

WALPOLE PLANNING BOARD MINUTES OF OCTOBER 1, 2009

A regular meeting of the Town of Walpole Planning Board was held on Thursday, October 1, 2009 at 7:00 P.M. in the Main Meeting Room of town hall. The following members were present: John Conroy, Chairman (7:10 p.m.); John Murtagh, Clerk; Richard Mazzocca, Elizabeth Nashawaty, Don Johnson, Town Planner; Margaret Walker, Town Engineer.

Time Cards: Mr. Conroy moved to approve the secretary's time cards. Motion seconded by Ms. Nashawaty and voted 4-0-0. Mr. Conroy moved to approve the planner's time cards. Motion seconded by Mr. Murtagh and voted 4-0-0.

Map Change: Mr. Conroy asked Ms. Walker to change the map dated April 2009 to reflect the date of the town meeting article. Ms. Walker agreed.

The Trails Subdivision: Mr. Merrikin stated they did not submit a new filing for Deer Park as the endorsed plan for Deer Park gives authority to allow work in the buffer already. It will still be a vegetated buffer, but will allow some grading. Mr. Conroy stated this will be discussed at our October 15th meeting.

Appointments:

7:20 P.M. Article 21 Continued Hearing: Mr. Conroy stated that at the last meeting, the applicant was going to do test pits with Weston & Sampson. Mr. Merrikin stated they went to Sewer and Water on Monday and asked for permission to work with Weston & Sampson and also to have them come out to the site, but the Sewer and Water Commission refused to allow that. They have refused to let them have any communication with Weston & Sampson.

Mr. Merrikin stated that based on the information provided, this area cannot support a well. This proposal is consistent with what is across the street. In the last paragraph of Weston & Sampson's letter dated September 15, 2009 states "...Weston & Sampson recommends adopting a bylaw consistent with the DEP's Zone II delineation already established through a thorough permitting process." They are basically saying that Walpole should change the bylaw. Their argument is not part of the scope of this petition. The applicant is only here to change the zone.

Mr. Conroy asked for board comments.

Mr. Murtagh stated he is disappointed with the Sewer and Water Commission not allowing Weston & Sampson to come out to the site. He feels this should automatically be an Area 3 because there is not 40' of required soil. Mr. Merrikin asked him to look at what is in the water table. They are both the same. Mr. Murtagh agrees that this area is not a good candidate for a well.

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Mr. Merrikin stated it is crystal clear that this area should be an Area 3. He submitted another map and stated that IEP is wrong because this doesn't meet the criteria for an Area 2, but it does for an Area 3. If IEP had what we have today, they would have put it in Area 3, just like Iorio.

Mr. Mazzocca stated he has nothing to add from what he said last week. He was disappointed also that the Sewer and Water Commission wouldn't meet with Weston & Sampson. Mr. Merrikin stated they are ignoring the data and not giving us any reason why. They simply said they will see us on town meeting floor. There was no discussion whatsoever. It is very frustrating. Ms. Nashawaty asked if we have the applicant's reports and Mr. Merrikin stated yes. Mr. Conroy read the votes from both the Conservation Commission and Sewer and Water Commission. Mr. Merrikin stated they had asked to attend the September 14th Sewer and Water meeting, but were told to come to the next one so the commission could digest this. Mr. Conroy stated that the Conservation Commission voted in August before they got the report. The letter from Sewer & Water shows them voting on a Sunday.

Mr. Conroy stated there is no reference to IEP in the Zoning Bylaw. IEP doesn't mean anything. We only have Section 12-2(D) and that doesn't mention water saturation. It is fairly black and white. It does reference 40' and you don't meet the criteria of 40'. He doesn't think there is any argument. Test pits and physical observance is the way to go.

Mr. Conroy asked for public comments.

Mr. Murtagh asked what the Finance Committee did. Mr. Merrikin stated they met with them on Monday, but they didn't vote. They also asked Sewer and Water to come in next Monday. Mr. Conroy questioned the map that Mr. Merrikin showed the board. He asked if the tan and white areas were being changed to Area 3. Mr. Merrikin stated that the white area shown is already Area 3.

Maryanne Boragine, Finance Committee: they asked the Sewer and Water Commission to come in as they had a lot of questions and stated they won't come in. Therefore, their questions will not get answered.

Bill Hamilton, South Walpole: asked if there are four borings? Mr. Merrikin stated yes and 7-8 test holes. Mr. Hamilton asked how deep and Ray Johnson stated they are at 46', 45', 38' and 32'. Mr. Hamilton stated that at least two borings were over 40'. From what the chairman said you can't reduce that 46' or 45' because of questions of soil. Mr. Conroy stated you have 40' and stratified level drift. Mr. Hamilton asked if it has been determined that 45' or 46' meet the criteria because of the soil. Do you accept that limitation? Mr. Conroy stated they offered to do a test pit at their expense with Weston & Sampson being there and Sewer and Water said no.

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There were no further questions. Mr. Conroy moved to close the public hearing. Motion seconded by Mr. Murtagh and voted 3-0-1 (Ms. Nashawaty abstained).

Mr. Conroy moved to recommend Favorable Action on Article 21. Motion seconded by Mr. Murtagh and voted 2-1-1 (Conroy, Murtagh in the affirmative; Mazzocca in the negative; Nashawaty abstained).

7:50 P.M. Board of Selectmen (3) Zoning Articles Public Hearing: The Board of Selectmen was represented by Michael Boynton, Town Administrator. He stated that Chris Timson, Board of Selectmen Chairman was also present.

Article 11: Mr. Conroy read the public hearing notice. Mr. Boynton stated he will give a brief explanation as to how we got here. He wants to work through this article using the colored version of Article 11 which he handed out tonight. He stated this was held over from the Spring because of the NCAIS codes. They worked through the summer with staff, which included Don Johnson, Stephanie Mercandetti, Jack Mee and also the community. What was presented by the Use Committee to the Selectmen was a draft table of uses and definitions that the Board of Selectmen met on. They refined it and it was presented at a public meeting. The original table was dated August 25, 2009 and given to the Planning Board to hold the public hearing. It was anticipated that this would be the one to go forward. Since that time it was discussed with the Finance Committee and it was determined there was some work still to be done. There was an attempt to arrive at a consensus with one exception – biotechnology. The Board of Selectmen met on Monday night, September 28, 2009 and feel this is what should be discussed at town meeting. At that meeting, the Board of Selectmen removed several heavy industrial uses. There will be further debates and changes. He stated that Nate Kelley from Horsley Witten is here and he has prepared a slide show.

Mr. Kelley presented the slide show.

Mr. Conroy read comments that were received from town boards and committees. Mr. Boynton stated the Planning Board is the first board that has seen the modifications presented tonight; therefore, those comments Mr. Conroy read were prepared and presented on the original August 25 advertised version. Mr. Conroy stated that the Sewer and Water Commission supported what was advertised. He asked that Mr. Boynton explain the differences. Mr. Boynton stated that the changes he submitted tonight are color coded: green represents a change to the definition or use table; yellow with a strike through means a definition or use is gone; purple represents technical changes following Board of Selectmen action on this past Monday night.

Mr. Boynton stated that there is a change to bakeries on page 2 limiting any bakery in town to less than 50,000 s.f. In this bylaw, expansion for an existing bakery cannot be more than 50% and expansion is subject to a special permit.

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Mr. Conroy asked for public comments.

Dave Clark, Precinct 7: questioned "ff" on page 14. Mr. Boynton read the new definition as found on page 25.

Dan Merrikin, Carpenter Road: questioned page 6 "v".

Annmarie Kannally, Precinct 4: feels we should try to move some of the uses toward retail in an industrial zone. Mr. Boynton stated he will check with counsel because certain uses have been removed from this table. Some uses according to Ilana Quirk would not be allowed.

Mr. Conroy stated he believes you can't make it more restrictive at town meeting, only less restrictive. What was given to us tonight seems like you are making it more restrictive and feels this will come up at town meeting.

Mr. Conroy asked for board comments.

Ms. Nashawaty stated they got really restrictive with bakeries, but have become more lenient with aerospace. She asked why we aren't more consistent across the board. Mr. Boynton stated that regarding the sizes of the bakeries we have now, Peggy Lawton's is 20,000 s.f. To go to 50,000 s.f. would be more than double. Ms. Nashawaty stated we have some viable biotech in the community and she doesn't want to send them elsewhere when it is time to expand. They will want to expand and stay within our community; however, the proposed bylaw seems to make them more restricted. Ms. Mackenzie stated that basically Ms. Nashawaty is right. It is the direction that the town is going to go in. The consensus was that as far as industrial and commercial, we are happy with what we have. They can expand up to 50%. This is the direction the town has to decide on. She asked do you think what we have here is friendly to Siemens or not. Ms. Nashawaty stated it seems like a red flag. The new bylaw will not allow for a quick process, so why are we doing this. We have a permitting process already. Mr. Timson stated because we need a 2/3 vote at town meeting and to get that we had to go down this road. Based on what he has heard, he feels they may be hard pressed to get a level 2 through. Ms. Nashawaty asked how it came about in the discussion to change it. Mr. Timson stated they were initially attempting to achieve a particular status on a State level. Ms. Mackenzie stated when this was at committee, someone from Mass Biotech came in and presented to the committee. The committee thought this would promote good neighbors. Mr. Boynton stated that one of the real issues is the existing bylaw doesn't discuss levels or sizes of the facilities. What is proposed is not intended to be a restriction to the existing use at Siemens as far as expansion. There is still debate as to what the difference is between level 1 and level 2. Ms. Nashawaty stated she doesn't want us to become too restrictive. Our existing facilities should not be punished and she doesn't want to send out the wrong message.

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Mr. Boynton stated this use table is people's personal choices. There has been a whole lot of discussion about existing businesses. Would you in today's world open up some of the businesses that are no longer here in the same areas that they to be - probably not. Mr. Murtagh stated there is no doubt that the heavy industrial uses are over. They are not too close to neighborhoods. It is a positive step. He got a lot of calls on Level 2 Biotech.

Mr. Mazzocca stated he was very satisfied with the meeting that took place Monday night that he attended. The spirit of cooperation was fantastic. The one issue on the table of biotech would be left to town meeting. They agreed to disagree. He is satisfied enough with the changes made on Monday night. People have to be very aware of this going into town meeting. We should also keep in mind where would such a business be located. He feels there will be healthy debate at town meeting. The thing that did sway him would be to special permit bio-tech level 2 across the board.

Mr. Johnson feels we need to explain how Section 12 is now. That should help explain the difference at town meeting. Mr. Conroy asked Nate Kelley asked if we could put a biotech in a rural zone. Mr. Kelley stated it is not on the list, so no. If it is not listed, it is prohibited. Mr. Boynton stated see page 4. Mr. Conroy feels it should be bolded or highlighted. Mr. Kelley stated he will address that. Mr. Conroy asked if we stay with the old book, it is fair to say that all the definitions that were there years ago are the same today. Would we go back to what was existing? Mr. Kelley stated yes. Mr. Conroy questioned bakeries. Mr. Kelley said it was said that bakeries can smell good, but really big ones can have a significant impact on a neighborhood. Mr. Conroy stated that can be said about any business. If we restrict that, what is next? Mr. Kelley stated there was a lot of back and forth on that one. Mr. Conroy stated he doesn't have any comment on the old, but does on the new. It looks like we took out every business or at the least restricted them. Paper would affect H&V; trailers would affect U-haul; bakeries would affect Peggy Lawton's; wood products would affect Walpole Woodworkers. It appears that we have picked on every business we have in town. This sends a message and therefore he is not in favor of that. If you are looking to locate here that is good, but the new bylaw won't allow expansion. That says we don't want you any more. Mr. Timson stated that with regard to Walpole Woodworkers, we understand they moved their operation out of town any way. He feels this could be detrimental to a neighborhood. Mr. Conroy stated it targets all our old industry in town. Why would you leave in "leather" but take out "prefab wood"? There are more chemicals associated with leather. Ms. Mackenzie stated they talked about prefab wood and looked at it again after the fact. Their concern was the current business in town. The Selectmen looked at it as a policy level and a level as to where we were going. H&V couldn't expand, but we don't necessarily want another one of them in town. On the other hand, they would love to keep Peggy Lawton's in our town even if they want to expand. If we are looking to expand our tax base, Rolls Royce is good; Siemens is good; and the Bird Machine site could bring in high taxes.

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Mr. Conroy asked if it is cheaper to keep our current customers than go look for new ones because now we are giving our old ones the boot. We will force our existing businesses out of town. There is a lot of room on Industrial Road. They will be stuck. This goes against our being the "friendly town" which we have been promoting for years. We will also be playing more property taxes. He feels we have spent enough time on this and suggests we vote this and move on. He feels we should vote the old Article 11 which was advertised for tonight and then vote the new Article 11 which Mr. Boynton gave us tonight. Mr. Johnson feels that this hearing is on the old Article 11. Mr. Boynton stated the board has to vote on the old because without a vote it can't be put on town meeting floor.

Roger Turner, Elm Street: it can be changed at town meeting. Mr. Boynton stated that can be done provided it is a 2/3 vote. Mr. Conroy stated this affects the whole town. Mr. Turner stated it still can be modified or changed.

Phil Macchi, Washington Street: speaking as a tax paying citizen, if you want to modify the use table, go to town meeting. You are asking whatever business to spend tens of thousands of dollars. If there is 50-50 support, you are doubling that. It is hard to change. We changed from if it's not in, it's allowed, to if it is not in, it is not allowed. If the town wanted it, we could go forward. Tonight, if it is not in the bylaw, it is not allowed. If you rezone someone's house, it is not worth as much as it used to be. If you take one of the big corporations and do the same thing, they will be looking for a tax rebate. Mr. Boynton stated he doesn't agree with Mr. Macchi. Businesses can stay the way they are forever.

Dan Merrikin, Carpenter Road: agrees with Mr. Macchi. He stated he is not sure where landscapers fit into the new bylaw. He doesn't feel it fits into the "specialists" trade. Mr. Kelley read the definition. Mr. Merrikin stated landscape contractors do maintenance or landscape construction. Mr. Boynton feels that comes under "n" in the bylaw.

Carol Lane, Bullard Street: to continue with what Mr. Macchi said, she doesn't want the town administrator and building inspector to decide what is good for a neighborhood. We want to know where we stand which is why people look to zoning. Mr. Boynton stated he is assuming she is saying the new change is better than what is in the present document. Ms. Lane stated it makes his job easier.

Annamarie Kannally: stated that zoning is important for business and business development. It is also a view of what the residents want the town to be. Ms. Mackenzie stated that bakeries are an allowed use. They can move within the town and can't be bigger than 50,000 s.f. They could not go to 51,000 s.f. Depending on how big they want to be, they can stay or move. Ms. Kannally stated the people are not asking these businesses not to grow, we are just saying we don't want more of these businesses.

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Mr. Conroy stated that what is being said is that if a business wants to grow over 50%, hit the road. This thinking could promote empty buildings. We could be stuck with empty useless buildings. We have to work with whatever we have. None of the businesses here have done us any harm, but we are doing them harm with this change. Everybody goes into business so they can expand.

Ms. Mackenzie stated that with regard to biotech 1 and 2, what we are doing is changing Walpole's direction and limiting some friendly businesses and some that are not so friendly. She feels we are protecting the town and the water supply. We will be cutting down on what can come into our town. Mr. Conroy stated that something that is not listed in the book any more is sand and gravel pits. Mr. Johnson stated they are still there in 5-E.

John Valencourt, Beethoven Avenue: questioning Siemens as to what level of activities is occurring there now. Mr. Boynton stated there are a number of different things coming on. The best estimate is they are up to Level 2. Mr. Vallencourt asked if there have been other business interests expressed to Walpole officials to establish a biotech level 2. Stephanie Mercandetti stated no. Mr. Boynton stated that having sat through a very brief biotech presentation, the work performed in you doctor's office is a level 2. Mr. Vallencourt asked if Mr. Boynton is saying that if this doesn't pass, no doctors will be coming into Walpole. Mr. Boynton stated that is not what he is saying. A medical operation is allowed under a matter of right. Mr. Vallencourt stated that right now they already are. Ms. Nashawaty stated they are regulated under State, Federal and Osha requirements. Mr. Conroy stated that if they are presently a level 3 they are grandfathered until they cease to do it for two years or give up that use. If they want to increase up to 50%, they can do it. It is the use that is allowed. Mr. Boynton stated he will call Mike Canary and ask him what level Siemens presently is at. Mr. Vallencourt stated that someone could buy that building and continue that business. Mr. Boynton stated it runs with the land. Mr. Vallencourt asked how the town monitors that. Ms. Nashawaty stated through the Building Inspector. Mr. Merrikin stated he feels it is crucial that we as a town know if Siemens is a Bio 2 or 3. If we are contemplating their business would not be allowed, he has a problem with that. Ms. Kannally asked if should Federal and State agencies regulate this. Ms. Nashawaty stated that Level 4 is under federal restrictions. They are almost like a military facility. Ms. Kannally stated we would like to know what agency to go to. Ms. Nashawaty stated OSHA or CDC. Mr. Conroy stated she is asking questions that the Board of Health should know. Ms. Nashawaty stated that businesses in town don't have the opportunity to come and vote at town meeting. We have to look at what is best for the town financially and safety wise. Mr. Boynton stated he will check with the Board of Health.

There were no further questions.

Mr. Conroy moved to close the hearing on Article 11. Motion seconded by Ms. Nashawaty and voted 4-0-0.

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Mr. Conroy moved to recommend favorable action on Article 11 dated August 25, 2009. Motion seconded by Ms. Nashawaty and voted 3-1-0 (Conroy, Murtagh, Nashawaty in the affirmative; Mazzocca in the negative).

Mr. Conroy moved to recommend favorable action on Article 11 dated September 30, 2009. Motion seconded by Mr. Mazzocca. Mr. Conroy asked Mr. Mazzocca if he wanted to vote on this as he had participated in the meeting that changed the article from what was originally advertised. Mr. Mazzocca stated yes. Motion voted 2-2-0 (Murtagh, Mazzocca in the affirmative; Conroy, Nashawaty in the negative).

Article 12: Mr. Conroy read the article as advertised and comments received from town boards and committee. He stated this article is to address clerical changes. There were no public comments or board comments.

Mr. Conroy moved to close the hearing on Article 12. Motion seconded by Ms. Nashawaty and voted 4-0-0.

Mr. Conroy moved to recommend favorable action on Article 12 with clerical corrections. Motion seconded by Ms. Nashawaty and voted 4-0-0.

Mr. Conroy moved no action on Article 12 dated August 25, 2009. Motion seconded by Mr. Mazzocca and voted 4-0-0.

Article 22: Mr. Boynton stated when we present this article to the Finance Committee they will want to accept the September 30 version as the main motion with no reference to August 25, or they will not accept proposal and the August 25 version will be the main motion or they will refer to committee and vote no action.

Carol Lane, Bullard Street: feels more and more stuff is going to need a special permit.

Ms. Nashawaty stated we had no chance to review this, but have had the first one since August 25th. Ms. Walker and Mr. Johnson stated they have no comment on either version.

There were no public comments.

Mr. Conroy moved to close the hearing on Article 22. Motion seconded by Ms. Nashawaty and voted 4-0-0.

Mr. Conroy moved to recommend favorable action on Article 22 dated August 25, 2009. Motion seconded by Ms. Nashawaty and voted 3-1 (Conroy, Murtagh, Nashawaty voting the affirmative; Mazzocca voting in the negative).

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Ms. Walker stated that regarding the September 30 version of this article, she needs to know what is out there and has not had time to review this. Mr. Johnson agreed.

Mr. Conroy moved favorable action on the September 30 version of Article 22. Motion seconded by Mr. Mazzocca and voted 2-2-0 (Murtagh and Mazzocca voting in the affirmative; Conroy and Nashawaty voting in the negative).

It was moved, seconded and voted to adjourn. The meeting adjourned at 10:30 p.m.

Respectfully submitted,

John Murtagh, Clerk

Accepted 11/19/09