

WALPOLE PLANNING BOARD MINUTES OF SEPTEMBER 24, 2009

A regular meeting of the Town of Walpole Planning Board was held on Thursday, September 24, 2009. The following members were present: John Conroy, Chairman; Edward Forsberg, Vice Chairman (7:12 P.M.); John Murtagh, Clerk (8:00 P.M.); Richard Mazzocca, Don Johnson, Town Planner; Margaret Walker, Town Engineer.

Minutes: Mr. Conroy moved to accept the minutes of September 3, 2009 with clerical corrections. Motion seconded by Mr. Forsberg and voted 3-0-0.

Time Cards: Mr. Conroy moved to approve the secretary's time cards as submitted. Motion seconded by Mr. Forsberg and voted 3-0-0. Mr. Conroy moved to approve the planner's time cards as submitted. Motion seconded by Mr. Forsberg and voted 3-0-0.

Eric Goodman, 536 High Plain Street, Case No. 00-09 Modification: Mr. Goodman stated he is requesting a determination regarding the placement of on-site lighting and is asking that the board vote it to be a minor modification. Mr. Conroy stated that the board cannot do anything as the site plan, No. 00-09, has been completed. Also, lighting issues are not under the Planning Board's purview. Mr. Goodman might need a permit from the electrical inspection or the building inspector. Mr. Goodman agreed. Mr. Conroy returned Mr. Goodman's filing fee of \$200 to him.

Hale Trailer, Case No. 05-2 Extension of Time: Mr. Conroy read a letter dated September 14, 2009 from Atty. Philip Macchi, 1256 Washington Street, Norwood, MA requesting an extension of time for Hale Trailer. Mr. Macchi stated they were approved by the Conservation Commission on September 9, 2009 and as of today they can finally actually progress on this project. Three bids have been put out. Full build-out on this project will be about 2.5 million dollars. The applicant bought this property for \$750k and, to date, have expended approximately \$250k. The Zoning Board gave them a 2-year extension last night on their own motion. He would like at least a one-year extension or possibly two from the Planning Board.

Mr. Conroy moved to grant an extension of time up to and including January 12, 2012 as per request of the applicant's attorney. Motion seconded by Mr. Forsberg and voted 3-0-0. This time frame will allow the extension of the Planning Board and the Zoning Board to expire around the same time.

FEMA: The board is in receipt of a copy of a letter dated September 14, 2009 addressed to Chris Timson, Chairman of the Board of Selectmen. Mr. Johnson stated that we will probably have to adopt a new flood plain overlay map at the Spring 2010 town meeting.

Finance Committee: Mr. Johnson submitted a copy of a memo dated September 21, 2009 that he had written to the Finance Committee.

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Panera Bread: Mr. Johnson stated that Don Myers from Norwood Engineering will be coming before the board to request a minor modification to the Walpole Mall plans. He gave Mr. Conroy a copy of the work plan. Mr. Conroy asked if the letter that was discussed in August is related to this and Mr. Johnson stated yes. Mr. Conroy asked how it was rolled into this and Mr. Johnson stated that the final product is what is in front of the chairman. Mr. Conroy stated they have a restaurant that is open and was opened without this change. Mr. Johnson stated they may have a partial occupancy permit. He will check with Jack Mee. Mr. Conroy asked when Mr. Myers is coming in with new plans and Mr. Johnson stated he will be on our October 15th agenda and will be discussing the fifth revision. Mr. Conroy asked if they will meet the 14 days and Mr. Johnson stated yes. Mr. Conroy asked if we will be determining whether the change is minor or major and Mr. Johnson stated yes.

Westwood Planning Board: Mr. Conroy read a letter dated September 14, 2009 addressed to “Neighboring Towns” from the Westwood Planning Board asking our board to write a letter to the MPO.

Grandview III Subdivision: Mr. Conroy read a letter dated September 24, 2009 from John Glossa, 46 East Street, East Walpole, MA on behalf of the applicant asking that this petition be withdrawn without prejudice. Mr. Conroy moved to allow the applicant to withdraw without prejudice. Motion seconded by Mr. Mazzocca and voted 3-0-0.

Ms. Walker left at 7:30 P.M. to attend a Finance Committee meeting.

7:40 P.M. Appointment – Public Hearing for eight (8) Zoning Articles: Mr. Conroy opened the public hearing. He moved to waive the reading of each article. Motion seconded by Mr. Forsberg and voted 3-0-0 (Conroy, Forsberg, Mazzocca).

Article 13 – correction typographical/clerical or housekeeping errors in various sections of the bylaw: There were no board or public comments. Mr. Conroy moved to recommend favorable action on Article 13. Motion seconded by Mr. Mazzocca and voted 3-0-0.

Article 14 – amend Section 5 Use Regulations and Section 5-G Buffer Zones in the bylaw: Mr. Mazzocca asked if this will create a significant impact on any single family homes. Mr. Johnson stated no. There were no public or further board comments. Mr. Conroy moved to recommend favorable action on Article 14. Motion seconded by Mr. Forsberg and voted 2-0-1 (Mr. Mazzocca abstained).

Ms. Walker returned at 7:50 p.m.

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Article 15 – amend and clarify Section 6, 6-B and 6-C in the zoning bylaw: Mr. Johnson stated this is a clarification article. There were no board or public comments. Mr. Conroy moved to recommend favorable action on Article 15. Motion seconded by Mr. Forsberg and voted 3-0-0.

Article 16 – amend and clarify the Table of Contents, Section 8, Section 13 and Section 14: Mr. Johnson stated that this article was recommended by Town Counsel. There were no board or public comments. Mr. Conroy moved to recommend favorable action on Article 16. Motion seconded by Mr. Forsberg and voted 3-0-0.

Article 17 – amend Section 9 of the zoning bylaw: Mr. Forsberg stated he would have liked more explanation. Mr. Johnson stated that town counsel noticed there was some inconsistent wording in these sections. There were no further board comments or public comments. Mr. Conroy moved favorable action on Article 17. Motion seconded by Mr. Mazzocca and voted 3-0-0.

Article 18 – amend Section 12 by adding wording for clarification: Mr. Johnson stated this was brought forward by a local attorney. Further, one family, two family and three family homes are exempt from site plan review. There were no board or public comments. Mr. Conroy moved to recommend favorable action on Article 18. Motion seconded by Mr. Forsberg and voted 3-0-0.

Article 19 – amend and clarify Section 13, Section 13.3: Mr. Conroy stated this puts special permits back with the Zoning Board where it is suppose to be. There were no board or public comments. Mr. Conroy moved to recommend favorable action on Article 19. Motion seconded by Mr. Mazzocca and voted 3-0-0.

Mr. Murtagh arrived at 8:00 P.M.

Article 20 – Amend and clarify Section 13, Section 13.5 and 13.15: Mr. Merrikin asked if the new wording makes a meeting optional or required. Mr. Johnson stated it is optional per town counsel. Mr. Merrikin stated it could be a waste of time if you know you need site plan approval. There were no board or further public comments. Mr. Conroy moved to recommend favorable action on Article 20. Motion seconded by Mr. Murtagh and voted 4-0-0.

Mr. Johnson asked if the board wants to revisit Article 14 because Mr. Murtagh arrived. Mr. Conroy stated we would have to do all of them again. Also, we are only recommending. It was agreed by the board not to go back to Article 14. Mr. Conroy read the setbacks as per the zoning bylaw. Mr. Johnson stated this refers to a new use not an existing use.

8:15 P.M. Appointment – Public Hearing for (1) Private Petition (Article 21): Mr. Conroy read the public hearing notice as advertised. The applicant was represented by Dan Merrikin, Merrikin Engineering, Millis, MA. He introduced Ray Johnson, a Hydrogeologist with Tetra Tech Rizzo. Mr. Merrikin stated this is a petition of Walpole Park South VIII and several other people and involves the last vacant piece of land at Walpole Park South. The area is presently an Area 2 and they are asking it be reclassified properly to an Area 3. Mr. Merrikin stated that Area 1 is the best area for a well; Area 2 is when someone could possibly put a town well in there some day; Area 3 are similar to both Areas 1 and 2, but the soil is not thick enough to support a town well; and Area 4 contributes to surface runoff toward the aquifer. He stated that the main issue is does this meet an Area 2 definition. If you don't have that, you are not in Area 2. Back in 1983-1985, it was determined that this was an area where the town could put a well. About ten years ago, Iorio submitted a petition to town meeting which studied the Iorio property and concluded that there was not 40' of sand and gravel. Town meeting rezoned it from Area 2 to Area 3. Now, one of the properties is Area 3 and one is Area 2. The land in this petition is directly across the street from Iorio. It was concluded that this property doesn't have 40' or sand and gravel either. Mr. Merrikin referenced and submitted a map drawn by Talkington Edson Environmental Management, LLC dated November 1997 and titled "Figure 5, Iorio Ice Arena, Walpole, MA". Mr. Merrikin stated he could not find this change voted by town meeting on any maps. Mr. Conroy stated it could be a simple map error. Mr. Merrikin stated you can't reasonably put a town well in this area.

Ray Johnson, Tetra Tech Rizzo: stated he is a hydrogeologist with over 30 years of experience in this part of New England. He stated that the map done in 1984 is a good character map, but it is not current. He stated that 1) the installation of four soil borings there shows less than 40' of bedrock and that puts this property from Area 2 to Area 3; 2) the area consists of a very fine sand and silt with some clay; 3) to supplement the boring investigations, they excavated a series of test pits ranging from 15' to 19'. There was very fine sand and silt with some clay. There were also glacial lake deposits. This area would not support a municipal well. They concluded this area should be mapped as Area 3. Based on all the information, this property doesn't meet the Area 2 criteria, but does meet the Area 3 criteria.

Mr. Merrikin stated this piece of land was recently acquired by Walpole Park South VIII. The problem with the Area 2 designation is that it is very restrictive on the use of certain hazardous substances; for example, propane. Those restrictions will affect the viability of some uses in this area. They would need a special permit for impervious cover and also for hazardous material. He knows there will be concerned about the water supply, but Walpole Park South has a protective covenant which restricts certain uses and materials within the Park. Part of Mr. Murphy's plan is to wrap this into the existing covenant which will allow those existing restrictions to be a part of this property. Half the property will be Walpole Park South and half will not be.

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Mr. Conroy asked for board comments.

Mr. Murtagh stated that Area 3 would allow for more hazardous uses. Mr. Merrikin stated you can only have hazardous materials with a hearing with the Zoning Board of Appeal, and a new site would be a Planning Board hearing. He has a packet of information. Mr. Forsberg asked if that goes through the Board of Health and Fire Department. Mr. Merrikin stated yes. They met with both of them to solicit opinions from them. They addressed all their comments. Mr. Murtagh stated that Area 2 wouldn't allow you to bring in the type of industry you are looking for and Mr. Merrikin stated a fork lift with a propane tank the size of a gas grill wouldn't be allowed in Area 2. He feels the town should foster commercial development as much as possible. Mr. Murtagh stated the town is trying to stamp out hazardous uses. Mr. Merrikin asked how a warehouse operates without a fork lift. He stated they would need permits in Area 3 also.

Mr. Mazzocca asked if they have seen the Weston & Sampson report. Mr. Merrikin stated yes. He use to work for them and does respect them. He asked the board to look at Page 2 of the report which states "Weston & Sampson has not reviewed this document but recommends that the Zoning Bylaw be assessed again with respect to the Area delineations". Mr. Merrikin stated they don't have the study that is the base for the entire town's WRPOD. Their conclusion is entirely inconsistent. Weston & Sampson says that every Area 3 should become an Area 1 and 50% of Walpole is Area 3. It is not answering the questions that this article is posing. Mr. Mazzocca stated that the basis of your findings and Weston & Sampson's findings comes down to the report. They are saying one thing and you are saying another. Mr. Merrikin stated there is not 40' of dirt in this area, no matter what kind. The discussion should be what is stratified drift. They are willing to have Weston & Sampson come out and they will dig them some holes. He dug every test hole himself. The area is fine sand and silt. Weston & Sampson doesn't have any site specific knowledge. 40' of saturated stratified drift would mean you can't have a well in there. 40' of saturated sand and gravel is what is needed for a well. Mr. Mazzocca asked what action did Weston & Sampson take in 1998 with regard to Iorio? Mr. Merrikin stated he doesn't know, but it did pass at town meeting. Mr. Mazzocca stated Mr. Merrikin makes a great point about having Weston & Sampson look at your test pits. Sewer and Water voted against this. This is based upon their own engineering reports. If you can't convince them, you can't convince me.

Mr. Merrikin stated it comes down to meeting the definition. They do want to work with Weston & Sampson and are meeting with Water & Sewer on September 28th. Mr. Forsberg asked if Water and Sewer reviewed Mr. Merrikin's results and Mr. Merrikin stated they are based solely on Ray's study and they disagree with it. They feel sand and gravel could be stratified drift and Ray disagrees. In a lake bed scenario, you can see the summer/winter deposits. Mr. Forsberg asked if Iorio was only concerned with their property at the time of the change and Mr. Merrikin stated yes. Mr. Forsberg stated that they feel their property is in the same area as Iorio and you have to convince Sewer and Water of that? Mr. Merrikin stated yes.

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Mr. Murtagh asked if they have anything from the Board of Health or Conservation Commission. Mr. Conroy stated that the Conservation Commission supports the Sewer and Water Commission. Mr. Murtagh feels the Sewer and Water Commission need to be on board. Mr. Conroy stated that regarding the Iorio map, the security building was not part of this. It is a separate piece. He asked Ms. Walker how could the map get changed. Ms. Walker stated it could have been changed inadvertently. If a zoning line is a property line, it could disappear. It was not done on purpose. Mr. Conroy asked her to look into this and she said she would.

Mr. Conroy questioned "professional geologist" as referenced on the Weston & Sampson report. Ray Johnson stated there are none in Massachusetts. They are licensed in another state like he is as Massachusetts only has professional engineers. Mr. Conroy stated our entire aquifer protection is based on an IEP report. Mr. Merrikin stated the Sewer and Water Commission couldn't find the 1983 report referenced. Mr. Conroy questioned the fact that the basis of our whole zoning couldn't be found and Mr. Merrikin stated yes. Ms. Walker was surprised they couldn't find it. Mr. Merrikin thinks it is around some where. Ms. Walker suggested he call Ron Fucile on Monday and tell him what he is looking for. Mr. Conroy stated that Weston & Sampson should have said they were never given a copy of the 1983 report. So, they really can't comment. They want this to be a Zone 2. This is more a technical change and has to do with the dirt underneath the ground. He asked if he could dig in another part of town that is not in this zone, but should be. Mr. Merrikin stated yes. Mr. Conroy stated his recommendation to Sewer and Water is because they don't have a report that can be referenced, Weston & Sampson should go onto the site. He also stated that no one came into the office to view the file. He asked for public comments.

Tom Driscoll, Precinct 4: we are in the sole source aquifer and there are only 72 in the State. This makes us vulnerable to the contamination of our water. He asked that the board be very leery of what they have been given tonight. He doesn't think we are getting a fair evaluation. They have gone back to DEP. You have one expert, Weston & Sampson, saying it should be Area 1. Now you have another that says it should be changed from Area 2 to Area 3. We ask you to vote no. He questioned the integrity and knowledge of Ray Johnson.

Ray Johnson, Rizzo Tech: this is a groundless unnecessary attack by Tom Driscoll. He submitted the application and passed the exam. To make the suggestion that his services are not correct or inadequate is wrong. He will not compromise his security or that of his family. He stands by what is submitted. If people think something is wrong, they should come up with specifics. He stands by what he has done at Walpole Park South. Mr. Conroy stated that Mr. Driscoll contacted DEP and asked if they had a problem with Mr. Rizzo. Mr. Driscoll accused him of being paid off by Walpole Park South. Mr. Driscoll stated that is a fact. Mr. Conroy asked if there is a technical violation. Mr. Driscoll stated that is the way they operate. Mr. Conroy stated that Mr. Driscoll insinuated there is a wrong doing, but there is not.

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Mr. Driscoll stated that under the public involvement process in Massachusetts they are assured there would be objectivity. Given the fact that the responsible party is paying the professional, where is the objectivity? Mr. Conroy asked who he was assured by? Who conducted the meeting? How did the format go? Who is "they". Mr. Driscoll stated it was Mrs. Grillo from DEP. When there is a problem brought forward, the State makes the party at their own expense hire a licensed professional. The question is how can we be assured there is objectivity, not a vested interest? We are raising the question of objectivity. Mr. Conroy stated you are questioning the objectivity of the State of Massachusetts. You have been assured by DEP. Mr. Driscoll asked where is the objectivity. Mr. Conroy asked because they are being paid by Walpole Park South? Mr. Driscoll stated he is not saying that. Mr. Conroy stated you have gone around in a circle. Mr. Driscoll stated no he hasn't. Mr. Driscoll stated he is talking about the spill. Mr. Conroy stated that has nothing to do with this petition. Mr. Driscoll stated conversation is over. The remediation process is not over. He stated that he should have said that up front. Ray Johnson stated the investigation is ongoing. Mr. Conroy asked who he is submitting the reports to and Mr. Johnson stated Board of Health, DEP, and Sewer and Water. Mr. Driscoll apologized for not mentioning the spill earlier as he thought he had made this clear. Mr. Conroy stated that Weston & Sampson never mentioned this in their report either. Mr. Merrikin stated these are two separate issues. Ray Johnson stated they can't fake these reports.

Bill Hamilton, South Walpole: he brought many studies to Amherst with Mr. Perry to Dr. Mott. He said they should not agree to change the area from rural to commercial as it would not be in the best interest of the town. He suggested that the Audubon and IEP determine where the glacial hill is. They had to develop a plan and it had to be approved by the Secretary of Environmental Affairs. Any change made to the water protection district had to be also approved by the Secretary of Environmental Affairs. He asked if the town has the approval of the SOEA to change from Area 2 to Area 3 at Iorio. That may be why the map was never changed. The town should seek the SOEA approval. Mr. Conroy stated that the town clerk must have something. If what Mr. Hamilton says is correct, there must be something on file.

Ken Fettig, Precinct 3: As a member of the Economic Development Committee and Sewer and Water Commission, he would like to clarify that the note the board has from the Sewer and Water says the vote was 3-0. He wasn't there or it would have been 3-1-0. This change makes sense as it is not affecting our water. To drill a well would cost the town $\frac{3}{4}$ million to 1 million dollars. To pretend this is a potential well site is incorrect. He is not in favor of the change. Mr. Conroy stated that the memo from Sewer and Water and Conservation did not say what their actual votes were. Mr. Hamilton stated when he came to Walpole, School Meadow was all shallow. 39.5' doesn't exclude a well. Mr. Conroy stated that Weston & Sampson didn't review this as there was no book. We have a zoning bylaw may be based upon a book that is not in our possession. What do we do about that? Mr. Merrikin stated we may be able to find the book.

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Mr. Conroy recommends we postpone voting this and ask town counsel if there is not a copy of the report existing in the town, what happens. He feels we should hold off our vote until we find out. The date of the IEP study is August of 1983. We can't reference something we don't have. Mr. Hamilton stated you have the map. Mr. Conroy stated it doesn't mean anything without the report.

There were no further questions from the public.

Mr. Forsberg stated we also need a definition of the type of material that is there. Mr. Merrikin stated he is trying to meet with them. Mr. Forsberg asked who defines the material and Mr. Conroy stated it would be in the book. Mr. Merrikin stated he has a 1985 IEP study, but we need the 1983 IEP study. Mr. Forsberg stated we need Weston & Sampson to back-up their information. Do we need to come up with money to pay Weston & Sampson? Mr. Merrikin stated they do all the Sewer and Water work. Mr. Murtagh stated he would like to see some progress with Water & Sewer. He suggested we invite Rick Mattson to our next meeting. Mr. Merrikin answered sure. Mr. Murtagh stated it is a very contradictory report. Mr. Conroy stated he assumes Weston & Sampson will be at town meeting to speak to their report. Mr. Fettig stated he is not sure. Mr. Forsberg asked if the time line is okay. Mr. Merrikin stated you have until the night of town meeting to make a recommendation.

Mr. Conroy moved to continue this hearing until October 1, 2009 at 7:15 P.M. to allow time to find the report. In the interim, he asked the planner to ask town counsel if the book doesn't exist, what happens. Motion seconded by Mr. Forsberg and voted 4-0-0.

Mr. Conroy asked the planner to send a letter to town counsel about the book that no one can find. If it is not found, how does the town or the board proceed? What if someone comes in and we don't have the book? Mr. Merrikin stated it is not part of the article.

Meeting: Mr. Johnson stated he would like to go to a meeting in Worcester on Wednesday afternoon. The board agreed.

Erosion Issues: Ms. Walker submitted correspondence on Wisteria Way II, Niden Woods, Brush Hill and Hancock Court Ext.

It was moved, seconded and voted to adjourn. The meeting adjourned at 10:50 P.M.

Respectfully submitted,

John Murtagh, Clerk

Approved 10/15/09