

October 17, 2012

Meeting Minutes

The meeting was called to order at 7:09 PM.

1. Roll Call

In attendance: Dan Bowie, Henry Coo, Noah Luskin, Jim McCarthy, Bonnie Sontag, Don Walters

Absent: Paul Dahn, Sue Grolnic, Cindy Zabriskie

Andrew Port, Director of Planning & Development was also present.

2. General Business

a) Approval of the minutes Minutes of October 3, 2012 Meeting

Henry Coo made a motion to approve the minutes as amended.

Bonnie Sontag seconded the motion.

The motion passed unanimously.

Minutes approved.

Votes Cast:

Dan Bowie: approve

Henry Coo: approve

Paul Dahn: absent

Sue Grolnic: absent

Noah Luskin: approve

Jim McCarthy: approve

Bonnie Sontag: approve

Don Walters: approve

Cindy Zabriskie: absent

3. Old Business

a) City of Newburyport School Department 331 High Street, Bresnahan School Major Site Plan Review *Continued from 9/19/12*

Planning Director Andrew Port had received the initial peer storm water review from Christiansen & Sergei in an email. Project engineers are still preparing revisions and a response to those comments. The city would like more time to review the comments as well. Director Port did not get through it or send to board members yet. Chairman Bowie said there was not much to go over without the needed material. Director Port's understanding is that there are no major issues with the traffic analysis.

The applicant, Newburyport School Department, has requested a continuance of this Public Hearing until November 7, 2012 in order to address outstanding issues relating to the peer reviews of storm water and traffic, and a few other items, including safe pedestrian access to the new facility. Director Port suggests a continuance accordingly. He said if the board had any

concerns not already addressed during the first night of this hearing, to please let him know. He would like to ensure that all outstanding issues are addressed prior to the November 7th meeting.

A member said, in light of the fact that there are residents here specifically for this issue, what is the likelihood that they will be able to be here on Nov 7th. Director Port assured that the residents would come.

Don Walters made a motion to continue the major site plan review until November 7.
Henry Coe seconded. The motion passed unanimously.

Motion approved.

Votes Cast:

Dan Bowie: approve
Henry Coe: approve
Paul Dahn: absent
Sue Grolnic: absent

Noah Luskin: approve
Jim McCarthy: approve
Bonnie Sontag: approve
Don Walters: approve
Cindy Zabriskie: absent

During the course of discussion and consideration of this application, plan(s), supporting material(s), department head comments, peer review report(s), planning department comments and other related documents, all as filed with the planning department as part of this application and all of which are available in the planning department, were considered.

4. Guests

a) Members of the Newburyport Affordable Housing Trust
Discussion on the Housing Plan and Other Common Issues

Representing the Newburyport Affordable Housing Trust were Chairwoman Judy Tymon and Vice Chair Karen Wiener, who had assembled a formula for NAHT donations under Section VI.C. Every community is struggling with assessing market rate donations against the true value of units lost, they both said, and hardly any communities have an exact formula. Developing a formula for Newburyport was not easy to do. The first donation under Section VI.C in Newburyport was for a Merrimac Street application in 2011. At that time, the NAHT looked at the affordable purchase price of a home for a family of 4 using the HUD median income of \$60 – 64,000. They took 10% of the average purchase price as an amount that could be given to the trust for their programs. The average purchase price was \$225,000, yielding at \$22,500 down payment. They have funds for programs such as Down Payment Assistance for people who are looking to purchase a unit and an MLS program that allows for enlisting the assistance of a broker in selling a unit. The NAHT assists in funding those services, giving out small amounts of cash. They've used this formula at least twice and are not yet developing and creating new units. Although every application to the board is different, the NAHT can't apply a different formula for each applicant. The NAHT treats every applicant the same; everyone needs to know they are working within the same set of rules.

Planning Director Andrew Port said the ordinance does not have a table or a formula in it and also considers issues other than affordable housing, including open space as 'public good'. The

feedback the board receives from the NAHT is not the only feedback used in determining the public good. NAHT feedback is only one element in the evaluation process of the varied and different projects applying under Section VI.C. It's not entirely possible for a formula to encompass everything that has to be taken into consideration.

Chairman Bowie asked if there was a second formula for assessing the impact of rental units? Chairwoman Tymon said the NAHT did use a different formula for 3 Parker Street because it was a rental property. Director Port said he wouldn't expect the formula or final contribution to be the same for a rental. Chairwoman Tymon agreed, adding that the Parker Street project was four rental units instead of the usual taking of one market rate unit and creating two units. The rents were somewhat lower than the market rate rentals in downtown Newburyport.

Ms. Weiner said when a two-family is converted to a single-family, the building is probably more affordable than it was before but we're actually losing something. Director Port said that's an important factor. When you talk about subsidized housing, you usually rehab to add market rate units. The total number of units is going up, but not the number of affordable units. The denominator is increasing and but the overall equation is moving further away from a balanced proportion of affordable housing. For example, the 53 Spofford Street project has more of an impact than the Parker Street Project.

A member commented that the city received more from the Spofford Street project with a donation amount of \$36,750. Attorney Costa, representing the applicant on Spofford Street, had suggested that the average down payment in Newburyport was \$11,250. He initially offered two down payments. He came back and offered three down payments as just the housing part of the donation. Chairwoman Tymon asked what was meant by market rate down payments? The member responded that Spofford Street was going from a one-family with an in-law apartment to two, single-family units at market rate. They offered and the board accepted the equivalent of three down payments that the NAHT would use for affordable units.

Director Port said that Attorney Costa derived his down payment figure partly based on conversations between Planning Administrator Emily Wentworth and Attorney Lisa Mead, who represented the client in the first meeting with the board.

Chairman Bowie said he was paying close attention to bottom line donation amount rather than how Attorney Costa arrived at the average down payment figure, but that now he's curious how the figure was derived. The member continued, saying the board hasn't seen this average down payment figure for Newburyport anywhere else.

Chairwoman Tymon said that a figure like that would be fairly easy to come up with because the Planning Office has all the information on sales and re-sales. The NAHT has been using \$22,500, based on the average home price of \$225,000, but does not advocate this particular formula. Ms. Weiner added that the NAHT was looking at the Spofford Street situation as if the city was losing an affordable unit. The member said that the board was able to secure a higher donation than what the NAHT would've asked for. Director Port said he suggested the conversation tonight focus on working together to develop a consensual formula.

Another member asked if there was anything else the NAHT would be interested in other than cash. Chairwoman Tymon said replacing a lost unit would be ideal. The member said that the

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Spofford Street project demonstrated creativity as concerns the public good requirement, referencing the donation to the Moseley Woods Foundation. In the future, the member believed applicants would become increasingly creative in their offers for public good donations. Given that, if there was something that would be particularly helpful to the NAHT, let the board know.

A member asked if the NAHT performed rehabilitation of units? Another member added, what if an applicant offered to do the rehab? The first member further added, what if there is something in the NAHT stock that has an immediate rehab need? The first member shared that the board does not have a sense whether the \$36,750 donation actually helped the NAHT or not. Ms. Weiner responded that the NAHT does not own any units and cannot proffer a unit that needs rehab as an option.

Another member wanted to understand the NAHT's figure of \$22,500 down payment vs. the \$11,500 used in the Spofford Street project. How was the calculation made when you talked about a 20% down payment, then said 10% of the purchase price? Ms. Weiner said it's a valid question and the calculation was complex -- the 20% down payment amount was derived using a family's average income and a formula to calculate what they can afford, including what the family can afford to pay on a monthly basis. The 10 % is not based on anything other than it seems to get at the right amount.

A member attempted to clarify, saying that assuming someone rented something, lost it, needs 20% down, and doesn't have it, but can make the monthly payment. They're displaced and the NAHT gives them 10% of the down payment. In this scenario, it is not obvious that the 10% down payment is going to help them. Ms. Weiner agrees that it's not obvious, but said the scenario assumes the person qualified for the NAHT down payment program. She added that at the time the NAHT came up with the formula, it was impossible to get a loan. If there are no more rentals in Newburyport, and the person does not qualify for the down payment program, then they have to leave Newburyport.

A member asked how real the 20% down payments are in securing a mortgage? Ms. Weiner said it's still difficult, but there are a couple of state programs people can qualify for that allow less than 20% down. If they don't qualify, it's a tough time right now to get something for less than 20% down. It doesn't solve the issue. The member asked if the board could help people with meeting certain state criteria? Ms. Weiner said there are income and asset limits in the state criteria. She did not know if the local banks participated in the state program and thought that would be a good thing to explore.

The member thought it would prove interesting to go back over the last 10 years to look at down payments for units that were more modest. The member thought that average down payments were much higher than what Attorney Cost proposed in the Spofford Street application. The member asked if the NAHT could provide the board with that information? The member was trying to understand the difference between \$22,500 and \$11,500 down payment figures.

Chairwoman Tymon said the NAHT views \$22,500 as the maximum amount of down payment assistance the NAHT could give. The member asked if that was NAHT practice or a state statute? Ms. Weiner responded that it was NAHT practice. The member asked if the NAHT could give \$35,000? Another member asked why not give the full down payment and the board could increase the amount it requests from applicants? Chairman Bowie asked if what the NAHT

gives is in recognition of the total amount of funds available? Chairwoman Tymon said the down payment assistance figures had been raised at least once, if not twice, in the recent past. Ms. Weiner said part of the evaluation is driven by market and economic conditions that they experience in the field.

A member commented on what an applicant gets in return for their donation; who knows how much the applicant is getting from their market rate units? Chairman Bowie said his personal view is that an applicant can get a \$200-300,000 value for very little in the way of a donation.

Director Port said it was important for the board and NAHT to be on the same page in creating a beneficial balance as the basis for developing a formula. Ms. Weiner said the NAHT was open to talking about it. A 20% down payment was what the NAHT originally wanted to ask for, but thought they would never get that amount. A member said that it would be easier if the NAHT gave applicants a higher number to strive for and the board could work down from that, based on variables such as historic preservation restrictions and other public good options. A down payment figure they both agreed on would provide less uncertainty for applicants. Ms. Weiner offered to take that information back to the trust, saying that maybe the NAHT has been too pragmatic. She could see how much easier it would be to work from a higher number, depending on differing variables in projects.

A member said if a lot is worth \$250-300,000 and the board can unlock that value in a reasonable way, it benefits everybody. The board will always examine the trade-offs, but since we haven't been able to argue the formula, it's off the table for the applicant. All parties have an interest in unlocking the value of a lot. Section VI.C is a way to do that.

Director Port said housing is still a big need and a big interest. It's an iterative process as we examine how the ordinance applies to different projects. Ms. Weiner added that it also costs applicants more money, time and is more of an ordeal to go through numerous waivers with a subdivision application than to apply through Section VI.C.

A member, citing Parker Street as a good example of providing affordable rental units, asked if there was something in the existing formula that could apply to rental units? Director Port responded that it is harder to develop a formula for rental units versus for-sale units. The member continued, saying the starting point for the Parker Street project was \$8,000. The amount we've been giving on the Rehab Program has been reduced. Can the board examine what has been given for rental assistance over the last six months?

Director Port said funds for the Rehab Program are for existing, for-sale units, not rental units. The member asked if the board should be making a distinction between rental and for-sale units? Director Port said yes, however, it's a harder number to formulize. Chairwoman Tymon said the rental figure fluctuates regularly. Ms. Weiner thought they could try to develop something to apply to rentals. The NAHT could offer rental assistance using the HUD formula.

The member said it would be good to have a base figure of rental units to work from. Chairman Bowie said whatever the base, it will go down over time. Another member added that for every application adding affordable rental units, there would be five applicants doing just the opposite, taking rental units off the market. The first member asked if that meant the board would not have applicants for rental units? The second member clarified that the number of rental units in

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Newburyport is at a maximum and will only go down over time. Director Port concurred that was the pattern.

Before Planning Administrator Emily Wentworth left, she prepared language for a couple of proposed amendments to Section VI.C which were:

- 1) To prohibit replacement of a two-family structure with market rate single-family units unless one of the units is made eligible for inclusion in the Subsidized Housing Inventory, or
- 2) Require the developer to provide cash in-lieu of the affordable unit for deposit in the Housing Trust Fund to subsidize an affordable unit elsewhere. It will be essential that the formula for calculating the cash in-lieu provision be sufficient to fully subsidize affordable units despite changes in market conditions such as the difference between the median single-family house price and the affordable purchase price as specified under the state's Local Initiative Program (LIP).

NAHT representatives thought it unrealistic to ask a developer to fund an affordable unit elsewhere. Chairman Bowie said it was significant the NAHT has chosen the \$22,500 figure for a down payment on an affordable purchase unit, but it was not cast in stone and was negotiable. The board would prefer the NAHT to decide to recommend a \$51,000 down payment donation for Section VI.C applicants. In thinking about the Parker Street application, Chairman Bowie said there was no way to ensure those rental units would remain reasonable. What would the NAHT recommend for example, if there were a deed restriction? He said that with Parker Street, one of the things the board tried to encourage the applicant to do was guarantee the units would remain rental units. There was an absolute refusal by the applicant to agree to keep them rental units for any amount of time.

Chairwoman Tymon said that was the first question the NAHT asked also and got a flat no. Ms. Weiner said it's really tough for a developer to deed restrict a property because the banks look at a loan in a completely different way when the property is deed restricted. In this financial climate, subsidies for affordable housing are falling and creating more reliance on banks.

A member wanted to engage in a topic previously proposed, by determining, more specifically, what the board means by the term 'public good?' Chairman Bowie said the ordinance says clear public benefit. Because details are contextual, without seeing an application, how could the board get more specific in identifying the public benefit? It has been good to work through the complexities of the issue with the NAHT. The member said it's also good to do this for the applicant.

Director Port did not think the board had been arbitrary or capricious in applying the ordinance's public benefit aspect because every Section VI.C has been very different. He thought Emily Wentworth would say that as well. In addition, there's nothing arbitrary and capricious about the process or the ordinance itself. The three requirements listed in the ordinance now will always be clear.

The member stated that there would always be a perception difference between content and process. Applicants may expect something different to happen and when they arrive here. All the back and forth over the public benefit aspect upsets them. If the public benefit could be

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explained up front that it's not a slam-dunk or a quick in and out on this issue, that would set expectations for the applicants. They won't come back and say we delayed and cost them money.

Chairman Bowie said applicants who go through this process are supposed to have an understanding of what's going on. This is a special permit, designed to have flexibility in it, and the board would lose that if we tried to list everything that's a possible public benefit. We don't want to defeat the purpose of the thoughtful dialogue that precedes a decision. If people come expecting to get what they want with their properties in 15 minutes, that's not going to happen with a special permit.

A member added that if an applicant stumbles because they didn't do their homework by reading through previous Section VI.C applications, which are on file as a public record, the board does not need to feel sorry for them.

Chairman Bowie said what you would see in the history is that there have been 10 applications, five have been approved, and a couple have withdrawn, and the time periods involved have not been onerous. The board has not caused delays. Developers are told what things have to be done.

A member said applicants don't understand they're coming in to a negotiation. Another member asked why applicants wouldn't assume they'd be under the gun if they didn't do their homework? The member would like to change the OSRD so the board can more effectively use it as an infill tool to try to unlock the value of the land and receive things the city wants and needs. As a tool, the special permit offers the board some measure of control.

5. Planning Office/Subcommittees/Discussion

a) Updates

A member asked if the mayor had gone forward with a supplemental budget for the comprehensive zoning review. Director Port said no. He thinks the Zoning Ordinance needs review and said the mayor is focused on that as a priority in the next few weeks. A broad review of zoning will be submitted. A member suggested that such a review could complicate things for some city councilors who are already overwhelmed with planning and development issues. Looking at the zoning ordinance as a whole would be an additional burden on them unless the request is delayed until after the New Year. Director Port acknowledged that as a good point.

Director Port said we talked about the lot shape provision that City Council adopted about a year or so ago. The building commissioner suggested we address corner lots, where the frontage is defined by the longer side of the lot and determines the front of the lot. There are five applicants who have problems with that provision, based on where their front door is located. Director Port is not convinced this is a huge issue; front doors do not have to equal the front of lot. It is simply a loose end and it would be easier for corner lot owners to define their own front door. It's not clear to people what the requirements are and there is a concern to abutters, who are likely to complain. It's a hot button with the building commissioner and the mayor is asking the board to address it.

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Chairman Bowie prefers the chairs work together. Director Port said with five applications in hand, it is not clear or consistent to people, which is why there was litigation over the lot changes. A member asked Director Port wouldn't he be going for a zoning overhaul? Director Port didn't think the board needed to do this so that lot owners could do whatever they wanted to because it could create litigation down the line. The issue may come from the City Council.

Director Port thought the board should have more time to look at proposed architecture and how it fits within the surrounding neighborhood – more design review time. The board wants Storey Avenue to represent the city as equally as the downtown does. We need to encourage other new buildings to be compatible.

6. Adjournment

Henry Coe made a motion to adjourn.

Bonnie Sontag seconded the motion.

Motion approved unanimously.

Meeting adjourned at 9:05 PM.

Respectfully submitted, Linda Guthrie, Note Taker