

**City of Newburyport  
Planning Board  
February 1, 2017  
Minutes**

The meeting was called to order at 7:08 PM.

**1. Roll Call**

In attendance: Anne Gardner, Jim McCarthy, Andrew Shapiro, Bonnie Sontag, and Don Walters. Joe Lamb participated by phone. Leah McGavern arrived at 7:52 PM.

Absent: James Brugger and Mary Jo Verde

Andrew Port, Director of Planning and Development, was also present

**2. General Business**

Chairman McCarthy welcomed Anne Gardner in her return to the board.

- a) The minutes of 1/18/17 were approved as amended. Don Walters made a motion to approve the minutes. Bonnie Sontag 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.*

**a) Approval Not Required – 2-6 Elmira Avenue (2016-ANR-03)**

Director Port demonstrated on the plan the ANR request. Chairman McCarthy said dimensional variances for area and frontage for the new lot were approved by the ZBA resulting in two non-conforming lots with access from Elmira and Moseley Avenue.

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

**Motion Approved.**

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***b) Plan Endorsement – 223 High Street (2010-DEF-01)***

Chairman McCarthy said due to a time lag in the filing, the approved Wine property plan required re-endorsing. Taylor Turbide, engineer, 10 Senee Court, Amesbury, said a re-endorsement would certify that nothing had changed.

Don Walters made a motion authorizing Chairman McCarthy to sign the letter of re-endorsement for the Registry of Deeds. Andrew Shapiro seconded the motion and all members voted in favor.

**Motion Approved.**

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**3. New Business**

***a) Evergreen Commons LLC  
18 Boyd Drive and 5 Brown Avenue  
Preliminary Subdivision Plan (2017-PSP-01)***

Attorney Lisa Mead, Mead, Talerman, and Costa, 30 Green Street, said a Preliminary Subdivision Plan (PSP) with 43 lots filed two weeks ago had received comments from Christiansen & Sergei, Inc.(CSI),160 Summer Street, Haverhill, and some City departments. Steve Sawyer, Design Consultants, Inc., 120 Middlesex Avenue, Somerville, said this plan had greater detail than a previous plan. All lots fully conformed to zoning. Roadway alignments through the property conformed to subdivision regulations. CSI commented that a couple of roadway profile areas needed a minor adjustment. Mr. Sawyer described how lots would be reconfigured to handle the ILSF. He explained the calculations for increasing 330,000 cubic feet of stormwater to a volume of 430,000 cubic feet. He demonstrated on the plan the new ILSF area shaded in blue. The previous 220,000 square feet ILSF was reconfigured to 280,000 square feet with a small difference in depth to 1.8 inches. The added flow was manageable. The plan would be revised with additional grading at the Definitive Subdivision Plan stage. He addressed a question from the Conservation Commission on the buildability of some lots. The Newburyport wetlands ordinance had a 25 feet No Disturb zone. According to CSI, the lots met the wetlands ordinance and were buildable. Three lots in particular required Conservation Commission vetting for permits, but houses could be designed and constructed within the ordinance. Attorney Mead said the plan was created so as not to require any waivers.

Member comments: Did the new Isolated Land Subject to Flooding (ILSF) overlap the previous ILSF or was it moved? Mr. Sawyer said 75% of the new ILSF was within the original area. Moving was possible with mitigation, but draining and filling was not allowed in one area. Attorney Mead said an Order of Resource Area Determination (ORAD) was already obtained.

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Did houses whose gutters drained into dry wells reduce the ILSF? Mr. Sawyer said flow to the ILSF would be reduced but that was not taken into consideration in order to be conservative. Describe the No Disturb zone versus the buffer zone for the ILSF? Mr. Sawyer demonstrated on the plan an area that was taken into the ILSF under local regulations. The 25-foot No Disturb zone for wetlands was not the best resource for an ILSF. There had been discussions about making the ILSF deeper when the project moved forward. Members said the Conservation Commission could invoke a 100-foot buffer zone. Mr. Sawyer said a properly design buffer could be built. Director Port said the applicant needed to show that building within the buffer would not negatively impact the ILSF. Members asked whether lots would be removed from the plan as buildable if design changes could not satisfy the Conservation Commission? Mr. Sawyer said yes. Attorney Mead said the Wetlands Protection Act did not prohibit using property, but meeting the regulations made it more expensive to use the property. Julia Godtfredsen, Conservation Administrator, said limited impact was allowed on a wetland. Certain things could take place in the 100-foot buffer as long as functions and values provided by adjacent wetland were not negatively impacted. Attorney Mead said using and building on those lots required meeting performance standards. Members asked if dotted lines on the plan were housing footprints? Mr. Sawyer said the PSP was not required to show a footprint; the dotted lines showed the required setback. Chairman McCarthy said the project needed two Special Permits because it was in the WRPD. The fact that each permit was reviewed individually at the application stage rather than together was inappropriate for the unique property. His concerns about water quality persisted because the site was a bowl with a 500-foot radius in Zone II where unfiltered hydrology went directly into Well #2, the soils were highly transmissive, and seasonal high ground water was close to basements. Attorney Mead said she had correspondence from engineers showing that wells were completely clean. The state did not have any issues with building. Standards would be met when filing the Definitive Subdivision Plan.

Public comment open.

Ann Marie Vega, 21 Boyd Drive, read the conditions for the golf course that cited "...no chemical treatment provided in these areas."

Michael Lee, 1 Boyd Drive, asked whether there had been any testing on the property? Chairman McCarthy said yes.

Michelle Rogers, 11 Boyd Drive, said one lot appeared to be a disallowed pork chop shape. Mr. Sawyer said there were two property lines measuring 125 feet. Houses would be further back and well within the proscribed set back. Attorney Mead said the issue related to frontage, not zoning. There was no fixed set back.

Peter Hatcher, 15 Boyd Drive, asked about verifying the ILSF calculation and whether greater volume reduced the number of lots? Attorney Mead said CSI approved the report for the PSP. Director Port said a full engineering peer review occurred at the Definitive Plan stage.

Ms. Vega asked if traffic, noise, and other studies were reviewed at the Definitive Plan stage? Attorney Mead said yes, by peer reviewer CSI.

Public comment closed.

Chairman McCarthy said the OSRD ordinance applied well in this situation. He lacked confidence that the PSP was the best plan.

Andrew Shapiro made a motion to continue the Preliminary Subdivision Plan to March 1<sup>st</sup>. Bonnie Sontag seconded the motion and all members voted in favor.

**Motion Approved.**

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**4. Old Business**

- a) *Evergreen Commons LLC c/o Lisa Mead, Esq.  
18 Boyd Drive and 5 Brown Avenue  
OSRD Special Permit (2016-SP-03a)  
Continued from 1/18/17*

McCarthy read a letter from Mayor Donna Holaday. A 44-chemical test plan had increased to 250 chemicals. Results showed the well was clean. The applicant would cooperate with further testing on other areas of the property for future drilling of new wells in a separate process from the Planning Board's permitting process. The mayor instructed the board to move forward.

Attorney Mead said at the last hearing, the applicant had proposed giving the City about a half acre on the property. Afterwards, Director Port said the City wanted to test for water supply, not quality. At the time, the agreement with the City was to test in the northwestern part of the site. The City returned with a request for testing closer to the middle of the site. The applicant and owner agreed and owner gave the City legal right of entry during February to test in two separate areas. An on-site meeting today with City officials and the applicant's representative would determine out how best to get to the locations. The applicant's earlier test results were confirmed by the City's water quality testing for 250 chemicals. There was no indication of any chemical infraction from residents or the golf course. All written information supported the absence of any water quality issues. All input from the City had been addressed. If the OSRD were considered, there would be management control for any applications of chemicals. Chairman McCarthy said new information regarding testing that had occurred on B4 and B6 of the City's property and the golf course, including the soil that was not tested previously. Nothing in the 250 chemicals list showed up on of the City's property. Attorney Mead showed a plan of the golf course.

Member comments: Was the board to proceed regardless of what the City was doing? Director Port said it was unfortunate some Water Department concerns regarding Well #2 were not consolidated earlier. Whether the future new well was feasible and whether it would produce

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enough water would be a separate determination from the board's approval process. The Water Department, while not concerned about relocating the existing well and not directly concerned about residential development in the area, remained very concerned about the viability of a future hypothetical new well in the area. The board was concerned with existing conditions.

Public comment open.

Anne Marie Vega, 21 Boyd Drive, asked if Director Port's letter to the board was public? The DPS concern for water supply instead of quality was mentioned several times. Director Port said the DPS preferred no development next to the well but were not directly opposed. Their concern was with future water supply. He would post the letter on the website. Ms. Vega said the January 20<sup>th</sup> letter from the Health Director said not to move forward without ground testing. What if the development broke their conditions? The greens, fairways, and tees could not use any chemicals.

Alison McDougall, 19 Boyd Drive, asked whether the required buffer zones for a DPS determination of future well locations would impact the development? Was drilling this month? Attorney Mead said there would be a 400-foot radius from the center of their locations and a series of protocols were being followed. Chairman McCarthy said the permit would have to be reconfigured. Attorney Mead it was not an issue for this board. Water Department studies from many years ago referred to this site but a testing never occurred. The fact that future wells' viability had not been tested for would not stop developer from proceeding. Chairman McCarthy said if the Water Department decided to drill wells, the development's design and configuration would change. Ms. McDougall asked if arrangements would take place between the City and the developer if the city decided to drill? Director Port said his understanding was that the golf course owner would not allow testing previously. Nothing came up in a July 2017 meeting with City departments. He first became aware of the Water Department's interest late last year.

Jane Snow, 9 Coffin Street, attended a City Council meeting where \$60,000 was approved to clean the wellhead; as part of that, there were other actions involved. Attorney Mead said there were two different issues. The applicant had known about cleaning and repacking the existing well. Drilling would be \$25,000. Chairman McCarthy said the purpose of this board was to get the best plan possible on the table.

Public comment closed.

Chairman McCarthy said there were multiple options in this location for a future water supply. The well could move within 250 feet on City property without a new permit. Option 2 would be coming down toward the subdivision. All things being equal, the City would much rather use their own property. If the City decided to drill on the developer's property, the development would be reconfigured and the board's process would begin anew. For now, it was necessary to put a marker down so the plan could stop changing. He distributed copies of a plan that was slightly different from the current plan, with roads in accurate widths. He wanted everything moved out of the 100-foot buffer zone for the wetland and the actual ILSF shown as instead of through the cul de sac, as plans were now. Attorney Mead said a revised final plan would be submitted by the next meeting.

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Chairman McCarthy distributed a nine-page draft of Findings and Special Permit Conditions, along with a corresponding outline to aid in development of a comprehensive list of findings and conditions. The Findings Outline provided a general project description. The first heading, Water Quality Assurance, was the top priority that noted the importance of homeowner behavior. Following that were headings for the specific requirements for the Special Permit that included whether the plan met the purpose of an OSRD; Master Plan references; specific findings for the OSRD that included best management practices for the open space; and City department head comments that needed a findings process for that input. Attorney Mead said evidence was needed of the fill that tainted the water. Director Port referenced the 1987 Lally Report. Chairman McCarthy said the well was shut down. The Special Permit Conditions Outline headings were: Modifications; Consistency with Approved OSRD Plan; Public Well Protection that included testing initially, during, and after construction, insurance issues, and Homeowner's Association (HOA) stormwater maintenance plan and funding; Conservation Commission Approval; HOA documents; Roadways within subdivision; Requested Boyd Drive improvements; Water & Sewer requirements; Electrical lines buried; Easement for access; an Open Space Program document that covered the planting, trails, and maintenance plans; Open Space Preservation that was concerned with who would open the Conservation Restriction; Architectural Design and House Elevationittings; and Escrow Accounts that were concerned with the HOA behavior regarding care of stormwater management features, the roads, lawns, and open space. Attorney Mead said the applicant never specified that roads would be private. Director Port said the City had no interest in taking responsibility for the development's roads. Attorney Mead asked why was it necessary to build roads to the City's standards? Director Port said the rules and regulations did not mean the City accepted the roads. Chairman McCarthy said the Draft Findings and Conditions were not definitive. The board and the applicant would have two weeks to work on the language. The last two Conditions Outline headings were Water Resource Protection District (WRPD) applies and a sign off that the project complied with the Special Permit. He would post the documents for the public.

Ms. Vega asked about the potential for flooding from the flow of underground water? Disturbing something underground would cause flooding. There had to be recourse.

Director Port gave a summary of the recommended Findings and Special Permit Conditions as a framework for discussion. The findings were typical for an OSRD Special Permit and described the project scale, current conditions, and factors that made the site unique. Water quality protection was a critical component of the conditions if the project was approved. Special Permit Criteria described how the zoning ordinance would be met. Special Conditions included: modifications to approved plans that could not be done without coming back to board; consistency of definitive filing with OSRD approval as to whether plans complied; public water supply protection; installation of monitoring wells that included easements, initial ground water testing at monitoring wells, initial soil testing on the site, and groundwater testing at monitoring wells during and after construction; insurance policy during construction; site design elements that included best management practices, underground infrastructure, distance between stormwater discharges and wetland resource areas, grading, earth removal, and fill; Conservation Commission Approval; HOA documents, deeds, covenants, and restrictions that included prohibited uses, a single landscaping and lawn care professional and use of chemicals, roadway infrastructure maintenance, drainage system maintenance, Zone II, trash and recycling

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maintenance, street lights maintenance, language in deeds, and enforceability; roadways within the subdivision that included roadway width (southern loop and connection to Brown Avenue), maintenance of roads within the subdivision, street trees, and maintenance of street trees; upgrades to Boyd Drive; water and sewer infrastructure; subsurface utilities; easement for emergency access; open space program that included trails, maintenance plan, control over open space areas, land to be deeded to water department, and non-structural stormwater features; open space preservation; architectural design and structural elements that included foundations, elevations, fencing, and garages; escrow accounts that included project review fees, account balance, initial funding for HOA activities; approval subject to compliance with WRPD ordinance; and signoffs for building and occupancy permits.

Member comments: Were there other developments in the City where the board had required the developer to ensure road maintenance and submit an annual plan? Would resident taxpayers find that onerous? Director Port said the City could not maintain additional infrastructure and it was the developer who benefitted from the Special Permit. A homeowner would purchase what the deed specified and could choose not to buy if they were uncomfortable. At a future time, homeowners could get together before the City Council to request the City take responsibility for the roads. Eventually, roads could be adopted. Chairman McCarthy said the board should re-engage the DPS about improving their control of road salting and cleaning out storm drains. The condition was not unique in the City. Members said responsibilities could also be split between the City and the developer. Was a conflict created by a plan where the public open space was accessible only by a private road? Director Port said that was a reasonable question. Members said the open space could also be reached from Boyd Drive or by walking. Many things could be accomplished by mutual agreement. The public had raised the possibility of a homeowner putting something on their lawn. That had not been addressed. Insurance was not necessarily practical because claims could be denied. Where subsurface utilities viable? Mr. Sawyer said electrical lines could be sealed and buried, but not the deep utilities. Director Port said the DPS did not want sewer lines in the seasonal ground water. Chairman McCarthy said this OSRD plan, with considerably less lot space and road surface, was better than the conventional plan. Best management practices should also address things at the water table. He welcomed comments from the public. Written comments were best and should be received in the next two weeks.

Public comment open.

Karen Geary, 9 Boyd Drive, was concerned about the HOA. Human behavior left a lot of room for error. Chairman McCarthy said the behavioral component was important and supported the rationale for moving the water features as far as possible from the lots.

Michael O'Brien, 7 Briggs Avenue, was concerned about safety on roads without sidewalks. Chairman McCarthy said the board had not deliberated when the full access road shifted to Brown Avenue. That would be addressed.

Ann Marie Vega, 21 Boyd Drive, asked about noise, air pollution, and hours of operation during the projected three years of construction? Director Port would add language to address those concerns. Ms. Vega asked how the board would address the history of flooding and the soil test the board wanted before work could begin? Chairman McCarthy said there was a placeholder for

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test results. The board still needed to decide whether the developer's protocol was accurate. Attorney Mead said soil testing would occur prior to filing a Definitive Plan. Ms. Vega asked what would happen if the HOA went defunct? Was there a penalty for not adhering to the rules?

Alison McDougall, 19 Boyd Drive, asked whether the three houses on Boyd Drive were part of the private development? Director Port said yes.

Peter Hatcher, 15 Boyd Drive, what were the changes in the modified plan that was distributed? Director Port said the plan was not modified, but rather a copy of the plan showing the overlap areas for putting in a well.

Michelle Rogers, 11 Boyd Drive, said houses on Boyd Drive should conform to the existing neighborhood rather than the new neighborhood.

Public comment closed.

Attorney Mead had no comments.

Chairman McCarthy opened a discussion about Brown Avenue. Members said traffic mitigation would need to be addressed, given the condition of roads going into the neighborhood. The traffic study had shown little incremental traffic. Had that changed with the latest design? Director Port said the traffic study did not indicate heavy traffic flow onto Briggs Avenue or Laurel Road. Members asked what level of traffic was acceptable? Director Port said the traffic consultant did not think a threshold had been met. Chairman McCarthy said the consultant was pleased with the two 90-degree turns and that traffic was split. It would be very hard to speed.

Director Port would take all the feedback and continue to work on the conditions to get something back to the board prior to the next meeting. There were 10 days for feedback. Chairman McCarthy discussed quorum issues and continuing to February 13<sup>th</sup>. Attorney Mead would check remote participation requirements.

Don Walters made a motion to continue the OSRD Special Permit to February 13<sup>th</sup>. Leah McGavern seconded the motion and all members voted in favor.

**Motion Approved.**

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**5. Planning Office/Subcommittees/Discussion**

*a) Updates*



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Andrew Shapiro, Leah McGavern, and Joe Lamb were designated as subcommittee members to work with NED, with Mary Jo Verde as an alternate. Jim McCarthy was designated as the Community Preservation Committee representative.

**5. Adjournment**

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

The meeting adjourned at 9:40 PM.

Respectfully submitted -- Linda Guthrie