

## Meeting Minutes

### Planning Board

Wednesday, December 14, 2022

Virtual Meeting via Zoom

*Final – Approved April 19, 2023*

**Members Present:** Larry Murphy, Chair; Peter Paicos; George Morse; Woody Knight; Leslie Matthews  
**Members Absent:** Mary Stohn (Associate Member)  
**Staff Present:** Martha Taylor, Planning Director

Chair Larry Murphy opened the Planning Board meeting at 7:00 p.m. and verified that all members except Matthews were in attendance at the start of the meeting.

Opening Statement from Chair: Murphy announced that the December 14, 2022 Open Meeting of the Newbury Planning Board was being conducted remotely in accordance with Chapter 107 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 March 31, 2023. 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. L. Murphy 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, Murphy turned to the agenda. PB member Leslie Matthews joined the meeting.

- A. Discussion of January 2023 Meeting Schedule:** Murphy asked if there were any concerns about meeting on the first Wednesday of January, which would be January 4, 2023, falling so close after the holidays. Board members did not have concerns. Murphy declared that the Board will keep its regular schedule and will meet on January 4, 2023.
- B. November 2022 Financial Report:** Murphy read the Planning Board’s November 2022 Financial Report into the record.
- C. Planning Director’s Report:** Taylor explained that the Town’s Action Plan for compliance with the new MBTA Communities legislation needs to be submitted at the end of January. She suggested the Board make time to discuss this in a workshop meeting early in January. Murphy agreed this made sense to hold a workshop meeting in early January. The meeting will be posted as an open public meeting. The Board members suggested meeting in person at 2pm on January 5, 2023. Taylor encouraged the Board members to attend the CPTC training workshop on the MBTA legislation on December 19. Taylor reported that the Town is close to filling the assistant planner position.
- D. Public Hearings:** At 7:19pm, Murphy opened the scheduled Public Hearing:

**Special Permit Modification Application, 140R Main Street (Map R41, Lot 42), requesting modification of the Special Permit granted to Borrego Solar Systems, Inc., on May 16, 2018, to allow construction of a utility access road, including a bridge, in the location of an existing cart path; Applicant: New Leaf Energy; Owner: Karen E. Yesair Thiel and Kavy N. Yesair, Successor Trustees of the Ruth A. Yesair Trust, 138 Main Street, Byfield, MA 01922.**

Murphy asked the applicant's representative Engineer Robert Roseen to summarize the project status since their last meeting with the Planning Board in September. Roseen stated that the project has received its permit from the Conservation Commission, and has advanced its permit plan set to a construction plan set. Roseen stated that the only change from what the Board has seen is that the road is shorter and modified slightly due to review by the fire department and the stormwater peer review. Taylor confirmed that the technical meeting with town staff and the applicant resolved these road layout and slope issues as Roseen presented them. Taylor added there will be a condition in the Board's decision about permits from the Army Corps.

Paicos asked the applicant to address the information about the tree compensation fund received by the Board, which concerned valuation for the trees that are to be cut down for the project. Roseen explained that the 2018 decision for the project described a \$30 per tree charge for the approximately 1600 trees to be cut down. Roseen proposed doubling the payment to be a \$60 per tree payment for each of the 103 trees in this 2022 project. Murphy asked Taylor if she had any insight. Taylor stated in 2018 she and Town Counsel reviewed tree calculators to help arrive at the valuation but Taylor did not recall specifics. Morse agreed with looking at the methodology used in 2018. Matthews asked the applicant what the plan was for the cut trees. Roseen replied he didn't have a definitive answer however he said that many of the shrubs and small trees would be saved and replanted in the "lay down" area during the road construction. He said the tree company doing the clearing would likely take the lumber. Matthews asked what the size of the land being cleared is. Roseen answered that there is 0.6 acres that will be cleared, which includes 103 trees (47 trees in 6-11 inch range, 45 trees in 12-23 inch range, and 11 trees in the 24+ inch range). Knight had no questions. Taylor said she has not received any public comments.

Roseen asked the Board if they would consider a straw poll tonight on the modification request if they feel the applicant has addressed the majority of the concerns. Paicos and Morse said they were comfortable with the project status. Matthews asked what the timeframe was for moving forward to construction. Roseen said he does not have a timetable yet but they are anticipating it would be a 3-month timetable duration for all construction once it begins. Matthews, Knight, and Murphy also stated their informal approval for moving forward.

**Motion:** Murphy asked for a motion that Taylor draft a decision for the modification request. Paicos made the motion. Knight seconded. There was no further discussion and all Board members voted yes in a roll call vote.

**Motion:** Murphy asked for a motion to continue the project's public hearing to the January 4, 2023 Zoom meeting at 7:15pm. Morse made the motion. Matthews seconded. All members said yes in a roll call vote.

Roseen asked the Board how they would like to resolve the tree compensation question. Murphy asked Taylor to research this and review with Roseen, and the Board will be able to continue discussion at the January 4<sup>th</sup> meeting.

At 7:43pm, Murphy opened a new public hearing:

**Public Hearing (New): Application for Modification of an approved Definitive Subdivision Plan on property previously known as 15 Coleman Road (Map R02, Lots 12 and 13), requesting a waiver from the requirements of the Code of the Town of Newbury, Chapter 117, Subdivision of Land, § 117-21.D., to allow for a property line radius of 20 feet, instead of the required 30 feet, on the easterly side of the intersection of the subdivision road, Fieldstone Lane, and Coleman Road, and approval of related changes to the area and frontage of Lot 7 (now #2 Fieldstone Lane, Map R02,**

**Lot 13G) and the layout and area of the subdivision road; Owner/Applicant: Zendko, LLC, Tom Zahoruiko, Manager.**

Knight read the legal notice for the public hearing. Taylor stated that she has received proof of all the abutter mailings. Applicant Tom Zahoruiko explained that this is an administrative request to modify the property line radius of the previously approved subdivision plan to show that the Witchstone/Fatherstone is located outside the right of way of Fieldstone Lane, and would be located in 'Parcel A' to be created as an ANR lot and conveyed to the Town. Taylor displayed the modification request showing the original and new plans. Murphy asked the Board members for any comments or questions. Paicos thanked the applicant for addressing this administrative clarification. Morse agreed it makes sense to do the change as shown. Matthews and Knight also stated agreement with the change.

**Motion:** Paicos made a motion to ask Taylor to draft a decision. Matthews seconded. All members voted yes in a roll call vote.

**Motion:** Murphy asked for a motion to continue the public hearing to January 4, 2023 at 7:15pm on Zoom. Knight moved. Morse seconded. All members voted yes in a roll call vote.

**E. Liaison Reports:**

1. Select Board: Matthews reported that the recent Select Board meeting discussed the Marsh Meadow Lane project and continued its discussion to February 28, 2023. The Select Board also held an executive session, and then discussed trees that need to be cut down on the Newman Road right of way for safety reasons.
2. ZBA: Murphy reported that the ZBA has a continued public hearing on a special permit at 80 Northern Boulevard and a new hearing for 16 Green Street.
3. Conservation Commission: Paicos said the Commission finished its review of the observation platform at the Trustees' Old Town Hill property.
4. MVPC: Taylor reported she attended the kick off meeting for the MVPC regional Hazard Mitigation Update project and met with MVPC staff regarding the update of the regional housing production plan which is due to start up in January.

**Motion:** There being no further business, L. Murphy called for a motion to adjourn. A motion was made by Paicos and seconded by Morse. All members voted yes in a roll call vote. The meeting was adjourned at 8:04 p.m.

**Materials reviewed at the meeting:**

- "Definitive Subdivision – Open Space Residential Development Plan for 15 Coleman Road, Newbury, MA, Sheet 13.2", prepared by Civil Design Group, LLC, 21 High Street, Suite 207, North Andover, MA; surveyed by Joseph I Levesque III, Levesque Geomatics, Inc, 43 Glendale Road, Sturbridge, MA; dated 6/10/2021, rev. 8/4/2021, rev. 11/21/2022; prepared for Zendko, LLC, 4 High Street, North Andover, MA.

Respectfully Submitted,

Kristen Grubbs

Assistant Planner