

TJ Melvin suggested limiting the square feet of commercial space provided on the first floor without going back to the Planning Board. By no means shall the remaining portion of the first floor be used for residential units. That area shall be an accessory use to the residential units above.

M. Taylor added a condition. "O. The first floor commercial space shall not exceed 3,000 s.f., and the remainder of the first floor shall be designated for tenant use only."

All Board members were comfortable with this, as was the Applicant.

**Motion:** A motion was made by L. Murphy and seconded by W. Knight to grant the Site Plan Approval and approve the Decision as amended for 3 Newburyport Turnpike (Map R47, Lots 38 & 39); Owner/Applicant: Bavaro Family Realty Two, LLC. There was no discussion on the motion. A roll call vote was taken: P. Paicos, yes; L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes.

**Motion:** A motion was made by W. Knight and seconded by L. Murphy to close the Public Hearing for 3 Newburyport Turnpike (Map R47, Lots 38 & 39); Owner/Applicant: Bavaro Family Realty Two, LLC. There was no discussion on the motion. A roll call vote was taken: P. Paicos, yes; L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes.

#### **H. Planning Director's Report (Continued)**

M. Taylor said she wanted to follow up on the announcement she had sent out regarding the public meetings that will be held in conjunction with the Town's Municipal Vulnerability Action Grant on the fiscal and economic impact of sea level rise on Plum Island and make sure that everyone had received it. She encouraged everyone to check out the website and come to the meetings if possible.

Following the Planning Director's report, G. Morse left the meeting.

#### **I. 66 Parish Road OSRD, Georgetown – Status Report (Reprised)**

J. Rybicki, 37 Larkin Road, requested that the Larkin Road update be repeated, because a number of people joined the meeting at 8:45 p.m., when this item was posted to be discussed on the agenda.

P. Paicos said they had moved this item forward because they had time earlier in the meeting, before the public hearings started.

M. Taylor gave a summary of the report.

M. Stohn noted it is important for people to understand that the Newbury Planning Board is not officially involved in this project.

The Board was asked for guidance on who the public should be contacting with their questions. M. Taylor said she is seeking clarification on that.

Justin Londergan, 38 Larkin Road, said all the residents on Larkin Road are concerned about this project and don't see the upside for Newbury.

Katherine Londergan, 38 Larkin Road, asked if the bridge is in Georgetown or Newbury.

M. Taylor said a very small portion is in Georgetown, but the majority is in Newbury. She said it was a high priority for the Select Board to get the bridge rebuilt at the time that the developer of this subdivision offered to rebuild it.

M. Stohn asked if there was a source of information currently, since M. Taylor can't be it.

M. Taylor said the best source of information related to the project itself would be the Georgetown Town Planner. Questions and concerns about how this affects Newbury could for now be addressed to her.

P. Paicos said this is an unusual situation. The Planning Board will have to try to field the questions and concerns as best they can as an entity that is not involved in the decision-making process.

Cheryl Floyd, 26 Parish Road, Georgetown, said that back in 2016 one of her concerns that was addressed was the wildlife in the water below the bridge. She said that it was determined that the developer would be responsible for relocating the wildlife while construction was in progress and then moving it back. She said that this should be monitored and she personally will watch it.

Gabrielle Connolly, 23 Parish Road, Georgetown, said she is very concerned about the increase in traffic, her son is autistic and disabled. She asked where she should send her questions and concerns.

P. Paicos said he would think because she is a Georgetown Resident, that she should go through Georgetown.

Julie Bernardo, 28 Parish Road, Georgetown, said she is the last house before the bridge. She is concerned that it will be a major cut through, she feels like it has been this way for 10 years, they should just keep it as it is.

A motion was made by L. Matthews and seconded by L. Murphy to adjourn the Planning Board meeting at 9:59 p.m. A roll call vote was taken. P. Paicos, yes; L. Murphy, yes; L. Matthews, yes; W. Knight, yes.

Respectfully Submitted,

Emily Noble  
Planning Board Administrator