

**City of Newburyport
Planning Board
June 3, 2015
Minutes**

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

1. Roll Call

In attendance: James Brugger, Sue Grolnic, Noah Luskin, Jim McCarthy, Leah McGavern, Doug Locy, Andrew Shapiro, Bonnie Sontag and Don Walters

Planning & Development Director Andrew Port was also present.

2. General Business

- a) The minutes of 5/20/2015 were approved as amended. Doug Locy made a motion to approve the minutes. Andrew Shapiro seconded the motion and seven members voted in favor. Noah Luskin and Bonnie Sontag abstained.
- b) 223 High Street Approvals (2010-DEF-01, 2010-SP-05)

Attorney Lisa Mead, Blatman, Bobrowski, Mead & Talermin, LLC, 30 Green Street, represented Trustees Brad Kutcher and Mark Wojcicki of Elite Builders Trust, who would assume ownership of the Wine Subdivision on June 24th. Current owners had a 2011 approval for a 5-lot subdivision, valid under the Permit Extension Act. Proposed were four house lots with smaller footprint structures in addition to the original gothic revival house. Attorney Mead was seeking: 1) endorsement of a certificate, 2) approval of a covenant from Elite Builders covering four lots, a roadway, with a requirement for the applicant to provide continuous access to the original house during construction, 3) approval of homeowners documents, 4) approval of a Preservation Restriction on the original house for which 2011 preservation details would be observed, 5) approval of the Conservation Restriction, and 6) approval of an exclusive use easement for the City to access a portion of the rear parcel abutting the Nock/Molin School playing fields.

Endorsed mylars were no longer valid. The Wines were restricted from selling until June 24th. Legal documents had four parties, including the bankruptcy. No document could be recorded until June 24th and all documents would be filed in order. All changes received City solicitor were accepted except one that appeared in both the Preservation and Conservation Restrictions. The Commonwealth's approval would not occur before the property transfer. The solicitor had improved language to ensure the restrictions were in perpetuity, but the last sentence assigned responsibilities to the current owner, whom Lisa did not represent. Everyone agreed restrictions were to be perpetual, but if for any reason they were not, the burden was on the grantor.

Member comments: Did initial complications of having many parties involved result in 30-year restrictions? Members considered whether they would agree to a 30-year restriction. Attorney Mead believed the City solicitor's language qualified restrictions for perpetuity. A restriction not accepted by the Commonwealth could still hold if it were challenged. Attorney Mead said the

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Preservation Restriction was granted to the City from the Historic Commission. Who was responsible for filing another restriction and getting the Commonwealth sign off if the Preservation Restriction were challenged? The owner was obligated because the City did not want the responsibility. Director Port said no one was obligated to file.

Chairman McCarthy asked what was needed to close the sale? Attorney Mead said approval on all documents and a certificate signed. Chairman McCarthy asked if the sticking point was the Preservation Restriction on the original house? Attorney Mead said also the Conservation Restriction encompassing a portion of the land. Chairman McCarthy thought 'perpetual' should be defined, but Attorney Mead said there had never been an argument on perpetuity. The issue was methodology. Chairman McCarthy stated there had been nearly 4 ½ years for restrictions to get done. Attorney Mead had confidence that Elite Builder's were knowledgeable and motivated to undertake the complex project. She did not have confidence that an owner of the original house would take care of re-filing. If documents were not all approved, the City would not have the exclusive use easement and the sale would not go through on June 24th.

Chairman McCarthy read a portion of the Definitive Subdivision Plan ordinance. Attorney Mead said the grantor of the Conservation and Preservation Restrictions was the current owner who would never own the original house or land. Members asked how separate activity by different parties could occur within one Special Permit? Attorney Mead said the client was buying lots 1-4 and the road, not the original, fifth house. Members said the board was asked to record documents pertaining to the entire property. Attorney Mead said the property was purchased in a short sale. The Preservation and Conservation Restrictions and the homeowners' and easement documents would record first. The deed would record at closing, and then the covenant for one portion would be filed. Restrictions applicable to the subdivision would apply to the whole site.

Chairman McCarthy asked whether the drawing reflected the style of all four houses? Attorney Mead said Mr. Kutcher could present more details on house styles. Chairman McCarthy wondered whether the City could act as the agent of the grantor? A member suggested the board issue a conditional approval requiring both parties to reach a mutual agreement. Attorney Mead asked if the burden should be on the grantor or the grantee to re-file? A member asked if the statute requiring the City to have the authority would apply if a restriction were challenged?

Sarah White, Chair, Historical Commission, volunteered to apply to the Massachusetts Historical Commission and take responsibility to execute the filing after documents had been recorded, on June 30th. Attorney Mead said the last sentence in the language gave Ms. White that authority, but the Conservation Restriction had the same language and the same issue. Chairman McCarthy supported Ms. White's proposal. Members asked if the Conservation Restriction language was only for 30 years? Attorney Mead said no, the language was exactly the same regarding perpetuity. She asked if it was important for the Conservation Commission to accept the same responsibility as the Historical Commission? Director Port suggested taking a vote on the language minus the last sentence to make it clear for the record what would be approved.

Chairman McCarthy said extending the endorsement, building on four lots with an offer of the covenant for surety, the homeowners' documents, and the language exchange were all okay. The board accepted the Historical Commission's proposal. House styles would be addressed later.

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A member said the applicant had the option to sell one of the lots. Ms. White said there was also a larger issue with the Historical Commission language.

Don Walters made a motion to approve the Modification with the language removed. Sue Grolnic seconded 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.

- c) Steve Sawyer Wright's Court (2007-DEF-02, 2013-SP-02)
Request for Modification – Drainage

Steve Sawyer, Design Consultants, Inc., 68 Pleasant Street, on behalf of Todd Freemont Smith and Delores Person for the Wright's Court Subdivision, proposed changing an open swale to the right of the road to a stone ridge edge, similar to one in Donahue Court. A 10-inch perforated pipe wrapped in filtered fabric and set in crushed stone would drain water off the edge of the road into a pipe to the system. Pipes were sized to convey a 100-year event. The original design required maintenance every two years when fabric clogged. Director Port said CSI supported it.

Don Walters made a motion to approve the Modification. Noah Luskin seconded 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. Public Hearings

- a) ***Berkeley Investments, Inc., c/o Lisa L. Mead, Esq.
260, 268, 270, 274, and 276 Merrimac Street
Special Permit Modification (2007-SP-03b)
Site Plan Review Modification (2007-SPR-04b)***

Attorney Lisa Mead represented Eric Ekman and Joe Laurano, Berkley Investments, 280 Congress Street, Boston, and First Republic Corporation of America, in a reconfiguration of the 2007 approved project. An application had been filed with ZBA for a Variance to exchange relocating the barn for an affordable unit. She would file with the Conservation Commission for

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an Order of Conditions and for a Chapter 91 Permit. Mr. Ekman said First Republic asked for their help due to Berkeley's focus on adaptive reuse projects in challenging sites and Berkeley assembled the team. He listed the primary challenges. The 1690 house was a difficult a space for two units and would become a single-family. The two shell buildings needed interior layout modifications to reorient everything toward the river. The large, lofty building with 3,000 square foot-plus units created a wall effect along the river. No buffer with the commercial parking lot existed. The river walk and front yards had minimal transition. Unit sizes would shrink to about 2,500 square feet reducing the building's scale. Environmental site conditions were similar to urban fill. Risks of relocating the barn were discussed. Previous piles were in good condition.

Attorney Mead said the outstanding Enforcement Order had been resolved with the Conservation Commission and the Order of Conditions had been extended. The development team had met with the Ward Councilor, Parks Director, Building Inspector, Mayor, and Director Port. Six units in front, nine units along the water, and the existing Towle Building as office space were permitted. Mitigation was needed on relocating the barn. Two units would be moderate-to-low income housing. The Preservation Restriction was out of date and unfiled and the License Agreement for parking was not executed. A covenant restricting the view corridor and allowing a private marina constructed in front of the units was received. The proposal would develop the planned structures for 15 residential units with the following changes: a single-family 1690 House would be moved near the river adjacent to other units; a new recreation building at Cashman Park would be built instead of relocating the barn; there would not be a marina; parking configurations would be altered; and the open Tyng Street corridor would not change.

Taylor Turbide, Millennium Engineering, Inc., Salisbury said based on his surveys, water and sewer tie-ins existed and gas service was installed. The pump was not put in and the pump station had deteriorated and could not be saved. It would be relocated. The gravity sewer would stay, but new sewer through the courtyards would be installed. Drainage and basins were not properly installed in the parking lot and the water was not treated. There were no detention basins because the site was tidal and discharge rates did not need to be controlled. Parking configurations were similar to what was approved. Required were 280 spaces, whereas the previous plan had 296 spaces. Parking would be reduced, but still be over 280 spaces. Proposed lighting throughout the parking area was a foot-candle plus. There would be no lighting in overflow parking on the residential side, used only in daytime.

Landscape architect Tim Mackey, Richard Burke Associates, Inc., Richard Burck Associates, Inc., 7 Davis Square, Somerville, would use all native plant species. Trees and shrubs buffering edges and sides would be tolerant of salt spray. A great amount of plant material would create an enclosure in the courtyard area. Patios coming off the building and elevated decks were in the turf grass area. A zone of two feet high native grasses separated units from the river walk. A walkway connected the courtyard to the river walk. Buffer plantings and a retaining wall would handle the grade change by the office building. Tall native trees would mitigate the expanse of parking, where curbs would be removed to allow stormwater into the area. The courtyard areas would be lit and fixtures mounted on building to entryways. Parking lots would use LEDs mounted 22-25 feet high, similar in height to what existed.

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Architect Lawrence Cheng, Principal, Bruner/Cott & Associates, Inc., 130 Prospect Street, Cambridge, said the 1690 House would retain its historical fabric. Maintaining the view corridor was important. Four units fit within the three-unit footprint where piles were set. The design would be similar to large Newburyport houses and use asphalt shingles.

Attorney Mead went through Site Plan Review and Special Permit criteria in relation to the modifications, demonstrating no negative impact. CSI comments received yesterday had not been responded to yet, and could be addressed easily. Comments from the Water Department relative to the line were being worked out. There would be consistent labeling on the plans and she expected to return to address the board's questions.

Board comments: Trees impinged on the view corridor from Tyng Street. Mr. Mackey said the view cone opened up as the street was approached. Chairman McCarthy said the view corridor triangle should be on all diagrams. Members said trees on the previous plan were smaller in photographs. Mr. Mackey noted which trees were at issue and said the mayor requested widening the sidewalk for additional rail trail access. Chairman McCarthy recalled granite posts on Merrimac Street. Attorney Mead said the sidewalk lined up with the gate. Members identified the need for a jog. Mr. Mackey said the circle would be maintained and a bench with plantings behind it would delineate the parking area. Chairman McCarthy said the 15-foot diameter cement circle required ornamentation. Members asked if the barn had been compromised?

Mr. Ekman said, the barn was not compromised structurally, but it was not in good condition. There were issues with the roof and the interior needed to a full gutting. Some reinforcement existed in preparation for a move. The cost of relocating and improving the barn made the project financially unfeasible; relocating it to Cashman Park was about \$60,000. Attorney Mead said the Provision stated the barn would move upon the City's request, not the Planning Board's request. A Variance proposed to build a one-story recreation building with bathrooms that was easier to maintain. She had asked if 'the City' was the mayor or the council.

Member comments: The walkway was a community destination and needed more than a bench. If the gate were locked, the walkway was a dead end. In response to Chairman McCarthy and members questions Mr. Mackey and Mr. Ekman said the big green fence along the walkway would come down and split rail fencing along the back was a boundary designation. The back area maintained by the association was open to the public. A property manager would mow at least once, at the end of winter, and maybe twice, a year. Members asked for a maintenance plan for the public thoroughfare. Director Port said that deadline would be prior to occupancy.

Member comments: Why were there only two affordable units proposed, one located in each of the two shell buildings? The plan was an improvement, more interesting to look at, with a more human scale and residential feel. Interior layouts and other materials were in Dropbox. Mr. Cheng said shingle siding would age to gray matching a dark gray roof. Ambient environment provisions included flashing, critical in the coastal climate, and vinyl clad wood windows that were easier to maintain than aluminum clad. Was there anything extraordinary to note? Mr. Cheng was considering non-toxic paint. Energy efficiency was standard. Two pair of inappropriate sliding doors on the backside of the 1690 House, unmatched in the other buildings, was the only exterior change. Mr. Cheng did not want to see a lot of garage doors. Parking was

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split with one car garage per unit and a separate area for another car. He demonstrated the location of visitor parking for waterfront lots. Members wanted a less residential look for the recreation building. Chairman McCarthy noted the bottom part of main buildings. Mr. Cheng said garages would be differentiated from utility spaces by a wider shingle or board. The highest building was 42 feet to the peak and there were no vent stacks. Chairman McCarthy wanted a set of plans for the front houses. Mr. Cheng would bring a sample of double hung cottage style windows. Utilities and condensers were camouflaged in three banks, as shown on the plan.

Mr. Turbide said a new photometric study was not identical to the previous study. Members asked about washing on the corridor? The closest light to the corridor was shown on the map; there would be some spillover. Members said there was not much foot traffic at that location, but putting the light on one side only would be good. The walkway lamp style was shown. Chairman McCarthy said electrical was not on utilities plan. Mr. Turbide was still working on taking everything underground. Chairman McCarthy said a pedestrian connection from parking to the soccer field was needed; the board had requested a crosswalk. Member asked about signage and the impact of the revised flood plain elevation? Mr. Turbide said the grade change eliminated any impact and a small sign at the entrance could be viewed from both directions. Members asked for comment on the SWPP in effect during the entire construction. Mr. Turbide said the temporary basins did not work, silt fencing was gone, drainage installed had not been cleaned, and it was a mess. Drains should be closed to prevent that in the future.

Public comment open.

Camille Gallo, 243 Merrimac Street, was concerned about tall trees impeding the view from Tyng Street. Mr. Mackey would revisit the street.

Tom Salemi, 29 Oakland Street, asked if all units were part of the same homeowners association and equally responsible for maintaining green spaces? Was the roadway private or still part of the parking lot? Mr. Ekman said there was one condo association for all units; the commercial property was separate. By mutual agreement, the two would maintain all common areas. Attorney Mead said the walkway was protected by a covenant that allowed access. No gate could be put there.

Joyce Senior, 235 Merrimac Street, said cracks had appeared in her walls and stairs during pile driving. Mr. Ekman said added piles would follow proper protocol and foundations checked first.

Denis Kennedy, 4 Carter Street, said piles should be driven at the right time of day, not at 6:30 AM. The original Variance or Special Permit addressing traffic flow on the site should be rechecked. Sally Snyder Way, utilized more often than Tyng Street, had an important view corridor. Pedestrian traffic and views up and down the river were also important. The set back helped, but trees obstructed river views. Residents walking along Merrimac Street did not want to feel closed off from the river. Towle residents may not like the busy abutting boat/trailer parking area but it's useful existence was a fact.

John Losh, 1 Manson Avenue, asked if the sidewalk would open to the boat club? Director Port said the dead end would remain for a while. Mr. Ekman said signage would help.

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Stephanie Niketic, 93 High Street, said a one-unit density bonus was based on relocating and restoring the barn. What happened if the ZBA eliminated the requirement? The Historical Commission had said that moving reduced the value of the barn, which had already relocated once. The City Council should amend the Variance if it was accepted. Director Port said the issues would be evaluated at the June 9th ZBA meeting. Ms. Niketic had observed that the barn was exposed to the elements in violation of the ordinance. Windows were the most valuable material in the building and should be fixed and preserved.

John Kolterjahn, 64 Federal Street, was liaison to the project before the financing problems. He listed the remaining historic features in the house and barn. Non-historic features were already gutted. The Preservation Restriction and rehabilitation was required by the Towle Overlay that was never put in place and critical to saving the barn.

Richard Maines, 208 Merrimac Street, asked how long new pile driving would last? Mr. Ekman would get back to him with the information and said structures were not moving back from the water. Mr. Maines hoped the work would not start at 6 AM.

Public comment closed.

A member asked for the pros and cons of converting the 1690 house to a single family for the next meeting and suggested a fund for the City to hire another construction company to mitigate the impact if something happened mid construction. Attorney Mead requested to return July 1st.

5. Planning Office/Subcommittees/Discussion

- a) **40R** - Director Port gave a brief update on the status of the 40R.

6. Adjournment

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

The meeting adjourned at 10:29 PM.

Respectfully submitted -- Linda Guthrie