

**Planning Board**  
**August 3, 2010**  
Approved September 7, 2010

**Members Present:** Tom Vannatta, Chair; Bill Weiler, Travis Dezotell, Elizabeth Ashworth, Members; Alison Kinsman, Russell Smith, Alternates; Jim Powell, ex-officio member; Ken McWilliams, Advisor.

Mr. Vannatta called the meeting to order at 7:03 p.m.

Mr. Vannatta appointed Ms. Kinsman and Mr. Smith as voting members for this meeting.

Mr. Vannatta called for a motion to go into Executive Session for the purpose of hearing the advice of Town Counsel concerning a question raised by the Board.

Ms. Kinsman made a motion to go into Executive Session. Ms. Ashworth seconded the motion. All in favor.

The Board went into Executive Session at 7:07 p.m.

The Board moved out of Executive Session at 7:20 p.m. and resumed the meeting. No action was taken in Executive Session.

Mr. Vannatta asked the Board to address the Administrative Business portion of the agenda later in the meeting. The Board agreed.

**CASE: Case 2010-003: Conceptual- Ken Nielsen** (attorney for Newbury Elderly Housing Project) 591-0740. Newbury Heights Road. Map/Lot 020-072-043.

Mr. Vannatta reviewed the conceptual to date, noting that at the Board's meeting on July 20, 2010, the project was presented as a single building which was a change from the original proposal of multiple separate buildings. Mr. Vannatta said the Board expressed concern at the July 20, 2010 meeting over the length of the access road to the revised project. The revised project, as a single building, was now governed by site plan review regulations. The board questioned whether the 1500 foot maximum single access road regulation applied to the project under site plan review regulations. The Board decided to consult with Town Counsel regarding same. Mr. Vannatta reported that Town Counsel advised that the 1500 foot maximum single access road regulation that applies to subdivisions does not apply to a site plan review.

Mr. Vannatta advised the applicant to proceed with an application for a preliminary site plan review, reminding the applicant of the required fees, abutter notices, and application deadlines and hearing dates.

Mr. Vannatta informed the applicant to expect to set up an escrow account to absorb the expense of a third party engineering firm, chosen by the Board, to provide oversight and

monitoring of the project.

## **ADMINISTRATIVE BUSINESS**

### **Minutes**

The Board reviewed the minutes of July 6, 2010 and made corrections. Mr. Weiler made a motion to approve the minutes as corrected. Ms. Ashworth seconded the motion. All in favor.

## **COMMITTEE REPORTS**

### **Sign Ordinance**

Mr. Powell reported that the committee has not met since February 2010 but plans to meet soon.

### **Workforce Housing**

Mr. Dezotell reported that there was nothing new to report from his committee but stated that there should be a checkmark box on the application designated for Workforce Housing. Mr. Weiler asked Mr. Dezotell for an email requesting same. Mr. Dezotell agreed.

### **Subdivision Regulations**

Mr. Weiler reported that his committee continues to work on the regulations but has nothing to report at this time.

## **ADDITIONAL BUSINESS**

### **Zoning Ordinance Proposed Amendments**

Mr. Vannatta said the Planning Board and the Zoning Board of Adjustment (ZBA) will hold a joint work session on September 7, 2010 to review and discuss ordinance language that may need modification.

Additionally, Mr. McWilliams said amendments to the sign ordinance may need attention.

### **Proposed Amendments to Planning Board Rules of Procedure**

Mr. Vannatta presented to the Board a proposed modification (underlined below) to the Planning Board Rules of Procedure, Article IX Meetings, Section 9.3 Quorum and voting, paragraph three, which reads as follows:

*“Proposed decisions by the Board shall be put forth in the form of a motion. A motion, duly seconded shall be carried by a majority roll call vote of the members qualified to vote and voting in the affirmative. Only members who are present are qualified to vote. ‘Member’ includes the Chair and any other alternatives sitting in place of members.”*

There was general discussion about the proposed modification.

Mr. McWilliams said that defining the reasons for a vote becomes important when the Board, as a whole, denies an applicant. In such cases, there must be a basis in the Board's Rules of Procedures for the denial. He said that when the Board denies, it must cite the reasons why and refer to specific articles, sections, and paragraphs to support the denial. He said the Board should then make a motion to pass the denial and have a roll call vote. He added that if the Board decides to deny, there should be a record of the reasons for doing so, and a record of same must be provided to the applicant in writing afterwards. He said in a court review attention will be paid to procedures, due process, and whether the Board has a rational basis in its regulations upon which to base a denial.

There was further discussion about the process of deliberation and roll call vote.

Mr. Weiler presented a modification to the proposed modified amendment which reads as follows:

*“Actions of the Board shall be affirmed by a majority vote in favor of the motion. For example, failure of a motion to approve an application does not deny the application. A new motion to deny has to be made and voted.”*

There was further discussion concerning Mr. Vannatta's and Mr. Weiler's proposed amendments.

Ms. Kinsman asked Mr. McWilliams how other Planning Boards handle the voting process – through a roll call or through a show of hands. Mr. McWilliams says there is no standard approach to the voting procedure.

The Board decided to table the discussion for now and to revisit the topic at another meeting.

### **Rheta/Diane Heller Letter Followup**

Mr. Vannatta shared with the Board a letter received from Diane Heller regarding the dates of the last two subdivisions on her property. He said the Town Land Use Secretary researched the property and the first subdivision occurred in 1994. The second subdivision occurred in 1999 and the third subdivision occurred in 2007. Another subdivision occurred in November 2009. Mr. Vannatta said over the past three years, the one parcel of property has been subdivided into three parcels, which constitutes a minor subdivision.

Ms. Heller's letter requested that the Board consider several options and Mr. Vannatta suggested that the Board invite Ms. Heller to return with a conceptual to discuss the possibilities. He suggested that Ms. Heller meet with the Board at the meeting on August 17, 2010. The Board agreed.

### **IN-HOUSE SEMINAR**

Mr. McWilliams presented to the Board a review of the Newbury Land Subdivision Control Regulations for the benefit of new members and alternates.

Mr. Vannatta requested that Mr. McWilliams continue his presentation covering Section XIV Construction of Street or Road and Section XV Enforcement at the August 17, 2010 meeting. The Board agreed.

Mr. Dezotell made a motion to adjourn. Mr. Vannatta seconded the motion. All in favor.  
Meeting adjourned at 8:45 p.m.

Respectfully submitted,

Meg Whittemore  
Recording Secretary