

**Meeting Minutes**  
**Planning Board**  
Wednesday, February 20, 2019  
Newbury Municipal Offices

**APPROVED**

**Members Present:** Peter Paicos, Acting Chair; George Morse; Larry Murphy; Kristen Grubbs (Associate Member)  
**Members Participating Remotely:** Rachel McManus  
**Staff Present:** Martha Taylor, Town Planner

Peter Paicos, Acting Chair, called the meeting to order at 7:00 p.m. He announced that Rachel McManus was participating remotely via telephone due to geographic distance and that all votes will be taken by roll call.

**A. Meeting Minutes**

**Motion:** A motion was made by G. Morse and seconded L. Murphy to approve the meeting minutes of December 19, 2018. R. McManus, aye; L. Murphy, aye; G. Morse, aye; P. Paicos, aye; K. Grubbs, aye. The motion passed.

**Motion:** A motion was made by G. Morse and seconded L. Murphy to approve the meeting minutes of January 2, 2019. R. McManus, aye; L. Murphy, aye; G. Morse, aye; P. Paicos, aye; K. Grubbs, aye. The motion passed.

**B. Town Planners Report**

M. Taylor reported that the Citizen Planner Training Conference is scheduled for March 16, 2019. It will take place Worcester, MA and registration is open.

The Town receive a Chapter 91 waterways license application for the Kent way bridge replacement and rehabilitation for fish and wildlife and it has been granted.

The Town has received a notice for a joint public hearing from Newburyport for some rezoning they are going to do in the Storey Ave and Low Street area. That will take place on March 6, 2018.

The Governors Academy is doing an upgrade on Old Road. Old Road is a private road.

**C. Liaison Reports**

M. Taylor reported on the Board of Selectmen's meeting, they had a report from the building committee, they are working on the site design currently. They plan to come before the Board for site plan review in early May on their current schedule. They asked if the Board could try to coordinate with the Conservation Commission. M. Taylor presented the zoning changes being proposed and they did refer them back to the Board for public hearing, which we should discuss tonight. M. Taylor reported that the conservation commission talked about the Old Road project and another project on Plum Island on 35<sup>th</sup> Street.

G. Morse said the Zoning Board of Appeals has a meeting the tomorrow night with around 6 items on the agenda.

M. Taylor reported that the Merrimack Valley planning commission has a commissioners meeting the tomorrow night. Next Tuesday a Planners meeting where they will be talking about housing and there will be a presentation on natural resources protection zoning, K. Grubbs and M. Taylor will be attending.

**D. Continued Public Hearing – Open Space Residential Development (OSRD) Special Permit Application, 170 Orchard Street, Map R-20, Lot 43A; Applicant: Charing Cross Realty Trust**

P. Paicos opened the continued public hearing on this matter at 7:10 p.m.

M. Taylor said that in following up with Bill Luster, Charing Cross, he said that they do not have the responses to all the questions that were raised. The Board received a letter today from Charing Cross requesting a continuance of the public hearing with no discussion tonight.

Channing Howard, 61 Central Street, in reference to this project, every public hearing we have had on this project this applicant has been incomplete, not all of their staff have been here. Is this regular practice to just continue when abutters and concerned citizens are waiting to hear the plan, and we continue to come here and find out that the applicant is not ready?

M. Taylor said that that is a very good question, it is something I want to follow up on to see if at some point is it appropriate for the Board to say it might be time to withdraw or do something else. We have had hearings that continue for a long time, but usually that is because there is information that needs to be followed up on, not a series of cases where the applicant isn't ready and requests continuance.

C. Howard asked if this project was to go forward as a conventional subdivision, has the Board contacted Town Counsel in reference to the owner of the house on Pearson Drive for the second egress, and the fact that they hold a position on a town Board.

M. Taylor said that they have not had any conversations with Counsel about that.

The Board discussed when this public hearing could be continued.

**Motion:** a motion was made by G. Morse and seconded by L. Murphy to continue the public hearing on this matter until April 3, 2019 at 7:10 p.m. R. McManus, aye; L. Murphy, aye; G. Morse, aye; P. Paicos, aye; K. Grubbs, aye. The motion passed.

**E. Continued Public Hearing – Site Plan Review Application for Proposed Rehabilitation of Newbury's Upper Green, bounded by High Road, Green Street, and Hanover Street, Assessors Map U-09, Lot 75; Applicant: GreenER, c/o Dr. Keith Ablow**

P. Paicos opened the continued public hearing on this matter at 7:20 p.m.

Verne Fisher, Visionary Landscapes, LLC, Keith Ablow, and Cole Ablow were all present.

K. Ablow said that they have a revised plan, based on the feedback they got from both the Planning Board and The Board of Selectmen. This also is following a meeting they had with Historic New England.

C. Ablow said that they gave Historic New England an overview of the most updated project plans and they were enthusiastic about it and encouraged us to dive deeper into the historical value of the Green. Overall it was a very positive meeting.

K. Ablow said that they have done some extra work to prepare for the public meeting on the 25<sup>th</sup> to show the public the changes the Upper Green has undergone in the past and understand this is part of the evolution of changes. To show the Green has not been a static installation. Historic New England thought it would be helpful to place these changes in context with the many changes that have taken place over time.

V. Fisher said that Historic New England suggested that they put the changes into chronological order. There are some iterations that they don't know exactly when they were done, because some of the Board of Selectmen records have been damaged and lost. They have reached out to the historical commission to see if they can help out with that. Their goal is to preserve and enhance the history and significance of the Upper Green for the users of today and for generations.

The design is relatively simple. They want to replant around the periphery, based on the oldest pictures they could find, which showed that there used to be American Elms there. This tree has died off because of Dutch Elm disease. They are suggesting that they go back to the original layout of the Upper Green using Zelkova. They chose Zelkova because they have a similar growth size and habit and have no known insect or disease problems. They want to move them in 22 feet so they won't get entangled in the lines and destroyed over time. There were no trees along High Road originally, because back in the 1600s and 1700s that roadway was there and the pond was the original watering hole, hand dug out by the Selectmen. The other reason they are not going to plant trees along High Road is there are wires in the way, so the trees will not have room to grow properly.

Another change that they have made from their original design is eliminating the walkway that comes around the back side of the pond. They agree that is should be left in the pastoral form it was originally intended to be. Newbury was established as a cattle town, they had over 3,000 head of cattle in 1791. They will leave the walkway between the Arnold Rock memorial and the flagpole, to bring people there and allow handicap and disabled access. They have also reduced the walkway from 8 feet to 6 feet which what is there now in front of the pond. The other proposed change is the location of the baseball field, which was a request from the Recreation committee and the Little League because currently at a certain time of day the sun is in the batter's eyes. From what they have been able to find the field has been there since the early 1900s. Taking this into consideration they have a suggested a new location where it is not in the way.

V. Fisher then reviewed all the changes that are asking to make. For safety, they want the move the baseball field. To bring back the original look of the Green they want to plant 4.5 to 5 inch caliper Zelkova trees where the original American Elms were. To allow pedestrian access to the memorials and flagpole they want to put in a 6-foot-wide Goshen

stone walkway. There are benches already there, they would like to move them and possibly add a couple more. The last proposed addition are life size bronze cattle, the reason they would like to do this is that it will today and, in the future, remind people of the history of the Green, they will have black and white signs next to them explaining the history of the town. They think that this will bring the history of Newbury to the forefront.

Historic New England liked the idea of the cattle and said that the Garrison School in Connecticut had used some bronze cattle, but the applicant said that they are still taking input on the cattle.

V. Fisher also added that they will be regrading the site to drain into the pond, except the portion that is coming from High Road that would have salt in it, which will go to a catch basin that is already there.

P. Paicos asked the Board if there were any questions or comments from the Board.

G. Morse asked if Zelkova occurs naturally or if it is a cross between a couple of trees.

V. Fisher said that Zelkova serrata is a zone 5 tree from Japan, because Japan has the same conditions plants that grow there will grow here. It is the only tree that would replicate the American Elm with resistance to all the current diseases and pests.

G. Morse asked if they turn a color in the fall.

V. Fisher said they turn a beautiful yellow.

L. Murphy said that the Board has a letter from the DPW director saying he is very concerned that the drainage off the roadway to the Green not be disturbed. If there any concern where you are targeting that drainage to the catch basin.

V. Fisher said that they are only changing the grading so that there will not be any puddles on the Green and everything will drain into the pond as it was intended to. The only difference is that the water draining from the road will be directed to the catch basin instead of the pond.

K. Ablow said that this has been approved by the Conservation Commission.

L. Murphy asked if they had finalized the phases and the construction budget for those phases.

V. Fisher said that they do and they can present it to the Board.

K. Ablow said that all their donors would like to see the project approved before they give them any funds.

V. Fisher said that they set it up in phases so that each phase is paid for before they start. They also have made phases so that at least parts of the Green will be open to the public

at all times. This way they won't run out of money half way through any part of the project.

L. Murphy asked how long the project is going to take.

V. Fisher said about 3 to 4 months. It really depends on when we get the approval and getting the financing. The banks and other people have signed on but want to make sure they have the Town's approval before they put any money forward.

K. Grubbs asked if she was right in saying this is in the water supply protection district.

M. Taylor said yes. That is why it is a Selectmen's special permit.

K. Grubbs asked what the water supply is.

M. Taylor said it is within the radius of the wells for the elementary school, the Bashaw property, and Matt's Property.

K. Grubbs asked if all of these improvements meet the parameters of what should happen in the water supply protection district.

M. Taylor said that that is what the Selectmen have to determine.

K. Grubbs asked the applicant with the Zelkova trees what original look they are trying to match.

V. Fisher said that originally when they laid it out as pastoral ground they didn't have elms in 1635, but as time went on they planted the periphery of the common with majestic elms, as they did all over America. They did this because they grow up like a big umbrella and hang down. Zelkova is the closest they can come to that look without having any danger of diseases or pests.

K. Grubbs said that she would say that there are aspects and values to trees beyond the aesthetics. She is of the opinion that native species would be more appropriate on a Town Green. There are also wildlife habitat and other value in a diversity of native species that you wouldn't get with a monopoly of one tree.

V. Fisher said that has been a concern. We are trying to bring back that historical look and that is why we have chosen Zelkova. There are a lot of trees we could bring in. That is totally different than what we are trying to do. We are trying to bring it back to the original look and bring the history to the attention of the user today and the future.

There was discussion about a building that was once on the Green.

K. Ablow said that Historic New England said that their choice would be Zelkova trees.

V. Fisher said that the trees are being grown in New Hampshire, which is where they would get them from.

K. Ablow asked where else can we find these trees used in a historical setting?

V. Fisher said they are used all over America to replace American elms. He said he wanted to use sugar maple and he knows with using a 3 to 1 sand to loam mix they would grow well, but a lot of people said that the ground was too wet for them. The original look was the American Elm.

K. Grubbs asked where people park when they visit the site.

V. Fisher said the same place they do now, along the perimeter.

K. Grubs said that she would argue that is not an appropriate use.

V. Fisher said that is how it has always been. Are we going to put in a parking lot? It is private property. We can't put in a parking lot.

K. Grubbs said there is a crosswalk from the old Town Hall.

K. Ablow said that if there was a way that we could get people to park at the old Town Hall that would be even better. He thinks they might get some push back from people who have always parked on the side.

K. Grubbs said she is just suggesting it is a consideration the Town should have, if it is a more attractive space.

P. Paicos thanked the applicants and said that he really appreciates their passion for this project, its good to see positive energy coming in.

P. Paicos opened up to public comment.

Fred Thurlow, 26 Marsh Ave, asked if they did a survey to see where the pavement is in relation to the right of way. How much of where people park is part of the Green and how much is part of the right of way of the Road. He showed a picture from the 1800s and said the trees in the picture are not Elms.

V. Fisher said that they planted other trees next to the elms when they were dying off.

F. Thurlow said this was in the 1800s, the Elms weren't dying in the 1800s. In truth most of the Elms died in the hurricane of 38' and of 54'. The State planted Ash trees which are not native and they have taken over.

V. Fisher said and they planted Norway maple which are considered a weed tree. There are Norway maple, silver maple, ash and a whole list of what is existing. And in the picture the trees are way too close.

F. Thurlow asked what the spacing is between the trees.

V. Fisher said it is around 60 feet. On our plan we have 16 trees, presently there are 19 trees.

K. Ablow asked if 60 feet sounded right.

F. Thurlow said standard planting distances for street trees is between 30 and 50 feet

V. Fisher said it is to give them enough space and to make it uniform. This way the canopies won't be touching. It is about the form and the majestic look of the tree.

F. Thurlow made the point that if you flip the field around instead of the sun being in the batter and catcher's eyes it is in everyone else's eyes.

V. Fisher said that it won't be in anyone's eyes. This is a change they only made because of a request from Recreation and Little league.

F. Thurlow said that he looked at a bunch of fields on the North Shore and the traditional orientation is north to south.

V. Fisher said that they tried the best they could considering the circumstances.

F. Thurlow said that he remembers the field always being the way it is now. He also said that he is concerned about the Firemen's Muster that the backstop would be in the way.

V. Fisher said that they met with them and mapped everything out and they have a letter to the effect that they have no problem with the position of the backstop.

F. Thurlow asked if they are going to remove all the trees.

V. Fisher said yes, and replant them so they can all mature together.

F. Thurlow asked where the catch basin drains. He said that the pond level is abnormally high, he thinks there is an issue with drainage and that will need to be addressed if they are going to solve the water back up issue.

V. Fisher said that he would work with the DPW on that, that is not something we could do, but we could work with the Town on solving that issue. It won't hurt to fix the grading and raise it up.

F. Thurlow asked about an aerator in the pond. He said that the town of Newbury had put one in, but has since stopped working, it should be at the bottom of the pond.

V. Fisher said that an aerator is still in the plan, it will be a floating one that makes a little fountain. F. Thurlow said he would prefer one that is on the bottom because it is more natural. V. Fisher said that they are open to suggestions. F. Thurlow said that if it is a bottom aerator there should be two in the pond.

Jim Moran, 104 Elm Street, commented that he appreciates what they are trying to do to make improvements to the Upper Green, but that the applicant is very focused on what they would like to do instead of what the town would like to do. He said he is not sure that going back to several hundred years ago is what you want to do, maybe we want to

do something more in the middle, keep it modern and still affect some of the changes you want. He said he would like to see some nice sugar maple in there. How many trees are you talking about at 4-5 inch caliper?

K. Ablow answered 16 trees.

J. Moran said on Monday you will have some pictures of full grown Zelkova trees look like, so we can see. He asked if they had had a survey done. He asked if these drawings are available in PDF for the Town to mail out or put up on the website so that people can look at them. He then asked what the budget for the project is.

Tiffany Bartholomew, Executive Director Project GreenER, said that it is between 400,000 and 700,000. It is highly depended on if the cattle are included in the plan. The cattle themselves are 150,000 plus shipping and installation.

J. Moran asked how many yards of fill they would bring in.

V. Fisher said he doesn't know the number.

J. Moran said you think from start to finish it is going to be about 3-4 months?

T. Bartholomew said to be clear it depends on when the project starts and when little league starts because we will not disrupt little league.

J. Moran asked how many phases will the project be.

T. Bartholomew said if we keep the cattle it will be 20 phases.

V. Fisher said that there are 20 steps, but 4 phases. Moving the benches is one of the steps.

J. Moran asked if they got all of the approvals would they start this year.

T. Bartholomew said taking everything into consideration like raising money, all the steps and phases, it would be safe to say they would need 9 to 12 months.

J. Moran said that sounds more reasonable. This could be a two-year project. He commented that they need to make that clear to the public. His last comment was if the town wanted this to be done as a private project or if they would rather have total control over it.

T. Bartholomew said that that decision is up to the Board of Selectmen, whether they want to maintain control or except it as a gift.

J. Moran asked if the money they are raising could be used by a town committee.

T. Bartholomew said that the way it would work if the Selectmen decide not to accept it as a gift the project would go out to bid and it would follow a whole different process that is required by State Law.

J. Moran said if they accept it as a gift it would be your way by your means. It would be less expensive that way. If you get approval how long to you expect it to take to raise the funds?

K. Ablow said that it would not be more than 4 to 6 months. They can get a big chunk of it from local businesses that are just waiting for them to have approval and that would get them through phase one and two.

T. Bartholomew said that their informational meeting is Monday at 7 pm, hosted by GreenER, at the Round School, in the Auditorium.

F. Thurlow commented that there is a lot of concern about continued hearings that go on and on. The problem comes from the State Enabling Act that says you have 90 days to act from the time the hearing closes. If you want to get rid of that problem lobby for it to be changed to 90 days from the start of the hearing.

J. Moran suggested that all applicants need to have full information in the Boards hands three or four days before the meeting and if they don't then don't allow them to go on the Agenda. That would solve the issue of people showing up to meetings and nothing happens.

M. Taylor responded that with Public hearings they cannot do that because the date and time is set at the previous public hearing. And you cannot change it on the agenda because the hearing still needs to be called to continue it to another date.

L. Murphy said M. Taylor has offered to notify people if the public hearing is just going to be continued, in the case of 170 Orchard Street. That being said even though it is just being continued public comments will still be accepted that could be of interest.

The Board discussed with the Applicant when to continue this public hearing.

**Motion:** A motion was made by G. Morse and seconded by L. Murphy to continue the public hearing on this matter to April 3, 2019 at 7:45 p.m. R. McManus, aye; L. Murphy, aye; G. Morse, aye; P. Paicos, aye; K. Grubbs, aye. The motion passed.

**F. Paul Donohoe, Donohoe Survey, Inc. – Submission of ANR Plan for 43 Orchard Street, Map R22, Lot 24; Applicant: Heather Ellen Creed, Holly Creed Meyer, and W.E. Douglas Creed, Co-Executors, Estate of Florence E. Creed**

Holley Meyer, came before the Board, with a complete plan, but presented the issue that her name was spelt wrong. She asked if the Board could approve it as amended at this meeting.

L. Murphy weighed in that the Board could approve it with that change and P. Paicos could sign the corrected plan.

M. Taylor said that would work.

H. Meyer presented the plan for the Board to review, she said her mothers will directed that the property that the farmhouse sits on be separated from the rest of the parcel.

There was some discussion about what parts of the property were in 61A.

H. Meyer gave some history of the house and the property.

**Motion:** A motion was made by L. Murphy and seconded by G. Morse to approve the Form A Approval Not Required plan with the correction of the spelling of Mrs. Meyer's first name, and to authorize the Vice Chair endorse the plan. R. McManus, aye; L. Murphy, aye; G. Morse, aye; P. Paicos, aye; K. Grubbs, aye. The motion passed.

#### **G. Candidates for Planning Board Seats**

The Board discussed promoting K. Grubbs to the empty Board seat and recommending Martha Leahy as the Associate Member to the Board of Selectmen.

**Motion:** A motion was made by G. Morse and seconded by L. Murphy to recommend that the Board of Selectmen appoint Kristin Grubbs to serve as a full member of the Board until the May 14, 2019, Town Election. R. McManus, aye; L. Murphy, aye; G. Morse, aye; P. Paicos, aye. The motion passed.

**Motion:** A motion was made by G. Morse and seconded by L. Murphy to recommend that the Board of Selectmen appoint Martha Leahy to serve as Associate Member of the Board until the end of the fiscal year. R. McManus, aye; L. Murphy, aye; G. Morse, aye; P. Paicos, aye. The motion passed.

#### **H. Update on Potential Zoning and General By-Law Amendments for April 2019 ATM**

The Board discussed setting the date for the Zoning public hearing.

**Motion:** A motion was made by G. Morse and seconded by L. Murphy to set March 20, 2019 at 7:10 p.m., the date and time for the open hearing to discuss the potential zoning and general bylaw amendments for April 2019. R. McManus, aye; L. Murphy, aye; G. Morse, aye; P. Paicos, aye; K. Grubbs, aye. The motion passed.

M. Taylor said that she would start a PowerPoint for the hearing. The Board of Selectmen discussed taking consideration of daycare out of the marijuana buffer zone. The Board agreed to discuss that point at the public hearing. The Board discussed that normally they would not have to notify abutters except for out of town property owners, but the Board of Selectmen suggested that they notify any property owners in the area they are talking about, especially residential property owners.

G. Morse asked if schools included in the buffer zones, but daycares are not.

M. Taylor said they both are included right now in our bylaws, in the Cannabis Control Commission (CCC) daycares are not included.

G. Morse said that he would consider not changing it because the audience may be opposed to that change and turn down the whole amendment.

M. Taylor reported that the other recommendation was that in the wireless amendment to change the property line setback to the tower the height of the tower, not the 1.5 the height of the tower as it has been amended. It again has already been proposed to the Selectmen as it is.

The Board discussed the process necessary to get the amendments approved.

A motion was made by G. Morse and seconded by L. Murphy to adjourn the meeting. A roll call vote was taken: R. McManus, aye; P. Paicos, aye; L. Murphy aye; G. Morse, aye. The meeting was adjourned at 9:03 p.m.

Respectfully Submitted,

Emily Noble  
Planning Board Administrator