

## Meeting Minutes

### Planning Board

Wednesday, March 2, 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  
**Guest Present:** David Maxson, Isotrope, 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 March 2, 2022 Open Meeting of the Newbury Planning Board was being conducted remotely consistent with the “Act relative to extending certain COVID-19 measures adopted during the State of Emergency,” which extends the Governor’s March 12, 2020 “Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A § 20,” until April 1, 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. February 2022 Financial Report:** P. Paicos read the report of February 2022 Planning Board/Planning Department expenditures.
- B. Liaison Reports:** L. Matthews reported on the March 1, 2022, Select Board meeting, which had been rescheduled from February 22, and which included review and approval of the Intermunicipal Agreement and Construction and Maintenance Easement for work to be done by Georgetown in the Larkin Road right-of-way related to installation of Georgetown water and underground electric service. P. Paicos reported on the March 1, 2022 Conservation Commission meeting, which included discussion of proposed work at 81 Central Street, the ANRAD for 170 Orchard Street, and marsh restoration work being done by the Trustees adjacent to Newman Road. M. Taylor reported on two MVPC meetings – the February 17, 2022, Commissioners meeting, which included discussion of MVPC’s FY 22 and FY 23 budgets, and the February 24, 2022, Regional Planners meeting, which included a presentation by Christine Madore, MassHousing Partnership (MHP), on MHP’s Complete Neighborhoods Initiative. She also reported on a webinar hosted by MVPC on February 24 regarding the MBTA Communities Multi-Family Housing legislation and Guidelines. L. Murphy reported on the February 17, 2022, ZBA meeting, which included a new public hearing for a Special Permit/Finding application for 5 Cinder Ave. and review and approval of two Decisions, one for a Special Permit/Finding for 7 Hutchins Road and one for a Special Permit/Finding for 141 Northern Blvd.
- C. Public Hearing (New) – Proposed Zoning Amendment: To delete § 97-4.C. Wireless Communications Overlay District in its entirety and replace it with a new § 97-4.C.**

**Wireless Communications Facilities, with revised and new provisions regarding wireless communications towers, wireless communications facilities, small wireless facilities, modifications and eligible facilities, permitting, and definitions**

P. Paicos, Chair, opened the public hearing at 7:15 p.m. L. Matthews, Clerk, read the legal notice and M. Taylor confirmed that notice had been given in accordance with the requirements of MGL c. 40A, s. 5. M. Taylor then gave a brief PowerPoint presentation on the proposed revised by-law, including background information regarding the existing by-law, which was originally adopted in 2001, the purpose of the proposed revisions, and a summary of specific revisions. The Planning Board's consultant, David Maxson of Isotrope, LLC, then provided additional information on the factors he took into consideration in developing his recommended revisions to the by-law. He noted that Isotrope conducted a drive test through the town to determine the level and quality of coverage provided by the three main carriers – Verizon, T-Mobile, and AT&T. This helped identify where the current overlay district is working and where it isn't. He then noted that the proposed revisions are intended to bring the by-law into compliance with current federal law and FCC regulations, to address points of confusion and ambiguity in the existing by-law, to allow the Town to have enough control that it can apply legally to get good results when wireless proposals are brought forward, and to address increased data demands and new technology, including small cell facilities. He noted that homework for the Board after adoption of the revised by-law will be to develop small cell regulations. He noted also that sometime in the future one or more wireless carriers may be interested in having a tower or other facility to provide coverage to underserved areas in town, so the Board will likely want to look at additional Tower District location(s).

P. Paicos asked if Board members had any comments or questions. L. Murphy asked what the consequences would be if the Town failed to adopt the revised by-law. D. Maxson replied that in that case the Town will continue to be dealing with the ambiguities and difficulties that are in the current by-law and there will be no guidance on how to comply with certain regulation and technology changes, in particular eligible facilities and small cell facilities.

L. Murphy asked for clarification on whether small wireless facilities would be permitted in just the Tower District or throughout town. D. Maxson replied that they would be permitted anywhere if installed on an existing structure, but would be permitted only in the Tower District if on a new pole. He added that most small cell facilities will be in a public way and therefore within the jurisdiction of the Select Board – permission would essentially be equivalent to grant of location for utility poles.

L. Matthews asked whether a property owner is entitled to any compensation if a small cell facility is placed on private property. D. Maxson replied that if a wireless carrier rents space on private property, it would enter into a lease agreement with the property owner and there would most likely be some compensation. However, there is a gray area – if a utility has an easement across private property, a wireless carrier might be able to piggyback on the utility and take advantage of its easement. D. Maxson said that he hasn't seen this as an issue popping up.

M. Stohn asked how common these easements are. D. Maxson replied that they are not at all common.

P. Paicos opened the hearing to public comment and questions. No members of the public asked to speak.

P. Paicos then said it was his understanding that there are still a few particulars on language that need to be resolved. M. Taylor said that there are still a few things that need to be ironed out with Town Counsel. D. Maxson added that these items are relatively minor and procedural and editorial in nature – they don't involve anything substantive.

P. Paicos suggested that the Board allow the hearing to stay open to the next meeting to give time for these few outstanding items to be addressed and asked for a motion to continue the hearing to March 16, 2022, at 7:15 p.m. via Zoom.

**Motion:** A motion was made by W. Knight and seconded by L. Murphy to continue the Public Hearing on the Proposed Zoning Amendment: To delete § 97-4.C. Wireless Communications Overlay District in its entirety and replace it with a new § 97-4.C. Wireless Communications Facilities, with revised and new provisions regarding wireless communications towers, wireless communications facilities, small wireless facilities, modifications and eligible facilities, permitting, and definitions to Wednesday, March 16, 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. 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 February 2, 2022):**

P. Paicos opened the public hearing continuance and noted that the hearing had been opened on December 15, 2021, and had then been continued several times without discussion at the request of the Applicant. He noted also that Larry Murphy had missed the December 15, 2021, session of the public hearing and had submitted the required certification stating that he had watched the video of the missed hearing session. He said that for this evening's meeting the Applicant had submitted revised plans, a Swept Path Plan for fire apparatus, and a letter responding to comments from the Town's peer review engineer and Town staff.

He then invited the Applicant to bring the Board up to speed. Eric McLean, Alliance Newbury I, LLC (ACE Solar), said that since they came before board in December, the Board had seen the site, and the Applicant team has addressed all comments from the Board's peer review engineer, Joe Serwatka, and the Fire Department. He said that fire access was the biggest issue and pulled up the Swept Path Analysis on his screen to review with the Board. He said that Weston & Sampson looked at loading and dimensional requirements for the access road and determined that some modifications need to be made. The access road is in good shape in terms of width and turning radius, but needs to be adjusted due to loading requirements. Because some of road lies on top of the liner for the landfill, they will need to increase the depth of the road by about 1'-0" in some locations. The Police Department firing range will need to be relocated to allow clear access through the site for the Fire Department – the final plan will show removal and relocation of the firing range and access road upgrades. He concluded by saying that most of the peer review comments were minor.

P. Paicos asked if the Board members had any questions about what had been presented – there were none. He asked about the status of permitting with the Conservation Commission. E. McLean replied that they already have an OOC from the Commission. Relocation of the firing range requires an additional permit - Solid Waste 36 – from the DEP. Every other required permit has been received.

P. Paicos then asked M. Taylor if the Board had received any written comments. She noted that James Sarette, DPW Director, had sent an email asking if the existing fence will be replaced as part of the project. P. Paicos asked if the fence will go completely around the site. E. McLean replied that the plans call for augmenting the existing fence around the leased area only, so that the arrays are inaccessible, and that they are not leasing the entire site.

P. Paicos asked if any members of the public had questions or comments. There were none.

P. Paicos then suggested that the Board review the Special Permit criteria and move toward a decision. Before review of the criteria started, M. Taylor asked for clarification from E. McLean on which post-closure use permit needs to be modified for relocation of the firing range – the post-closure use permit for the project or the post-closure use permit for the firing range. E. McLean replied that they need to submit a new Solid Waste 36 Application for a minor modification – this will be a new permit application, not modification of an existing permit. She then asked for confirmation that no modification of the OCC will be needed. E. McLean said no, since there will be no changes in the buffer zone or resource area.

M. Taylor then pulled the Special Permit Review Criteria for Ground-Mounted Solar Installations up on her screen. She noted that most of the Open Space and Agricultural Impact criteria do not apply, due to the fact that the solar installation will be on a landfill. P. Paicos then read through the findings that the Board needs to make in order to grant a Special Permit as listed in the Zoning By-Law, § 97-5.F.(d)02a) through n). The Board discussed para. g) regarding screening and all agreed that screening is not achievable and not necessary, given the location of the project. The Board also discussed para. h) regarding stormwater management – it was noted that design of the stormwater management system was part of application. P. Paicos asked E. McLean about para. l) sound mitigation. E. McLean said that all the electrical equipment is manufactured with sound guards now, so that criteria is met. He added that NGrid's transformer also meets those requirements. They are not proposing to put up any additional sound barrier and given the location of the project it is unlikely that anyone will be able to hear anything. The Board had no concerns about any of the other findings it needed to make.

P. Paicos asked L. Murphy if it would be appropriate at this time to direct the Planning Director to draft a decision in favor of granting the Special Permit. L. Murphy concurred.

**Motion:** A motion was made by L. Murphy and seconded by W. Knight to request the Planning Director to draft a decision in favor of granting the Special Permit. P. Paicos asked if there was any discussion regarding the motion. G. Morse said that he had one question, which was who will be responsible for maintaining clear access to the equipment during snow events. E. McLean said that they would not plow – the inverters are on the landfill, not near access road, and the landfill can't be plowed. P. Paicos asked M. Taylor what provisions

had been made in previous approvals regarding plowing for fire access. M. Taylor replied that previous approvals for solar projects required plowing for fire access if the snow is 8 or more inches deep. P. Paicos asked the other Board members whether this was a condition that should be entertained. Board members agreed that this should be consistent with previous decisions. P. Paicos recommended that this condition be put in this decision. M. Taylor said she will review prior decisions for other conditions that are also applicable.

P. Paicos returned to the motion that was on the table. There being no further discussion, a roll call vote was taken: L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

The Board then discussed the date for the public hearing continuance.

**Motion:** A motion was made by L. Murphy and seconded by G. Morse to continue the public hearing on the 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 to March 16, 2022, at 7:15 p.m. via Zoom. There was no discussion of the motion. A roll call vote was taken: L. Murphy, yes; G. Morse, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

**E. New Business: 105 High Road OSRD – Request for approval of proposed grading and utility layout changes in Exclusive Use Areas 5, 6, 7, 8, and 9, as shown on OSRD Grading/Drainage Plan, Sheets C1.21 & C1.22, prepared by DCI, revised 2/18/22.**

P. Paicos asked the Applicant to present the proposed changes to the grading in Exclusive Use Areas 5 through 9 and explain why these changes from the approved OSRD Site Plan are being proposed and said that the Board would need to determine whether these changes were major, requiring a public hearing, or minor. Steve Sawyer, DCI, pulled the revised plans up on his screen and reviewed the proposed modifications, including revisions to the layout of the retaining wall on EUA 9 and revisions to the final grading; the plan also showed layout of the underground utilities and identified the former contour lines in color for easy comparison. He noted that the footprints of the structures have been changed from the approved plan, resulting in grading changes, but that the approved drainage pattern was being maintained and that the Board's review engineer, Joe Serwatka, had said in his most recent comment letter that the grading in EUAs 5 through 9 appear to match the grading as approved. He said that they were asking for approval of modifications to EUAs 5 through 9 only at this time – EUAs 1 through 4 were still being worked on and final design would depend on whether the abutter, Matt Kozazcki, would relinquish his rights to the 7 foot wide easement that runs along the northern boundary of the lot.

There was substantial discussion about what level of review had been anticipated for the grading changes and whether approval of grading changes could be done administratively at the staff level or if Board approval was required. P. Paicos asked M. Taylor if there were conditions in the Special Permit Decision raising concerns about this. M. Taylor referenced Condition #8, which states that all grading shall be done in accordance with approved site plan, and Condition #5, which states that any changes will come before Board for approval, that major changes will require a public hearing, and that the Board has the authority to approve minor modifications without a public hearing or modification of the Special Permit.

P. Paicos reiterated that the Board must determine if the proposed changes are minor or major.

P. Paicos then asked what other changes are being contemplated, in addition to the changes to EAU's 1 through 4 that had been mentioned, and expressed concern about changes to the project coming into the Board piecemeal. S. Sawyer replied that the changes to EAU's 5 through 9 conform to the approved plan and that north and south are two distinct and separate drainage areas. He saw no reason why the requested changes to 5 through 9 couldn't be approved while they are working out 1 through 4.

P. Paicos then asked if any changes to the Open Space were being contemplated. S. Sawyer said that Mark DePiero has been in discussion with Matt Kozazcki about using the Open Space as agricultural land. L. Murphy said that any change to the use of the Open Space would be a major change requiring a public hearing, but that the proposed changes to 5 through 9 could probably be approved as minor modifications. M. DePiero said that he understands that change of use of the Open Space would be a major modification and require a public hearing – if Board didn't like it, they wouldn't change it.

P. Paicos said that there appear to be many moving pieces and that it doesn't make sense for this Board to look at things piecemeal – once it has a complete plan for all proposed revisions, it can then determine whether the changes are minor or major.

After further discussion, P. Paicos asked the Board members their thoughts on whether the proposed changes were major or minor. L. Murphy reiterated that any change to the Open Space would be a major change, but in his opinion the proposed changes to EAU's 5 through 9 could be approved as a minor modification. There was no clear consensus among the other Board members.

P. Paicos proposed that, as a way to navigate through this process, the Board approve changes to EAU's 5 through 9 as a minor modification and require the Applicant to come back in four weeks with proposed modifications to EAU's 1-4 and the Open Space and provide a full understanding of intentions for any other changes. L. Murphy said he thought this was going in the right direction, but that the decision should be in writing for the Applicant's protection as well as the Board's. He suggested that the Board direct M. Taylor to start drafting a decision for EAU's 5 through 9, including conditions that had been recommended by J. Serwatka. The Decision would then come back before Board for review. In the meantime, the Applicant could be asked to come back with more information on changes to EAU's 1 through 4. The Board members all indicated that they were in favor of this proposal.

M. DePiero said that there have been no substantive changes to the project. He noted that potential change of use of the Open Space might be the underlying problem and that he was taking that off the table. He emphasized that they were not seeking approval that night of changes to EAU's 1 through 4 and reiterated that he will not make changes to the Open Space. They were looking for approval of changes to 5 through 9 only.

P. Paicos then summarized: M. Taylor will draft a decision approving the proposed grading changes to EAU's 5 through 9 as a minor modification and will have this ready for Board review in two weeks. The Applicant will provide information on proposed changes to 1 through 4 at the next meeting. Changes to the use of the Open Space is off the table. S.

Sawyer asked when Mark DePiero would be able to pull building permits. P. Paicos replied following approval of the Decision.

With regard to issuance of building permits, M. Taylor referenced the Performance Covenant language, which states that no building permits, exclusive of Unit 10, can be issued until the construction of the roadway and installation of municipal services are complete. She asked if construction of the roadway and installation of municipal services would be complete in two weeks. As a point of clarification, L. Murphy noted that the Building Commissioner issues permits, not M. Taylor or this Board. M. Taylor is noting that there are other requirements that need to be met prior to issuance of building permits.

**F. Old Business: Multi-Family Zoning Requirement for MBTA Communities:**

M. Taylor reported that bit by bit some of the requirements of the Multi-Family legislation and Guidelines are being clarified. As she noted earlier in the meeting, MVPC hosted a webinar by Housing and Economic Development Secretary Mike Kennealy which provided useful information. She said that some requirements – for example the minimum density requirement of 15 units per acre – are in the legislation that was adopted in January 2021, not in the Guidelines that have been developed for implementation of the legislation. DHCD has clarified that not all of the required multifamily units must be within ½ mile of the commuter rail station. DHCD has also emphasized that this is not a mandate to construct the units, but a mandate to zone for them. DHCD has also noted that the lack of infrastructure doesn't impact adoption of the zoning – a developer interested in doing a multi-family project will need to work out the infrastructure. The next required step is to schedule a presentation to the Select Board – the target is to make this presentation before the comment period ends on March 31. L. Murphy asked whether the town would still be able to get help from MVPC to identify building parcels to include in the District. M. Taylor replied that MVPC will be out front in providing assistance, and that MassHousing Partnership and Town Counsel will also be resources. She noted that identification of parcels to include in the Multi-Family District is down the road and is not needed by March 31. L. Murphy then asked if there are any requirements for the presentation other than that it needs to be made. M. Taylor said it should clearly outline the requirements laid out in the legislation and the Guidelines. L. Murphy asked if this should be a joint Planning Board/Select Board meeting. M. Taylor will consult with Town Counsel and see what other communities are doing. P. Paicos encouraged all the Board members to visit the DHCD website.

**G. Planning Director's Report:** M. Taylor reported that preconstruction conferences have been scheduled for the PRESB at the Governor's Academy and for John Colantoni's subdivision at 108 Main Street.

(Note: G. Morse left the meeting at 9:07 p.m.)

**H. Meeting Minutes:**

1. Minutes of February 16, 2022: A motion was made by L. Matthews and seconded by W. Knight to approve the minutes of February 16, 2022, as written. There was no discussion on the motion. A roll call vote was taken: L. Murphy, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

2. Minutes of March 3, 2021: L. Murphy noted an error in the lot numbers on pages 2 and 7 regarding the lot numbers for 2 and 8R Old Point Road – both lots were identified as Lot 154, rather than Lots 153 and 154. A motion was made by L. Murphy and seconded by L. Matthews to approve the minutes of March 3, 2021, as amended. There was no discussion on the motion. A roll call vote was taken: L. Murphy, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

There being no further business, P. Paicos called for a motion to adjourn. A motion was made by W. Knight and seconded by L. Murphy to adjourn the Planning Board meeting at 9:10 p.m. A roll call vote was taken: L. Murphy, yes; L. Matthews, yes; W. Knight, yes; P. Paicos, yes.

**Materials reviewed at the meeting:**

- Public Hearings:
  - Wireless Communications:
    - Draft Wireless Communications Facilities By-Law revision
    - PowerPoint Presentation dated March 2, 2022
  - Alliance Newbury I, LLC, Special Permit Application for “Newbury Landfill Project”:
    - Revised Plans, dated February 15, 2022, prepared by Weston & Sampson
    - Swept Path Analysis, Figure 1, dated February 16, 2022, prepared by Weston & Sampson
    - Response to Newbury Planning Board Review Comments, dated February 16, 2022, from ACE Solar and Weston & Sampson
    - Newbury Zoning, § 97-5.F.(6)(d)01) a) through i) and 02)a) through n)
- New Business - 105 High Road OSRD:
  - OSRD Grading/Drainage Plan, Sheets C1.21 and C1.22, dated February 18, 2022, prepared by DCI
  - Peer Review Letter from J. Serwatka, dated March 1, 2022

Respectfully Submitted,

Martha Taylor  
Planning Director