

**City of Newburyport
Planning Board
September 21, 2016
Minutes**

The meeting was called to order at 7:01 PM.

1. Roll Call

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

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

2. Old Business

- a) *Ted Nelson
190 High Street
VI.C Special Permit (2016-SP-05)
Continued from 9/7/16*

Don Walters made a motion to continue the Special Permit hearing to October 19th at the applicant's request. Joe Lamb 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.

- b) *Evergreen Commons LLC c/o Lisa Mead, Esq.
18 Boyd Drive and 15 Laurel Road
OSRD Permit (2016-SP-03)
Continued from 8/17/16*

Director Port discussed the OSRD application timeline and process, noting that the applicant had requested approval of the OSRD special permit rather than the yield plan. Chairman McCarthy said the OSRD was 38 lots compared to 44 lots that could be developed through the traditional subdivision process.

Lisa Mead, attorney, BBMT, 30 Green Street, said she was reviewing public comment letters and the opinion of the City solicitor. A Water Resources Impact Evaluation report had been done. Covenants were released in 1988 when lots were released and Boyd Drive became a public way. A report from Hughes Environmental Consulting, 44 Merrimac Street, indicated no proximate habitat for endangered species. The Board of Health had not voted against the proposal as was suggested in a resident's letter.

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David Giangrande, president, DCI, 120 Middlesex Avenue, Somerville, said MA DOT and the Institute of Traffic Engineers (ITE) published specific steps for conducting traffic studies. The study examined four intersections, advantages of a second egress at Laurel Road, and the habits of drivers, pedestrians, and cyclists. Turning movement counts were taken at peak hours. A four-year period of accident data included a time when bridges were closed, but few accidents were recorded. A third party compiled data. Strong trip generation data showed 36 AM trips and 44 PM trips at peak hours for a 38-lot project compared to 44 AM trips and 51 PM trips at peak hours for 44 lots. Census data was examined for modal split. Trip distribution for a 44-unit development showed more drivers exiting via Boyd Drive. The safety analysis showed only one accident in four years at Spofford and Ferry Roads. There was adequate site distance at Ferry Road and Boyd Drive and another location. The capacity analysis, graded 'A' through 'F', examined three existing conditions that had grades of mostly 'As' and 'Bs'. At seven years out, if nothing was built, the grade was 'B'. Data showed good levels of service in both the 38 and 44-lot scenarios. The entire analysis was conservative and considered worst case scenarios. Laurel Road would not receive any trips, but provided a second means on egress helpful in emergencies. Most trips exiting Boyd Drive turn right. New trips to and from Laurel Road in the 44-lot scenario would be one in the AM and one in the PM. The 38-unit scenario showed no direct trips to Laurel Road because there was no access except in case of emergency.

Member comments: When was the last revision of MA DOT and ITE standards? Was there additional accidents data? Mr. Giangrande said the last updates were in 2012 and 2014. Only one accident occurred in four years across four locations. Were speed bumps needed for the project? Mr. Giangrande said traffic-calming measures could be helpful but should not be done on arterial or collector roadways. How was density and traffic flow accounted for? Mr. Giangrande said the data responded to the number of units proposed. How did existing traffic compare with future traffic? Mr. Giangrande said levels of service were expanded on existing conditions on a build versus no-build basis. There was one more vehicle every minute and a half during the AM peak.

Jay Billings, owner, Principal Hydrogeologist, Northeast Geoscience, 97 Walnut Street, Clinton, MA, examined the development's impact on Well #2. He first met with City staff and consultants to discuss how the well was operated and to review past studies. A field investigation was conducted using eight field borings to collect samples. Six monitoring wells were identified. City water and sewer would service the project, in the Zone II recharge area for Well #2. No volatile or synthetic organic compounds had been detected except one small sample in 1999. Well #2's yield was 408 gallons per minute (gpm) but operated at 225 gpm. The site's geology was sand and gravel with high permeability. No loam or clay was detected, contrary to some resident's suggestions. The average depth of water on site was less than 12 feet. Zone II was bisected by I95. The groundwater floor went in the direction of Well #2, as noted on the groundwater contour map. High bedrock provided a barrier to the well from part of the site. It was possible that some flow lines went around the bedrock. The nitrates concentration peaked in 2004. Since that time, less than two milligrams of nitrates per liter of water had been detected. The standard for drinking water was less than 10. The sodium level had been decreasing and was well below drinking water standards. Zone II was protected by the Wellhead Protection Zone ordinance adopted in 1998. The residential project is allowed in the Wellhead Protection District subject to a determination that the development will not be a threat to the public water supply. Offsets from the well and various points were covered. The site did not completely comply with

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DEP standard offsets in all cases. The golf course turf management was a threat. The subdivision added back 9.1 acres of lawn, a 62% reduction in managed turf. Also added was 1.4 acres of roadway, an 8% increase. He projected an 8% increase in sodium in Well #2, still well below drinking water standards.

Member comments: Would site disturbance during construction cause wellhead disturbance? Mr. Billings said the contractor would need to manage stormwater runoff. Did current drought conditions affect the analysis? Mr. Billings said the cave of depression around Well #2 was probably steeper normal. The rate of water travel was higher. Did the 1995 Talkington Edson Environmental Management (TEEM) Zone II Recharge Area Study include a 3D analysis? Mr. Billings said no. Could he examine existing versus future loads of fertilizer? Mr. Billings said yes, through a Mass Balance Calculation. One acre zoning applied if there were septic systems in Zone II. Chairman McCarthy asked if nitrates were projected based on how lawns were fertilized? Mr. Giangrande said he had no specific MA license for that projection as he did in other states. Could grading change the flow? Mr. Giangrande said flow was primarily driven by what went on underground. The hydraulic gradient represented the slope of the water table which could be changed by surface ground changes. Pumps and water could change ground flow. Could the development change gradient lines? Mr. Giangrande said no, the basic pattern of flow should not change. Chairman McCarthy wanted to know the water quality at far away sites and how long would it take any contamination to affect water quality? Mr. Giangrande had not collected water quality data for such an analysis, but could. Members asked if there was water quality data prior to the development of other subdivisions around the site to show how those developments affected water quality? Mr. Giangrande had seen no data on water quality prior to other subdivision development, however there was no history of water quality problems at Well #1 or #2. Well #1 had a slightly lower yield than #2; otherwise they were similar. Was residential development this close to a well in Zone II standard? Mr. Giangrande said yes, which explained the need for Title V septic system requirements.

Steve Sawyer, DCI, 120 Middlesex Avenue, Somerville, reviewed major changes. Mr. Sawyer indicated that Deputy Chief Bradbury accepted the design as long as 24-foot roadways were maintained and the 20-foot wide emergency egress kept cleared of snow. The vegetative shield along I95 would be maintained. Careful placement of evergreens along site lines would shield headlights from homes across the street from intersections. Paved and stone dust walking paths were adequate for bikes or walking. The emergency egress also provided access to paths. The landscaped island was traffic calming. Planting trees with an initial height of 15-16 feet across the street would cast a shadow on the first two floors of homes. The emergency access crossed the berm from Laurel Road with a 30 foot cut to minimize impact. Evergreens planted on either side of the cut were about 15 feet high. Stormwater detail was compliant and would exceed DEP standards with enhancements to Boyd Drive water treatment, all roof runoff directed to infiltration chambers, and rain gardens. The location to connect the project's trail network to the other trails changed to avoid disturbing vegetation. Adding to open space reduced 12 lots by 150-200 square feet.

Member comments: Would the current Boyd Drive runoff be treated through the project's stormwater management? Mr. Sawyer said yes, with the benefit of making Boyd Drive DEP

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compliant. Was emergency access runoff included in the study? Mr. Sawyer said not at this stage. Permeable bituminous pavement was considered for the access.

Director Port said roadway length as a dead-end was not in compliance with subdivision regulations in the opinion of the City's legal counsel and that while the residential use is allowed within the Zone II that allowance is subject to a determination that the development would not be likely to contribute to the contamination of the public water supply. The applicant would need a waiver for the road length if the integrity of the neighborhood were not affected. Water supply protection must comply with Water Resource Protection regulations. If contamination looked likely, the board should deny the project as proposed. Chairman McCarthy said input so far included City counsel, the applicant's experts, emails, and letters from residents, the City Council resolution, and Health Director's letter. A peer review of all information by the board's experts would occur before the board made a decision.

Public comment open.

Peter Durning, Mackie Shea, PC, 20 Park Plaza, Boston, and resident, 12 Arthur Welch Drive, asked if CSI would perform the traffic study peer review? Director Port said Vanesse & Associates, Inc. would do the review. Why was Sections 5 eliminated when the developer stated they would perform the entire scope of the hydrogeological study? Director Port said the complete scope of work would be done. Section 5 referenced a future new well and was removed because the applicant should not pay for analysis of a future condition. Mr. Durning challenged traffic assumptions and projections, as well as the traffic calming measure. A landscaped island effectively became a traffic circle, impacting the integrity and character of the neighborhood. The emergency egress was too short, not a good precedent or a solution. No other location in the City had this type of access to a cul de sac. The yield plan had a more robust roadway and better emergency egress. The five waiver requests should be revisited, including the length of the cul de sac. Reality on the ground agreed with Kopelman & Paige. A comment not honored was the need for public parking to access trails. Road width and density did not provide for reasonable public parking for access to open space. He requested the right to comment in the future on the hydrogeological report posted on the website today. Residents did not want to squander or degrade the drinking water resources. He asked the board to review any findings from the Board of Health meeting later this week. Development was previously denied in this location.

Donna Holaday, Mayor, received numerous emails and letters describing the development's impact on the quality of life for neighbors. She requested a broader forum for residents to present their concerns that included City boards for water, health, and others. A proper review of the complexities of the development required a joint effort across City boards and commissions.

Barry Connell, Councilor-at-Large, 36 Woodland Street, said the body of testimony suggested the need for a joint public hearing. The development was not a done deal. The alternative was not 38 or 44 homes, but 0 homes. The project impacted the entire community in which demand for water was growing. Recent efforts to site an additional well for the City failed. The clay barrier, an additional protection for the well field that was required by the board, did not exist because it was never installed.

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Peter Hatcher, 15 Boyd Drive, said the board should not approve 2,400 feet of roadway that was seven times longer than allowed. Why not use a 24-foot wide road for emergency access? Who validated the 44-lot yield plan that had a road less than 100 feet from wetlands? Director Port said peer reviewer CSI did not find any significant deviation from regulations, but commented on the building viability of several lots. Director Port would post the CSI analysis on the website.

Ann Marie Vega, 21 Boyd Drive, said research from the 1980s had the same findings as today's research, but there was enough concern about what could redirect flow to say 'no' to the development. The water source must be protected. Fertilizers would put nitrates into wells. Glyphosate herbicides in groundwater were toxic, cumulative, and could not be removed. The elevation of homes closer to wellhead was higher and much further away, with 5.5-7.5 feet seasonal groundwater. Mr. Billings said the vertical set back of the water table provided some treatment; the time travel was rapid. Lateral set backs provided important unsaturated zones (ground surface to the water table). What Ms. Vega referenced was historic and happened only once. Ms. Vega said it was the historic high water. Today's readings were 12-14 feet in extreme drought. Could water leach over bedrock in a high water condition? Mr. Billings said yes. Ms. Vega wanted to know if the golf course, that used a lot of fertilizers, knew of conditions limiting fertilizer use? Mr. Billings said it was not mentioned, but golf courses in well protection areas were controversial. Ms. Vega was concerned about headlights and the number of cars passing through a permanent cul de sac. Small strips of designated open space served no useful purpose.

Dan McCarthy, 13 Laurel Road, said the real situation contradicted what had been presented. A current stormwater runoff problem that DPS had yet to solve was located where the road was planned. Clearing vegetation would exacerbate the problem. The road was right on his property line. Was a 25-foot setback required? Director Port said the road could go right to his property line for the emergency access, but no determination had been made as to whether that was the appropriate way to address emergency access. Mr. McCarthy said a dirt road 75 yards from the golf course that belonged to the City should be used for the emergency access.

Michelle Roberts, 11 Boyd Drive, said houses around Well #2 existed before the well was built. There were no houses around Well #1. Zone II, 35% residential today, increased to 60% if developed. Water from Laurel Road could flow over the bedrock. Mr. Billings did not agree. Ms. Roberts questioned traffic study numbers. Mr. Giangrande explained the table of trips and how trips were calculated. Ms. Roberts said wait times did not address the volume of traffic that threatened children's safety. Could the City handle high maintenance permeable surfaces? Mr. Sawyer said the homeowner's association would maintain the road and all open space.

John Rogers, Boyd Drive, asked what assurance existed that the homeowner's association would perform as required? Attorney Mead said homeowner's association documents were bonded, filed, and given to the board. This was not an unusual situation. Mr. Rogers asked who monitored performance? Attorney Mead said the City would pick someone through the DPS.

Karen Geary, 9 Boyd Drive, asked what kind of enforceability was realistic? Were there consequences if nothing was enforced?

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Stephanie Strout, 17 Boyd Drive, suggested it was impossible to manage whether 38 homes adhered to fertilizer and pesticide use rules when the bond for the Boyd Drive development was erroneously released leaving things unfinished. The traffic study did not include flow from public use traffic during the after school hours. Mr. Giangrande said no public parking or specific use was designated for the open space to be measured. Ms. Strauss said the study assumed no traffic would be associated with public use of the open space, which in turn affected the safety of children and pets. A mid 1980s report considered a potential shift in the bedrock. Was that possible? Mr. Billings said the bedrock was solid.

Buck Woo, 14 Boyd Drive, was concerned for the water supply quality and the inherent danger of increased traffic. The benefits were not worth risking today's level of safety and water quality.

Michael Lee, 1 Boyd Drive, said the City's master plan set goals for new residential development to include appropriate size, scale, and massing; complimentary to existing neighborhoods; protection of natural and cultural resources; safe movement of pedestrians around neighborhoods; promoting environmentally friendly design; preserving home values and historic character; limiting developmental impact; and reducing impervious areas, vegetation loss, and open space. None of the goals were met and long-term consequences were guaranteed for the water supply. The traffic study did not address total trips with 38 and 44 houses.

Steven Lynch, 23 Boyd Drive, said the initial presentation emphasized a desire to create community, yet the project pitted everyone in the neighborhood against each other. Without public parking, daily public use of open space would create conditions similar to Cherry Hill during soccer games. The dead end street was already too long.

Jeannette Isabella, 1 Lime Street, said it was unfair to impose the risk on the entire community without giving all residents an understanding of how the development affected them.

Dan Koen, 16 Boyd Drive, was opposed in support of the project.

Peter Chu, 17 Boyd Drive, was concerned about water quality.

Sharon Thibault, 3 Boyd Drive, asked if a final decision would be made by October 3rd? Director Port said the time frame, driven by the ordinance, gave the board until the October 21st. A continuance could be requested at the applicant's discretion. Ms. Thibeau asked if the public could request a continuance? Director Port said no.

A member asked if lot use was still governed by City ordinances if the OSRD were approved? Would questions surfacing tonight be discussed again? Director Port said yes.

Ms. Rogers asked whether the yield plan was allowed by right? Was the applicant required to propose the OSRD? Director Port said the yield plan was not by right and required board approval. The more straightforward OSRD process allowed the board to influence housing design, such as in Oleo Woods. There was no requirement for the OSRD, but it was encouraged by the way criteria was written. Director Port indicated that the Planning Board must render a decision on the OSRD application by October 21st, 2016 (i.e. at the Planning Board's October

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19th regular meeting), unless the applicant asks for a continuance. Director Port said yes, it would be approved as it stood now, unless the applicant asked for a continuance. Attorney Mead said the OSRD process had two steps. The special permit made sure the concept was acceptable. A subdivision plan within that concept was submitted. The yield plan filed today was traditional with no waivers, approved by CSI. By necessity, the OSRD was not traditional and required waivers that must be granted. Was there a process for approving the yield plan? Director Port said CSI affirmed the yield plan met all criteria.

Alison McDougall, 19 Boyd Drive, asked why the yield plan met all criteria? What about the permanent cul de sac? Director Port said the yield plan had a secondary outlet, not a one-way dead end. A permanent cul de sac did not mean there could be no other connection from it, but that there needed to be a secondary outlet to meet the criteria.

Colleen Yavarow, 13 Boyd Drive, was concerned about 44 new lawns using Roundup when pesticides could not be used in a Zone II Water Resource Protection area. Today, there was no impact to the well. Why put everyone at risk to a future impact?

Public comment closed.

Chairman McCarthy said there would be no decision tonight. He asked members to think about the road configuration, traffic, and water quality issues. An 8 AM September 28th site walk would examine other egress connections, Laurel Road, Briggs Avenue, Clipper Way, and the wellhead. He would not commit to a joint meeting at this point. The regulation did not require the applicant to build the OSRD instead of the yield plan. The board should consider which plan they preferred. Director Port would coordinate with Water Department. Director Port said two council subcommittee meetings were scheduled to discuss the development on September 27th.

Pam Lee, 1 Boyd Drive, asked the board to consider opposing the development.

Don Walters made a motion to continue the OSRD Special Permit to October 5th. James Brugger 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.

3. General Business

- a) The minutes of 9/7/16 were approved. Sue Grolnic made a motion to approve the minutes. Andrew Shapiro seconded the motion and seven members voted in favor. Joe Lamb and James Brugger abstained.

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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.

6. Adjournment

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

The meeting adjourned at 10:35 PM.

Respectfully submitted -- Linda Guthrie