

**City of Newburyport
Planning Board
January 18, 2017**

The meeting was called to order at 7:00 PM.

1. Roll Call

In attendance: James Brugger, Joe Lamb, Jim McCarthy, Leah McGavern, Andrew Shapiro, Bonnie Sontag, and Mary Jo Verde

Andrew Port, Director of Planning & Development was also present. Arrived at 7:10

2. General Business

- a) The minutes of 12/6/16 were approved. Bonnie made a motion to approve the minutes. MJ seconded the motion and all members voted in favor.
The minutes of 12/14/16 were approved. Don made a motion to approve the minutes. Andrew seconded the motion and all members voted in favor.
The minutes of 1/4/17 were approved as amended. James made a motion to approve the minutes. Don seconded the motion and all members voted in favor.

Motions Approved.

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.

b) Approval Nor Required – 15-19 Williamson Avenue (2017-ANR-02)

Attorney Lisa Mead, Mead, Talerman, and Costa, 30 Green Street, proposed two single-family lots for the large parcel with one structure. A dimensional variance was granted by the ZBA for two non-conforming lots.

Don Walters made a motion to endorse the ANR. Andrew Shapiro seconded the motion and all members voted in favor.

Motion Approved.

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c) Approval Not Required – 5-7 Vernon Street (2017-ANR-01)

Chairman McCarthy said the ZBA shifted the lot lines with the intent of allowing things to exist as they were now when the current property owner was no longer there.

Don Walters made a motion to endorse the ANR. Leah McGavern seconded the motion and all members voted in favor.

Motion Approved.

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.

3. Old Business

- a) Evergreen Commons LLC c/o Lisa Mead, Esq.
18 Boyd Drive and 15 Laurel Road
OSRD Special Permit (2016-SP-03)
Continued from 1/4/17*

Chip, Paul, and James Goodwin, owners, Evergreen Commons, were present. Attorney Lisa Mead had met with City officials regarding concerns and accommodations before filing the new OSRD plan last week that reduced the number of lots from 43 to 38 and offered land to the City. Tonight's goal was to understand where board stood on the new plan. The new preliminary conventional subdivision plan filed today included the Brown Avenue egress. The applicant could withdraw the OSRD plan and file a conventional plan upon understanding the board would not approve the OSRD plan.

Steve Sawyer, DCI, 120 Middlesex Avenue, said the new plan met concerns stated by everyone. A two-way looping road encircled two acres of open space large enough for a neighborhood sports field. The cul de sac was shortened and compacted. Connections running throughout the project were similar, but the development was pulled away from the property line. There was ample area, without permitting it, for a new well to be drilled. The 250-foot radius, well away from the development, kissed some lots on Boyd Drive and Briggs Avenue as allowed under the existing permit. Three lots on Boyd Drive were larger and all lots measured between 10-14,000 square feet. Stormwater treatment had shifted for Boyd Drive. Construction of a stormwater wetland would replace ponds and piping to the rear of the property. Nitrogen, phosphorous, and some metals would be removed. The development was divided into three areas with three separate rain gardens eight inches deep. Water flowed in, ponded, and was treated. Overflow went into the isolated wetland area that would be augmented if needed for receiving all the water from the site that would be cleaned. In response to the City's requests, rain gardens were closer to the development and drained in less than 24 hours. Open space increased from 60% to 63%. The trail network was maintained and two distinct types of open space were provided. The yield plan had additional land area. Lots could be considered ISLF for extreme weather events in the

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first submission toward the Definitive Plan. The applicant's preference, in contrast with the previous submissions, was the OSRD plan. Basements were still two feet above high ground water and a minimum of one foot above the ISLF elevation. He reviewed the stormwater treatment systems that included deep sump catch basins with hoods, hydrodynamic separation, constructed stormwater wetlands, and bio-retention areas. Boyd Drive stormwater went to a constructed stormwater wetland. Today, that stormwater interfaced with seasonal high groundwater and was too low for anything else. There were substantial improvements to the stormwater systems. A detailed illustration of the hydrodynamic separator was shown and described in detail. It would be helpful with maintenance for heavier sands. A hydrodynamic separator large enough for the area of flow coming down Boyd Drive may not exist. The constructed stormwater wetland would not require any maintenance.

Attorney Mead said the plan included 22.12 acres of open space, care and oversight of testing would be managed by the applicant, HOA documents specified care and upkeep of all areas by a single entity, including a mechanism that gave the City the rights to go in and maintain wetland areas at the homeowners cost if the HOA failed to do so, the pump station replacement by the applicant would be to current standards, and the road from the end of Boyd Drive to the applicant's property would be milled and overlaid. All roads would be 24 feet wide.

Member comments: Provide more details about how Boyd Drive would be tied into the stormwater treatment system. Mr. Sawyer showed on a plan a pond area where stormwater was discharging through a 24-inch pipe today. The pipe would be picked up, six or seven feet excavated, and the pipe placed in a manhole. A member believed the stormwater treatment for the OSRD would improve water quality. Mr. Sawyer said water ponded in a pool with vegetative sides and a muddy bottom today, without any treatment. Proposed stormwater treatment systems exceeded Zone 2 requirements, whereas Zone 2 requirements were not being met today. The elevation was 54 or 53 now. The pipe would run at a minimum slope to convey water, dropping another foot and a half because the pipe had to run below the seasonal high for a constructed stormwater wetland. Describe how contributory stormwater from the neighborhood sports field would be handled. Mr. Sawyer said the field would be crowned a bit and graded toward the perimeter. Anything that did not infiltrate through lawns would go to the curb area. A complete profile had not been run yet on the new OSRD plan. Essentially, stormwater would be piped from two low points created in the development, back to the rain gardens. The road, four feet above the existing grades, would keep stormwater in a closed system. The bio-retention area had 24-30 inches of organic material. Members brought up concerns voiced about unregulated products applied by residents that would not be captured by stormwater systems and would go into the ground water. Mr. Sawyer said yes, he could not stop those applications from going into the ground. Residential lawns were low risk compared to a golf course. Members referenced the City engineer's questions about infiltration within 72 hours and asked about flooding and infiltration in large storm events. Mr. Sawyer said there was a larger ISLF area for a large event. The lawns' permeability would allow water to drain in 72 hours. The balance of volumes and permeability rates would be detailed at the definitive stage. He was confident there was an ample area to hold and drain a 100-year storm event that would be fully vetted by peer review before moving forward. Describe maintenance of the stormwater systems. Mr. Sawyer said rain gardens needed the most maintenance by replacing mulch, plants and removing wild grass two or three times a year. The particle separators and catch basins would be cleaned annually. Constructed

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stormwater wetlands were self-sustaining other than cleaning out sediment yearly by the HOA landscape contractor. He would work with Hughes Environmental on wetland replication to treat stormwater. Was the separator an HOA responsibility? Mr. Sawyer said yes. Would grass be planted in the oval field? Mr. Sawyer said yes. A gazebo might be added as a gathering place. He would work with the landscape architect on choosing a low maintenance grass.

Members said a 26-foot roadway was recommended. Was there no on street parking? Mr. Sawyer, unfamiliar with the 26-foot roadway requirement, said there would probably be parking on one side. Director Port said the Deputy Fire Chief had communicated with the state about the new roadway regulation. Push back on the new regulation meant it would not be applicable in this situation. The Planning Office typically supported less asphalt. Chairman McCarthy was concerned about cars speeding. He recommended no parking on either side on the straight part of road and the roadway reduced to 20-21 feet wide. Parking could be on the inside of the circle only. Mr. Sawyer suggested 22 feet without curbing. Chairman McCarthy wanted the road narrow to slow speed. Attorney Mead would consider 20 feet with no parking to enhance the feel of a close neighborhood.

In this conceptual situation, Attorney Mead wanted anything in the groundwater as far from lots as possible. Mr. Sawyer said Lot 24 was the closest. Chairman McCarthy said in the proposed configuration, the ISLF could move well away from the lots. Mr. Sawyer said the plan was to push the ISLF away so that water ponded as far from the well as possible. He would work with Phil Christiansen and Jon Eric White, who had specific ideas, such as using the Cornell number. Chairman McCarthy asked if the ISLF would it touch any yards when it flooded over? Mr. Sawyer said no. Members remained concerned about unregulated substances that might be used on lawns. Jay Billings, hydrologist, Northeast Geoscience, Inc., 97 Walnut Street, Clinton, said whatever was applied to lawns would go into the ground. Total lawn acres were considerably less than total golf course acres. Members asked if water that went up into the home's foundations would travel by surface into the stormwater treatment area? Mr. Sawyer said anything down gradient of the systems was pitched to the systems; anything up gradient of the systems would not flow in. Members expressed concerns about up gradient areas. Attorney Mead said there was no treatment at all currently. Nothing applied to the golf course appeared in the well. Mr. Billings agreed and said there were no elevated concentrations of nitrates and phosphorous. The public referenced uniquely stringent golf course practices as contributory. Attorney Mead said residential homes in Zone 2 were allowed. Peer review comments had been addressed in the new plans. There were no reported incidents of well contamination from homes in Zone 2. Chairman McCarthy asked about the final testing list of chemicals? Mr. Billings said there were 25-30 chemicals on list. Nothing was added after AECOM's additions. Mr. Sawyer said the ISLF was in open space with natural vegetation where no fertilizers were used. Lawn areas were all above the ISLF. Members asked about the OSRD lot plan where water went behind one yard. Mr. Sawyer demonstrated the location of that lot on the plan. Chairman McCarthy said the testing protocol was for 28 chemicals. If residents who used fertilizers were a concern, the City would have heard of Zone 2 problems. Mr. Billings said that was a good example of an ongoing, current test case. Fertilizers used on Boyd Drive lawns in Zone 2 were not showing up in the well. Attorney Mead added that the number of lots was reduced. Mr. Billings said reduced lots would lower any product application and produce lower counts.

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Members understood the surface flow. The board wanted all statements parsed out and specific. For example, there would have been more lots closer to the well had there been no concerns or issues. A plan with lots further from the well was an improved plan, but looking only at protecting the well, the OSRD plan was not further away from the well than the traditional plan with more lots. Mr. Billings described flow lines on the displayed groundwater contour map as perpendicular to contour lines. Spacing between lines represented the slope of the water table. Low permeability soil had steeper gradients. Gradients were a little higher than those to which he was accustomed but they were moderate overall. A member asked why contour lines were closer together nearer the well? Were existing houses contributing more compared to homes further away? Mr. Billing said yes, Well 2 was pumping as data was collected. Hydraulic velocity increased closer to the well. Lots in Zone 1 were well within the pumping depression of the well.

Members said roadway length was still a concern. Attorney Mead said the looping, two-way road with egresses onto Brown Avenue and Boyd Drive eliminated any problems. Members liked the community space in the circle. Would rain gardens continue to work in March when dead plants could not be replaced? Mr. Sawyer said treatment came from the soil matrix. How would that work when soil was frozen? Despite an improved plan, there were still fundamental issues such as the board's discomfort with the level of dependence on the HOA. Chairman McCarthy said he did not want the ISLF within 100 feet of any lot in order to address homeowners who might put chemicals on their lawn. That could be accomplished with this plan.

Public comment open.

Ann Marie Vega, 21 Boyd Drive, did not see a significant change. The conventional plan looked better. With hundreds of new units already under development but only one place for the City to get natural water, the board needed to look further ahead than 50-60 years. Information requested by the board on whether the site was already polluted was not yet available. Chairman McCarthy said there was some initial testing and the board was waiting for the City's test results. Ms. Vega said the current conditions were important. Substances not going into Well 2 were going to Well 1. She noted a shift in the board's attitude on the development.

Peter Hatcher, 15 Boyd Drive, sent an email to Conservation Administrator Gotfredsen, Planning Director Port, and Planner Newhall-Smith on January 2nd that outlined his concern that the total number of buildable lots had used an ISLF calculation for undeveloped lots. When driveways, roads, and houses were built, the ISLF calculation would be greater. The ISLF calculation should represent a developed site. Director Port said the DPS did not feel that was necessary. It was inappropriate to subtract areas of coverage, such as the clay lined areas that captured pollutants, and more important to use what had been proposed for infiltration. Mr. Hatcher asked if developed site calculations were used to determine the water volume? Mr. Sawyer said those calculations would be completed at the Definitive Plan stage. The ISLF would not double.

Robert Mazzotti, 8 Brown Avenue, was not supportive.

Michelle Rogers, 11 Boyd Drive, said the issue was the distance homes were from the water table, not their distance from the well. The lowest part of Boyd Drive was still higher than the pumping area.

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Stephanie Strout, 7 Boyd Drive, asked how many years were included in the water tests? Mr. Billings said two. Calculations compared the amount of treated turf to the development.

David Marino, 7 Boyd Drive, asked what would happen in a storm with 10 inches of rain? Basements on Boyd drive had been flooding for years.

Susan Hawkes Riddler asked if a conservation agency could purchase the land to protect it? Chairman McCarthy said the purpose of the board was to administer existing rules. Larger strategic questions were being addressed by the Water Department and other City entities.

Public comment closed.

Chairman McCarthy said the board's job was to put the best plan possible on the table. The process had moved as far as possible toward a vote on February 15th. In the meantime, the board needed inclusive feedback from the Water and Health Departments and a list of conditions. Concerns about the HOA's behavior remained because their many responsibilities were key to the development's success. Seed money would be needed. There was outstanding information. Members said the board's role was to balance property owner's rights, the wellbeing of the City as a whole, and abutters concerns. No one on the board had said they liked this plan; it was a better plan. The board needed a definitive recommendation from Water and other City departments, although at some point, the board was required to make a decision. Chairman McCarthy said timing would prevent the board's decision to be contingent on what Water and Sewer would do. Design changes had to stop before Water and Sewer departments could make a decision. The City needed to formalize any land taking. Members said the Health Department was waiting for the boring results from the property. If the applicant would not provide boring results, the board should not anticipate a recommendation from the Board of Health. Chairman McCarthy said the board would try to draft a condition that would satisfy the Health Department's needs. Director Port said findings and conditions would be discussed February 1st. Chairman McCarthy said any condition, such as the applicant submitting test results before filing a Definitive Plan, could have the ability to change thinking. Attorney Mead asked when the opportunity to ask the board to vote or withdraw occurred? Chairman McCarthy suggested waiting throughout the board's process. There could be significant information. He recommended continuing to February 1st and February 15th.

Leah McGavern made a motion to continue to February 1st. Joe Lamb seconded the motion and all members voted in favor.

Motion Approved.

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.

b) David Hamel and Karen Damon c/o Mark Griffin, Esq.

***496 Merrimac Street
VI.C Special Permit (2016-SP-07)
Continued from 12/14/16***

Attorney Mark Griffin, 11 Market Square, said the applicant had received dimensional and use variances from the ZBA for the second structure on the property. The Newburyport Historical Commission (NHC) voted to accept the preservation restriction. Members said the NHC held restrictions for 30 years. Preservation in perpetuity was a Massachusetts Historical Commission (MHC) process. If the MHC approval was not possible, the option stood for the NHC. Attorney Griffin said he delivered the MHC request to the NHC. The MHC required listing the building on the National Register of Historic Places in order for the restriction to be considered. He had proceeded with the National Register process through the NHC but had no understanding of how long it would take. He did not propose to keep the permit open until the process was complete. The Section VI.C Special Permit did not specify the type of preservation restriction.

Members said a VI.C Special Permit provided a benefit to the applicant. The board, in determining parameters, was not taking anything away from the applicant. The historic significance was not enough to sway some members that the benefit to the City was proportionate to the benefit to the applicant. The lot's soft soil was not ideal for a house. The benefit should be balanced. Many properties along Merrimac Street looked the same. All abutters were positive. Allowing a young family with roots here the ability to stay here was a community benefit. Could the house be torn down and another put up? Director Port said yes. Members did not see any reason to deny the second house if the original house was worth preserving. The MHC restriction should be secured before the new house could be occupied. The applicant would build at his/her own risk; an NHC restriction would become the City's risk. Chairman McCarthy said the streetscape had more historical value than the house. Any restriction needed modifications. The backyard configuration could be a problem if it was changed.

Public comment opened.

Stephanie Niketic, 93 High Street, spoke for Tom Kolterjahn, co-chair, Newburyport Preservation Trust. The 1750 house was significant for the date, retention of the original shape, massing, and form, and its contribution to the historic streetscape. Located in a Demolition Delay Zone, it could be torn down and a larger one built. The NHC agreed to hold the restriction and take steps to list the building. The modest, 1,000 square foot building would have conditions specifying no expansion more than 500 square feet and restrictions on roof height. Secretary of the Interior Standards would be followed for additions. The new house was also modest. The City was trying to maintain an inventory of modest houses; that would be accomplished twice with this VI.C permit. Not every preservation restriction was valuable or a benefit to the public, but this case had benefits and the Trust was in support.

Public comment closed.

Chairman McCarthy said the restriction would not prevent the house from deteriorating. He had been assured that the roof and foundation were in good condition. Proposed modifications for the restriction and conditions for the new house included only a 400-foot addition, 800 feet if two-

story; if the house were lost, it would be substantially rebuilt to same proportions it was now (the height was not recorded, only the footprint) and rebuilt on the original foundation; there would not be an attached garage; and listed on the National Register with an MHC preservation restriction prior to issuance of the building permit for the new home.

Leah McGavern made a motion to approve the Section VI.C Special Permit. Bonnie Sontag seconded the motion and six members voted in favor. Don Walters voted against. Andrew Shapiro abstained.

Motion Approved.

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4. New Business

***a) New England Development
Waterfront West
Informal Discussion***

Councilors Bruce Vogel and Jared Eigerman were in attendance. Attorneys John Twohig and Tim Sullivan, Goulston Storrs, 400 Atlantic Avenue, Boston, and Scott Kelley and Michael Duffy, NED, 75 Park Plaza, Boston, represented the project. Attorney Twohig said the interim walkway that would connect the Black Cow and Michael's Harborside would go away as the actual walkway was developed. The existing overlay had issues including: a focus on the building itself instead of the use; the 4-acre minimum encouraged one large scale project; the required 60-foot frontage would result in larger buildings on larger lots; the 35-40 feet height did not take into account the changing grade or climate change planning; dimensional requirements differed by use; the set back maximum of 6 feet created design issues that would block the views; and there was no allowance for additional ways to the water. In general, the overlay promoted large block-style, single-use buildings. NED preferred a series of smaller scale buildings with a lot of ways to the water and the ability to phase development over time. The solution seemed to be in taking a different zoning approach and the idea of creating a master development plan. The team met with the state on Chapter 91 requirements. There would be considerable infrastructure required upfront. The phasing of development supported financing the infrastructure requirements that would activate the waterfront. He believed it would be in the City's interest to be comfortable with 'full build-out' issues, such as traffic, at the zoning stage. Members asked when the development agreement occurred? Attorney Twohig, referencing the displayed timeline slide, said NED had experienced the importance of seeing the full impact before a development agreement could be finalized. The City would want all mitigation issues addressed up front, as well as any recommendations NED would make, incorporated into the development agreement. The timeline demonstrated only how NED would bring items forward in the context of time and was not a schedule to follow. The narrative would be a series of

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reports submitted in February as a package for the zoning text and map amendment. Director Port said there should be a unified process for going forward and asked what would work best, a Waterfront West subcommittee or working group meetings? Would councilors come to Planning Board meetings? Councilor Eigerman wanted to avoid a disjointed situation. It was not efficient for all 11 councilors to be consulted. A subcommittee of no fewer than three councilors could meet with the board every time and report back to the full council as needed. Eight of nine board members were needed to vote. March could cover design, zoning text, the master development plan; April could cover traffic, utilities, stormwater, parking, marina operations, the development agreement, and the formal filing; May could cover a Planning Board amendment recommendation; and June could be the City Council vote.

Chairman McCarthy asked if a traffic study was ready? Attorney Twohig said he had a traffic draft, a utilities study, a site plan layout, and several completed perspectives. The stormwater report was due in the next week or so. Chairman McCarthy said it was important to include the City Council and keep them connected all the way through. A subcommittee that met alternate to the board's regular schedule could work for some of the information. Director Port asked when NED would be ready to submit some materials? What kind of scheduling capacity was there for the subcommittees to meet? Councilor Eigerman said the whole month of June the City Council was unavailable because it was budget season. Time was needed for the City's experts to review materials. Director Port said his office would vet materials in advance of the formal submission. Councilor Eigerman said he had not discussed that with the other councilors. A letter to the City Council was needed for referring out project consultations. Board members asked if the meetings would all be public hearings? Councilor Eigerman explained a process whereby the work did not have to be a fully formed ordinance during the meetings. Attorney Twohig said NED would not make a formal filing until late in the process to avoid being under the clock. Director Port would submit a memo to the City Council from the Planning Office with draft documents from NED for joint discussion. A couple of weeks were all that was needed for consultants' reviews. Chairman McCarthy recommended an urban design consultant and a consultant for drafting sophisticated development agreements. Stormwater reviews required a longer lead-time. Board members suggested multiple subcommittees because of the scope.

Attorney Mead, representing Horton's Yard, requested that abutters be notified. The City could enter a Memo of Understanding regarding the use of outside experts. All documentation should be given to the City and put on the website, such as a draft of a zoning amendment, traffic study draft, etc. Even though the applicant proposed one building at a time, there was software to look at height and design standards in the context of surrounding areas. Attorney Twohig said everything would be in a master development plan for the entire project, except specific designs for the first building. He had already met with people at Horton's Yard. NED was two or three weeks away from submitting a full package. Councilor Eigerman asked for the procedural plan by February 13th. Attorney Mead requested a Chapter 91 licensing process update for the City to put on the website in order to keep the public informed. Attorney Twohig said materials would be made available as NED filed them, but Chapter 91 materials would lag.

Mike Lambert, 51 Merrimac Street asked if subcommittee meetings were open the public? Chairman McCarthy said yes. Director Port said the Planning Office could not notice every single abutter by mail. The public calendar would be used. Attorney Mead said if there were

multiple subcommittees, the public would not be able to follow the process. Director Port also preferred one subcommittee.

5. Planning Office/Subcommittees/Discussion

a) Updates

Famous Pizza was discussed.

6. General Business, cont.

a) Annual election of officers

Jim McCarthy was nominated as Chairman. Bonnie Sontag was nominated as Vice Chair. Andrew Shapiro was nominated as Secretary.

Leah McGavern made a motion to approve the election of all officers. Mary Jo Verde seconded the motion and all members voted in favor.

Motion Approved.

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7. Adjournment

Don Walters made a motion to adjourn. James Brugger seconded the motion and all members voted in favor.

The meeting adjourned at 10:33 PM.

Respectfully submitted -- Linda Guthrie