

**City of Newburyport  
Planning Board  
August 21, 2013**

The meeting was called to order at 7:12 PM.

**1. Roll Call**

In attendance: Dan Bowie, Henry Coe, Paul Dahn, Sue Grolnic, Noah Luskin, Bonnie Sontag, Don Walters and Cindy Zabriskie

Absent: Bonnie Sontag and Jim McCarthy

**2. General Business**

***Approval of Minutes***

Henry Coe made a motion to approve the minutes from 8/7/13. Don Walters seconded and all members voted in favor. Abstaining was Dan Bowie.

***43-45 Middle Street/38 Liberty Street – ANR***

Taylor Turbide, Port Engineering, 1 Harris Street #2, Newburyport, MA, said Lot 1 had 54 feet of frontage on Middle Street and another 5 feet of frontage on Liberty Street. Parcel A was 491 square feet, owned by Secamp; Parcel B was 212 square feet and owned by Ramberger. The property owners went before the Zoning Board of Appeals and received the variances required to adjust the lot lines. Parcel A, belonging to 43-45 Middle Street, would be transferred to Liberty Street with the board's endorsement of a subdivision. Chairman Bowie said the ANR would be approximately 200 square feet an unbuildable lot.

Don Walters made a motion to approve the 43-45 Middle Street/38 Liberty Street ANR. Henry Coe seconded and all members voted in favor.

**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.**

***Coffin Street Subdivision – 13 Coffin Street access improvements  
Continued from 8/7/13- Discussion (no application)***

Chairman Bowie put the discussion into context saying many people had issues with the project for over 40 years. In March 1999, it was decided the property was not subject to subdivision control. The parcel had frontage on Coffin Street. The city clerk certified that Coffin Street was a public way. The Planning Board took a site walk and in April 1999 endorsed the plan. The matter is before the board now because a portion of Coffin Street was unbuilt. The only issue tonight is that the owner is seeking approval for site access to the lot. There is no application before the board. Since 1999, it had become apparent there were issues. There was a taking of Coffin Street in 1996, reported to Mass DOT, whose records showed that only the paved portions of the street were taken. The board is aware of all correspondence over the years and understands

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the situation. The board has no power to appropriate money for taking any action for a build-out of Coffin Street. One of the issues is ownership of the unpaved portion of Coffin Street, but ANRs are not public hearings. Chairman Bowie will take public comment as long as it is relevant to the issue of access to the approved lot.

Steve Sawyer, Design Consultants, Inc., 68 Pleasant Street, Newburyport, MA, presented the improvements. He would improve access and safety to the paved portion in front so a ladder truck could pull forward for fire apparatus to access to the property. He would widen and pave a portion of Coffin Street to enhance the paved access for a driveway. Roadway grade is 2% and driveway grade is 3%. The site would be graded for the proposed home. He would add 435 square feet of pavement in the public way, rain gardens for drainage that would pick up about 1.2 inches of rain, and Caltec chambers for roof runoff. Deputy Chief Bradbury sent a letter to the board that he was satisfied with access. Chairman Bowie said the Fire Department wanted the new house sprinklered. Everett Chandler, Land Surveyor, Design Consultants, visited DPS Director Andy Lafferty who mentioned that in the course of plowing, snow would be pushed up into the area, so they would come in later with a bucket loader to clear it after plowing. Director Lafferty had no problem with the improvements from a maintenance perspective.

Les Reardon, Trustee of the property, wanted the lot developed in a way that ensured access and had adequate frontage on the public way. Some people wanted to extend the street and some people didn't. As owner, he believed developing the property was better for the neighborhood. It was an historic right of way and there was historic access. He was not in a position to go forward with the project given concerns about the street, the snow and the parking. He thought his proposal would solve everyone's issues. Mr. Chandler said there needed to be some sort of action for the right of way to be released to the owners.

Chairman Bowie said if in fact it was a public way, the problem was whether the intent of the City Council was to take the street in its entirety. DPS would be the authority that permitted the board to go forward. The Planning Department said it was the third parties who had an interest that needed to be resolved in order to place status of Coffin Street to rest. Mr. Chandler said that during redevelopment of Turkey Hill, attorneys had said he could not use any land within the public ways because everyone in the subdivision had rights to that land.

A member asked what was the other option? Mr. Chandler said pulling the driveway off the straight portion of Coffin Street was the other option. The fact that a tail of pavement existed there would bring the same issue forward: Who owned the tail of pavement and who had the authority to say what could be done? Chairman Bowie said the Minutes from 1999 were not that detailed. A member asked if the pavement Mr. Chandler outlined in orange did not exist in 1999? Did the city install it? Mr. Reardon said the city started to make the Coffin Street Extension and then stopped. The upper portion came first and the bottom portion was paved more recently. The board had tabled the proposal so they could walk the lot. The Fire Department was consulted. The city started the work before 1999, then stopped. Chairman Bowie said minutes read, "board members discussed emergency access by the Fire Department," but nothing said the Fire Department was consulted. The issue of the status of Coffin Street was significant because of that. There was only one way a street became public, when the city accepted it. What was actually the public way was the important issue.

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Public comment opened.

Donny Dorfman, 11 Coffin Street, said snow removal was normally pushed into the turnaround, but this past year it was pushed into a wall. How big was the turnaround? The length was about 15 feet. Mr. Sawyer said he would add 20 feet.

James Meinheart, 27 ½ Jefferson Street, lived here through the 1996 taking and was not notified. He never met anyone from the Planning Board on a walkthrough. The pavement extension was created at the insistence of a resident of Coffin Street. Previously it was gravel and the resident did not appreciate people turning around in her subdivision. He believed there was a severe grade issue and the lot was unsuitable for the proposal. His deed specified an easement granted to utility companies that was not grandfathered in with the other easements to the town. His easement was probably a private piece of land. He objected to the development.

Chairman Bowie said the board didn't have jurisdiction over environmental issues. The address enjoyed the status of a lot and could be built upon as long as it conformed to Massachusetts stormwater management laws.

Candace Bushnell, 29 Jefferson Street, contended that the way extending from the dead end to Jefferson Street was private and had supporting evidence. There were three ways a way could be made public. The plot plan assumes 90 feet of frontage on a public way. The ANR was based on misinformation. Director Port has been in touch with Port Engineering, and gave them 10 months to respond to evidence that it was a public way. They were not able to come up with any evidence. Although the Planning Board could not rescind the ANR, in this instance they should do so because the ANR was granted based on misinformation. There was a claim that Coffin Street was accepted by the city in 1996. The portion that was accepted and paved was 7/100 of a mile from Merrimac Street to the stone wall that fronts 11 Coffin Street. The city had no other recorded reference, thus Coffin Street from the dead end to Jefferson Street remained private, as it had been since it was laid out in 1783.

Jane Snow, 9A Coffin Street, said there'd been a lot of information handed out that no one could prove one way or another. She had proof that, in 1996 when the street was accepted, it ran from Merrimac Street to the stone wall and did not include the 129 feet that was unpaved. The map showed her property as being Coffin Street; her property began at the end of the stone wall, only 25 feet from the paved area. There was no way a city fire truck could pull up and turn around. Her property had been damaged from actions like that and the proposed access did not address safety concerns. There was a time in 1990 when she saw DPW trucks trying to put Coffin Street through and someone stood there asking if the city owned the land. The way was filled with debris and was a mess. Mayor Clancy said since it was being paved, she would be kind enough to make it possible for people to turn around. Mayor Clancy put in the turnaround because it was a safety issue and Coffin Street was put all the way through. When her parents built their home in 1948, there was oiled sand all the way through. The 1926 assessors map showed Coffin Street going all the way through and doesn't refer to any unfinished portions. People started dumping there and the city stopped oiling it. This was one of the last streets to be paved. In all her time growing up, she went right through that section. People came through on Jefferson Street to

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come down Coffin Street. She did not want the lot built. Coming in from the Jefferson Street side, there was only about 20 feet before you hit lot 13. You would have a better grade.

Chairman Bowie said a letter from Senator Baddour in the packet said it was meant to be a public way coming through Jefferson Street. From his review of the file, Port Engineering was not hired by the city of Newburyport. He asked Ms. Snow why she believed they were working for the city? Chairman Bowie didn't see any indication the city had ever undertaken any effort to determine the status of Coffin Street. Carlton Brown, with Port Engineering at the time, told Chairman Bowie the same thing, but the Chairman could find no evidence of it.

Maria Svirsky, 4 Coffin Street, came to the street in 1984. She said in the last two weeks the emergency and fire departments have had no problems negotiating the street or reaching any residences. As a relative newcomer, she had seen the integrity of the streets change. Paving was done and the city never returned to reinstall sidewalks. City plows back down the street, leaving all the snow on the street. The slope had become more deviant. She asked the board to consider how such conditions affected those with homes on the street.

Mary Sortal, 8 Coffin Street, said the issue was ownership of the road. How the street was used in the 1940s was not evidence of whether it was a public way. If the burden of proof was on the residents, they did not have it. She abutted the proposed driveway. How much wider did it go? Mr. Sawyer said 18 feet wide, from the right edge looking toward Jefferson Street, and about 3-4 feet long. Ms. Sortal said her deck was located there. Mr. Sawyer pointed to a drawing showing the deck in a different location. He said they would need to comply with the 90-foot frontage requirement. Ms. Sortal asked if that portion was part of the road? Mr. Sawyer replied yes. Ms. Sortal asked what made it a road or a private way? Mr. Chandler said Coffin Street was laid out in 1973 as a private way. He was not asking if it was a public way, he was asking if he could make this improvement in the private way.

Chairman Bowie asked if there was a plan predicated on it being a public way? Who gave the authority for improvements on a private way? The rights the property had were not to the exclusion of other people. Public comment suggested it was used for some portion of time as a public way. But what did the city accept? Mr. Reardon said there was a legal issue with the city, with the courts, with the definition of the statutes of the subdivision. His plan focused on the issue of safety, not the issue of historical use. The board needed to consider whether this was a safe access to the road. He would take care of the rest. Chairman Bowie said the board must determine the threshold issue before going forward. If 'Public Safety' didn't have an issue with it, then neither did the board. Mr. Reardon said the board already made a public safety determination. Chairman Bowie said the determination was predicated on it being a public way. Mr. Reardon said it was an appropriate issue and asked how it was sustained? Chairman Bowie said the board had not yet discussed it and would discuss the threshold issue before deciding the ANR. Mr. Reardon said a lot of people here tonight didn't want anything done. Chairman Bowie did not want to be part of the continuation of a problem. He commented on the lack of information from 1999 before the board.

Ms. Sortal asked if a determination on whether the piece of property was on a public way or private way was needed before development could go forward? Chairman Bowie said any

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development using Coffin Street as frontage had to decide that. Ms. Sortal said several elderly relatives were residents on the street. None had trouble with access or safety.

Karen Krueger, 7 Coffin Street, said the street was luxuriously large compared to other streets in Newburyport. Many homes had wet basements. The reinstallation of just the telephone poles without returning the sidewalks and curbing in 2005 left some residents with a serious drainage problem and made it one of the ugliest streets in Newburyport.

John Bursinger, 7 Coffin Street, said it was essential to determine whether it was a public or private way. The city couldn't pave something and say it was theirs. The turnaround should have been solved before the entire subdivision became a nightmare. There was no legitimate reason to allow the ANR until it was known who had the rights to the property.

Deanna Eastman, 9B Coffin Street, said when she lost partial power, the utility company had a hard time getting in because of two cars parked parallel across from each other. She was concerned about safety and getting a fire truck up the street when there was dual parking.

Public comment closed.

A member asked the width of Coffin Street. Mr. Sawyer said the end of the 'T' was 25 feet, but he did not survey all the way to Merrimac Street. Another member asked what the order of issues to be resolved would be? Chairman Bowie said the issue was whether the portion we're concerned with was public and considered part of the taking. The board was limited to recommendations and should make a recommendation to the DPS. A member said whether the access was acceptable not, the board couldn't do anything for the legitimate issues of drainage. Chairman Bowie confirmed the board would not change the drainage. If the lot were developed, it would be required not to add any water to abutting properties. The applicant needed to tell the board why he could do this.

A member said if it was not a public way, the ANR was not valid. Chairman Bowie said the board could not rescind the ANR and asked by what procedure the board would get the access approved? A member said that didn't make sense. If a board or group approved something using false information, this board might not be the group to reverse the decision, but there must be a process where people could have redress. Chairman Bowie said assessor's maps were not used as conveying purposes. He thought the answer could be found and the board needed that. He didn't see the board voting on the merits of the access. The board needed more information on a public way. The member said it would go a long way with the neighbors if Coffin Street were improved. With a slight extension that didn't encroach on the neighbor's deck, everyone would benefit from more snow storage area. The owners could also show neighbors how the run off wouldn't affect their basements. The member would not vote no, but was it a public way?

Chairman Bowie helped the audience understand the limit of the board's authority. The purpose of the ANR was to determine if adequate access for emergency vehicles exists - not sidewalks, plantings, or stormwater. The board had limited inquiry on the matter. He suggested continuing for the applicant to investigate further. A member said he would not be comfortable if the city didn't also weigh in. Chairman Bowie said to wait and see what the applicant found. The board

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knew there was a taking. A member said there were no metes and bounds. Mr. Reardon said the difficulty with the issue was the manner in which it was done. It could take time. He asked to continue for 3 months. If additional time was needed, he would ask for it. Mr. Reardon would contact the board when ready to go back on the agenda. Ms. Sortal asked who would do the research determining whether the way was public or private? Chairman Bowie said the applicant would. The board would possibly bring in the city assessor, if needed.

**3. Old Business**

*Northbridge Communities, LLC  
30 Toppans Lane  
Definitive Subdivision  
Section XXIII Special Permit – Courts and Lanes  
Continued from 8/7/2013*

Steve Sawyer, Design Consultants, Inc., 68 Pleasant Street, Newburyport, MA, said concerns about screening were addressed with an evergreen planting strip in front of 34 Toppans Lane and the pool at 28 Toppans Lane, and also with dispersed evergreens mixed with deciduous trees along the road. The drainage calculations were tweaked. Existing vegetation would be maintained. Regarding concern about a stormwater point in front, the flow was slowed and would be collected by a pipe connecting to the 24" pipe instead of going onto Toppans Lane. The three drainage points in the property were less than existed today. There was no mitigation in non-developed lawn area that did not require it. The 24-inch screen would be maintained. Another issue was the site distance. Over 300 feet down Toppans Lane was ample site distance. Street trees would not be cut and he wanted to maintain the street trees. Those were the only changes. He submitted the homeowner's documents about dealing with vegetation. The draft Trust documents needed review by City Counsel before the board could review it. Pages 11-12 dealt with issues of the buffer zone. He would accept a condition that binded the maintenance of the buffers. Page 13, paragraph 8, mentioned a minimum house size of 3,000 square feet. He wanted to strike the first two sentences. A grading change did not increase or lessen the rate of flow. He had leveled out the backyards and diverted the flow around the house to the 24-inch drain.

Chairman Bowie asked if the declaration of trust was updated? Mr. Sawyer said the language in the restrictions didn't change but the lot areas within each lot were defined to include the buffer zone. Chairman Bowie asked about the issue of the curb radius. Mr. Sawyer was maintaining the 15 feet, although Christiansen & Sergi had recommended a 25-foot curb radius. He believed there were no 25-foot curb radii in Newburyport, that a 25-foot radius would look like something in the industrial park, and that 15 feet was ample for access. The turnaround was opened to 25 feet, but not the entry. He needed a waiver for the curb radius at the entry.

A member asked if the rest of Christiansen & Sergi's issues were addressed? Mr. Sawyer said they would all be addressed on the Mylar. Another member said 12 comments Christiansen & Sergi issued on August 20 included the width of the right of ways. Mr. Sawyer said he provided over 20 feet of pavement and, in trying to blend the hammerhead into a turnaround, had reduced the right of way on the hammerhead portion. The member asked what subdivision regulations

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said. Mr. Sawyer responded the requirement was about 40 feet right of way for a hammerhead. Chairman Bowie asked what the Fire Department said? Mr. Sawyer said they had no issue. The member said Mr. Christiansen seemed to be asking for waiver requests; Chairman Bowie said for the radius only. Mr. Sawyer asked if a waiver was needed for the pavement width and the right of way? He added that Mr. Christiansen didn't have an issue with it, asking only if a waiver was needed. An important aspect in the design was the detention basin would not be topped in the 100-year storm. He said Mr. Christiansen asked the elevation to drop to the lowest outlet, currently only 6 inches above grade, allowing the area to drain within 24 hours. The fact that it used to fill when it was farmed demonstrated that runoff had been greater. With the weeds and today's conditions, run off was even less. A member asked if Mr. Sawyer would comply with item #8. Mr. Sawyer said a construction section would be provided to show compliance.

Chairman Bowie said Deputy Chief Bradbury was comfortable as long as hydrant spacing was no more than 250 feet and the roadway was 20 feet. Mr. Sawyer said it was 20 feet but went down to 16 feet. Chairman Bowie asked if there would be a waiver request for the 16 feet portion? Attorney Jeffrey Roelofs, 30 Green Street, Newburyport, said yes. A member said some abutters made comments on the screening, were there specifications? Mr. Sawyer said a 6-foot minimum height with a minimum of 10 trees planted, 10 feet apart included white pine, Canadian hemlock, and Blue Spruce.

Public comment opened.

Tom Smith, 36 Toppans Lane, displayed a photographic map showing Toppans Lane on July 1, 2013 with water in the road. A day later, a hole about 1-2 feet deep appeared in his yard. It was filled with water 4 weeks later that indicated insufficient drainage occurred in the flats. It was solid clay. The big flow was through the farm access at 30 Toppans Lane and there was another river between 40 and 36R during heavy rains. The source was at the top. There was a steep drop off at 34, 36R and 40. He was concerned with anything that might increase run off, saying most everyone on Toppans Lane had water and he wanted to understand how it would be reduced from current conditions. Chairman Bowie said Massachusetts's law required developers not to exacerbate a preexisting drainage issue, but they didn't have to improve it. Mr. Smith's concern was no mitigation in the area where a proposed house was dropping off on two sides. Mr. Sawyer said with three points of flow on site he would not increase flow to any of those sites. His channeling would lessen the flow by directing it away from that point. Calculations were peer reviewed. Reductions were 11% for peak flow and 30% for volume at design point 3. Design point 2 was a 12% reduction in rate and a 13% reduction in volume. Design point 1 had a 24% reduction in rate and a 34% reduction in volume. He could develop a subtle swale to slow water that ended up in the street and then the closed drainage system. In an intense rain, the water charged over the catch basin. There was no capacity problem. By connecting to the pipe, he was lessening sheet flow.

Sarah Holden, 34 Toppans Lane, asked if the buffer zone belonged to the new owners and the common land belonged to the Trust? Mr. Sawyer said the common land was a road, not a lot. Chairman Bowie said the common facilities to be maintained, replaced and repaired by the trustees shall include the roadway, all drainage, structures, equipment, and all areas shown as buffer zones on the plan. Ms. Holden was confused over who owned what. Attorney Roelofs'

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interpretation was that the lots themselves did not extend into the road and the road area was conveyed to and owned by the Trust. The buffer zoned areas would be owned by the lot owner but maintained by the Trust. A member said the Trust document should include four lots, not three. Attorney Roelofs agreed. The Trust document reflected the four lots plus the road area when it referenced the buffer zone on page 11.

Marybeth Shay, 20 Toppans Lane, asked if the drainage easement was part of the common area but not the detention basin? Attorney Roelofs said it was the burden of the Trust. Ms. Holden asked if that was defined? Chairman Bowie said it was on page b2 of latest document and it was inclusive. A member asked if a violation occurred, were assets of the Trust attached or could a lien be placed on individual properties? Attorney Roelofs said a lien could be placed on individual properties if that property was causing the problem. If Mr. Smith saw someone clear cutting the buffer zone, he could come to the Planning Department and the board would have enforcement authority. If the board approved the subdivision plan, it would be incorporated and reviewed. Nothing would be recorded at the registry until it was endorsed by the Planning Board along with the narrative approval that reflected the obligations and restrictions. Chairman Bowie said the intention at the outset was to have a document that reflected what the board wanted to send Kopelman and Paige.

John Neill, 39 Toppans Lane, distributed a cost benefit analysis for the city. The table characterized a cost benefit deficit for the city of an individual house and followed up on a comment at the last meeting.

Public comment closed

Chairman Bowie asked the board what they thought about the whole redirection of the drainage because it changed everything that had been reviewed. Christiansen and Sergi were satisfied with the stormwater report and provided a level of confidence but what did the board think about how water was diverted? A member addressed Mr. Sawyer, asking if he was confident about the increase in flow? Mr. Sawyer said he was not increasing it off the property. Chairman Bowie said changing the design created a necessity for further review because of increased flow at design point 3. Mr. Sawyer said he was maintaining or reducing flow at each design point without the swale. A member said the board was asking about flow with the swale. There was a need to go back and look at the section of that pipe since the flow was increased. Chairman Bowie did not detect a strong interest in the swale option. Flattening the lot would not increase the flow. A member said the swale would be good for Mr. Smith. If two engineers said that flow was going to be reduced, that was good enough. Chairman Bowie asked if there was draft language for the decisions, the subdivision application and the special permit?

Don Walters made a motion to approve the first waiver. Henry Coe seconded and all members voted in favor.

Henry Coe made a motion to approve the second waiver. Cindy Zabriskie seconded and all members voted in favor.



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Don Walters made a motion to approve the third waiver. Henry Coe seconded and all members voted in favor.

Henry Coe made a motion to approve the fourth waiver, 11.1 sidewalks, proposing no sidewalk. Paul Dahn seconded and all members voted in favor.

Henry Coe made a motion to approve the reduction in the area of the hammerhead from 20 feet to 16 feet. Cindy Zabriskie seconded and all members voted in favor.

Paul Dahn made a motion to approve the last waiver. Cindy Zabriskie seconded and all members voted in favor.

Chairman Bowie said all waivers requested were approved. There was draft language for the rest of the decision. Number 10 was struck from the special conditions. The review fee of \$3,000 was the same as for the High Street subdivision. The board would reference having the Trust document reviewed by City Counsel. Mr. Sawyer said the homeowner here requested arborvitae. Chairman Bowie requested a modification of language in the first paragraph to be made clearer, including the reference to maintaining the buffer. He wanted to track the language on that issue just as it was represented here. What was approved would be part of the decision.

Henry Coe made a motion to approve the subdivision. Don Walters seconded and all members voted in favor.

A member pointed out an inconsistency in the special permit. Normally there was more time for drafting decisions. Attorney Roelofs asked if there were any concerns with the content of the decisions? Chairman Bowie thought they were comprehensive.

Paul Dahn made a motion to approve the Northbridge Communities, LLC, 30 Toppans Lane Definitive Subdivision Section XXIII Special Permit – Courts and Lanes. Henry Coe seconded and all members voted in favor.

Ray Matrano, representative, Northbridge Development, LLC, would email the modified language to Chairman Bowie.

**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.**

**5. Adjournment**

Don Walters made a motion to adjourn. Henry Coe seconded and all members voted in favor. The meeting adjourned at 10:12 PM. The next meeting will be September 4<sup>th</sup>.

Respectfully submitted -- Linda Guthrie, Note Taker