

WALPOLE PLANNING BOARD MINUTES OF FEBRUARY 16, 2012

A regular meeting of the Walpole Planning Board was held on Thursday, February 16, 2012 at 7:00 p.m. in the Town Hall Main Meeting Room. The following members were present: John Conroy, Chairman; Edward Forsberg, Vice Chairman; John Murtagh, Clerk; Richard Mazzocca (7:15 p.m.), Richard Nottebart and Margaret Walker, Town Engineer.

Minutes: Mr. Conroy moved to accept the minutes of February 2, 2012. Motion seconded by Mr. Forsberg and voted 4-0-0.

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

Mylod Street fields: Mr. Conroy read an email that was received from Dan Merrikin, Merrikin Engineering, dated January 31, 2012 stating they will be filing an ANR plan to combine the various contiguous lots owned by the town at the Endean fields into a single lot. He asked if the filing fee would be waived as it is all town-owned land. Mr. Conroy questioned why the town isn't doing the plans instead of an outside engineering firm. Mr. Merrikin stated that he is being hired by the town.

Mr. Mazzocca arrived at 7:15 p.m.

LA Fitness: Mr. Conroy read a memo dated February 7, 2012 from Christopher Musick, Walpole Safety Officer regarding a complaint with regard to parking near LA Fitness. Mr. Conroy suggested that we send a letter to the developer to inform him that there have been numerous complaints about parking on the opposite side of the islands which separate the parking spots and the travel lanes creating a problem for emergency vehicles and through traffic. Further, the Safety Officer recommends the installation of "no parking" signs facing the travel lanes. He asked that we copy Don Myers also.

Budget: Mr. Forsberg asked for a copy of our FY2013 budget.

The Trails Subdivision: Ron Priore was present with his attorney, Ted Cannon to discuss a modification to The Trails subdivision. Mr. Priore stated he just wants to modify his subdivision, The Trails, not Deer Park. Mr. Conroy stated the board received an opinion dated December 7, 2011 from Ilana Quirk, town counsel, who stated it is her opinion that the modification requires a public hearing with full notice as the proposal significantly alters an existing condition of the subdivision approval and further that the developer be required to provide evidence that all subsequent purchasers and mortgagees have assented to the proposed modification. Atty. Cannon stated that even though that is the recommendation of town counsel, he asked that the board consider this a minor modification. Mr. Conroy stated the board will follow the recommendation of Atty. Quirk. Atty. Quirk stated that in the event there is no one against this, the applicant could present that to the board at the beginning of the public hearing.

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Atty. Quirk questioned Parcel D and stated it wasn't clear to her if we were receiving less and Mr. Conroy stated it should be one for one. He questioned that when people give land to the Conservation Commission, should they give us a deed. Atty. Quirk stated yes if it is a condition of approval. It is hard to go begging for the land ten years later. Mr. Conroy asked if that can be added as a condition to the Order of Conditions and Atty. Quirk stated no, it should be with the Planning Board. Also, the board needs to find a way to tickle that as they are then responsible for it being given. If five years comes and goes, we need to act. Mr. Conroy asked if we can tie it to the signing of the Form F covenant or acceptance of the bond and Atty. Quirk stated the board should consider tying it to the issuance of the first building permit because then financing would be in place and they would be ready to move forward.

7:30 P.M. Board of Selectmen: Our 7:00 p.m. appointment with the selectmen was cancelled by the Selectmen and they will reschedule.

7:31 P.M. Walpole Park South: Atty. Quirk stated that at our last meeting, there was a discussion with the developer and his counsel. It was stated the developer would provide a cash surety, rather than the other available bonding options. She also stated there are three punch lists. Ms. Walker stated that the three big punch list items are granite curbing, as built plans and street acceptance plans. Mr. Conroy asked if that was done back in the 1980's and Ms. Walker stated no there were cross sections required that have proven to be useless.

The Planning Board reviewed an email dated February 14, 2012 from Atty. Quirk responding to the chairman's questions sent to her on February 14, 2012 and also an email dated February 16, 2012 from Margaret Walker responding to an email from the chairman dated February 15th. Ms. Walker stated that Lots 42 and 43 are the only lots that take street drainage. She feels it is on the plan to show it can be done. Mr. Conroy stated the plan was remanded back showing retention basins and now they are all changed. He stated that we have an approved plan showing they will do all this work and then they didn't do it. He feels this is an issue. Atty. Quirk stated she needs to go back to the town engineer to check if the work was done. Atty. Quirk asked if there are a lot of basins shown on the plan that are not present today. Ms. Walker stated she didn't consider these as working retention basins. Mr. Conroy stated that no one can attest that this plan is true. He looked at a plan that was remanded back that shows retention basins. He asked if we are comfortable that everything works and there will not be a problem. Mr. Merrikin stated we do have some documentation and he also has minutes from April 22, 1985, which was the night the plan was approved. He gave the board copies of the minutes which stated the basins would be built as the lots were developed. Mr. Conroy stated he is only trying to make sure this is correct, but there seems to be a big gap in design. Mr. Merrikin stated that according to the minutes the intention was clearly to build a dedicated roadway system and the basins were intended to be developed and designed as they got to the individual lots.

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The individual basins were introduced in 1984. Mr. Conroy asked him if his father ever worked for Bethel Duncan and Mr. Merrikin stated no. His father was brought into this in 1983.

Mr. Conroy asked if there is any engineering to back up what has been done and Mr. Merrikin stated yes, it is all in the file. Mr. Conroy feels it is all speculation and Mr. Merrikin stated he is not speculating. Mr. Conroy asked if we have calculations that the basin was designed for the entire roadway system, which is all he needs. Atty. Quirk stated maybe he should ask the town engineer which of the basins were built to support the roadway. Ms. Walker stated the one on the border of Lots 42 and 43. Atty. Quirk asked if it is in place and Ms. Walker stated yes and it has been modified as necessary. Mr. Conroy asked if she has the original calcs and she stated she is not sure. Mr. Forsberg asked if that would have been re-addressed when this was reconfigured and Ms. Walker stated yes.

Mr. Conroy questioned bonding the pump station. Atty. Quirk stated it goes back to Ms. Walker as she will put the numbers in. If it was part of the subdivision approval, then it is already in the bond. Ms. Walker stated she had numbers for repair costs and parts, but took it out because it is not being taken over by the town. Mr. Conroy stated that Sewer and Water cannot remove this. It was on the plan so it needs to be in there. Atty. Quirk stated that the bond requirement is to build the infrastructure. We have a builder who has indicated a willingness to do repairs if needed. Mr. Conroy stated the town does this every twenty years and nothing has been done for thirty years. Atty. Quirk stated the Planning Board would not be in a position to require this to be done twice. The task is to have it done correctly the first time. Atty. Quirk stated they are willing to bring the pump station up to a certain level, but Ms. Walker has stated that nothing needs to be done. Ms. Walker stated that is correct. Mr. Murtagh asked why Sewer and Water walked away and Ms. Walker stated she wasn't there and she doesn't know the answer to that.

Dan Merrikin stated that the pump station was constructed and approved by the Sewer and Water Commission and their consultant in 1986. They had only brought this up because they believed if the Sewer and Water Department was going to take it over, they would want new pumps. The staff inspected it and stated it is better than most. If the commission was going to take it over, they were willing to bond it to make sure whatever Sewer and Water wanted was done. It is inspected every year and whatever is needed is done. Mr. Forsberg stated that Sewer and Water probably didn't want the monthly cost and Mr. Merrikin stated maybe. Mr. Macchi stated that Pat Fasnello asked the benefit of them taking it or the town. At the end of the discussion it was agreed not to take it. Ms. Walker stated on January 11, 2012, Hayes Pump did an inspection and it was satisfactory. Mr. Conroy stated he wouldn't be doing his job if he didn't ask. Given the fact that Sewer and Water will not take it, what happens now. Atty. Quirk stated the developer is responsible for the pump station going forward. Mr. Conroy stated we release the bond and it goes to town meeting for acceptance. Doesn't the Sewer and Water Commission have the opportunity to say they are not taking it and why.

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Atty. Quirk stated she has seen this done. If it is going into the overall system that the town owns, she thought they would take it. However, she has seen it done separately. Mr. Conroy asked if a Sewer and Water Department can go back and say they won't take it. Mr. Merrikin stated they never said they would. There was a lot of talk about it and they thought the town would take it over, but there was nothing binding. Mr. Conroy stated that in the meantime, no one owns it. Mr. Merrikin stated it is on the property of Walpole Park South VI, so they own it. It is actually in the right of way. There was an easement that would give the town the ability to get at it. So, the way it is right now, it will stay on private property. Mr. Conroy asked if we need a modification showing the town won't take it and the applicant will be keeping it. Atty. Quirk stated it wasn't part of the original decision. Atty. Quirk asked what amount of money should be set aside to guarantee this would be built and finished. The town engineer has said it was built with the original requirements of the 1980's. Mr. Conroy asked how we close the loop. Atty. Quirk stated when you set the surety. Mr. Conroy asked if there is anything stating that. Atty. Quirk stated that Ms. Walker determined it was shown on the plan needed to be built, it was and now it is finished. There is no need to bond certain items because some of those things are done and we assume those items were bonded originally and then released. Mr. Forsberg questioned an O&M and Mr. Macchi stated there will be no O&M agreement. Mr. Merrikin stated that anything that was part of the original approval and is done will remain under WPS VI Realty Trust. It is up to Donnell Murphy to decide what he will do.

Mr. Conroy stated when we release the bond and this goes forward and the pump station breaks, we need something to say they are keeping it. Atty. Quirk stated they would keep it if we don't accept it. Mr. Merrikin stated it is their property until or if the town decides not to take it. Mr. Conroy stated if you are going to propose that, you should have an agreement with the land owners. Mr. Macchi stated it is not a condo. Mr. Murphy stated he wants to think about the option of creating an association. Mr. Macchi stated that whether or not he does an association, he does agree there should be an agreement between all the people who will be using the pump station. It is just not in existence yet. Mr. Conroy stated we need something. Mr. Merrikin stated they need to convey an easement from WPS VI to all the others in the park allowing them to use the pump station and the basins. Mr. Macchi stated that is correct. Mr. Merrikin stated there are eight property owners in the park and the conveyance of an easement gives each one the right to go on the property for repair. Mr. Macchi it also shows who is burdened by it. Mr. Forsberg asked if that has to be done and Mr. Macchi stated yes. The actual owner of the easement is WPS Realty Trust.

Mr. Conroy stated we have a plan done by Bethel Duncan and changed by someone else. Mr. Merrikin disagrees. He stated at the time his father was brought in with the consent of Bethel Duncan to do the modification. Mr. Conroy stated we have a plan done by one firm and then another did work on it. There are two engineering stamps on that. Atty. Quirk stated you will be getting as-builts from Merrikin Engineering to verify this. Mr. Merrikin stated there is nothing improper here and it is not the board's concern.

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Mr. Conroy asked if Mr. Merrikin would give us a statement regarding the plan from 1985 and Mr. Merrikin stated no as the plan speaks for itself. Atty. Quirk stated that if the plan was endorsed, it is the plan of record. Mr. Conroy stated we have a plan right now that no one can ever say the whole thing works. If someone is willing to say it is okay, then he will be fine. Atty. Quirk stated he can't second guess the Planning Board from 30 years ago. If the Planning Board endorsed the plan, then that is the plan the Planning Board has to deal with. Mr. Conroy stated in his opinion that doesn't mean the plan is correct. Atty. Quirk stated the plan is endorsed and she doesn't recommend the board look past that. Once it is endorsed, it is done. That is the plan. Mr. Conroy stated but a mistake was made. No one can tell him that this plan in front of him works. Mr. Merrikin stated there are two engineers that say it works. Mr. Mazzocca asked what guarantee do we have anyway. Atty. Quirk stated it is built. Mr. Conroy stated there could be mistakes. Atty. Quirk asked what mistakes. Mr. Conroy stated there are two engineering stamps on it. Atty. Quirk stated that any stamping issues should have been asked before the plan was endorsed. Mr. Conroy stated that no one is going to say this all works. Atty. Quirk stated you have an endorsed plan and you have as-builts. Mr. Merrikin stated the board will go after the engineers that signed it if it doesn't work. Mr. Conroy stated he didn't see anything stating that Merrikin Engineering is working as a consultant to Bethel Duncan. There is no paperwork. He asked if Mr. Merrikin will get us the drainage information and Mr. Merrikin stated yes. Mr. Conroy stated as far as setting the bond, he is not 100% understanding the "gift" thing. Atty. Quirk stated the reason for adding in the "gift" language is that the Planning Board has the right and obligation to obtain subdivision surety to insure the roadway construction and services. When you accept a give under that statute, the gift account has to be signed off by the Selectmen. Her opinion is that this is the proper way to do this. Mr. Conroy asked what we are doing beyond this and Mr. Merrikin stated repaving and as-builts. Ms. Walker stated guardrails. Mr. Conroy stated the guardrails will be part of the building permit. Mr. Nottebart asked the value of the sloped curb and Ms. Walker stated \$159,100 just for the granite.

Ms. Walker stated that Punch List A is just what is left on the \$21,000. Mr. Merrikin stated that all that work has been done. Mr. Merrikin stated that Punch List B contains stuff that Ms. Walker wants done for street acceptance. Ms. Walker stated that the 2012 list is based on current regulations. It was approved with berm and they need to repair it. Mr. Merrikin stated that Mr. Murphy is not willing to replace the berm with granite curbing. They are willing to bond in the amount of \$292,669.20; however, that number will be reduced slightly by \$8,000 because the guardrail will be coming off; therefore the figure should be \$283,219.20 without the guardrail. Mr. Forsberg stated they should round that number up the \$283,220.00 and Ms. Walker agreed. Ms. Walker stated the roadway is 2450' long. Mr. Merrikin stated that granite is not in the mix.

Mr. Conroy moved to bond the required street acceptance plans. Motion seconded by Mr. Murtagh and voted 5-0-0.

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Mr. Conroy moved to bond the required as-builts. Motion seconded by Mr. Murtagh and voted 5-0-0.

Mr. Conroy moved to install the sloped granite as per today's standards. Motion seconded by Mr. Murtagh and voted 0-5-0.

Mr. Conroy moved to set the bond for Walpole Park South at \$283,220.00 in accordance with the 2012 Punch List including the town engineer's recommendations to support street acceptance and excluding the guardrail. Motion seconded by Mr. Murtagh and voted 5-0-0.

Mr. Conroy asked if we can set a time frame to get this work done and Atty. Quirk stated that June 20, 2013 is in the agreement. Mr. Conroy asked what if it is not done and Atty. Quirk stated it would go through the normal default process.

Atty. Quirk asked how this document will be signed by the Planning Board; i.e., authorize Mr. Conroy as the chair or have it done at the next meeting. Also, the old tripartite agreement is still on record at the registry and they would like it released. Mr. Conroy asked that the entire board sign this, not just him. Atty. Quirk stated she will have the surety agreement at the board's next meeting and will work with the developer's counsel to release the existing tripartite agreement. She also stated she will be working on the roadway issues. If it is to be owned by more than one entity, there would be an opportunity to do a homeowner's association; however, it was determined that the roadway is held by one entity, so there is no need for a homeowners' association. Mr. Conroy asked if there are any other items that we need to send to you. Mr. Macchi stated just conveyances of easements and utilities. Atty. Quirk stated she is aware of that, but didn't want to have to do something twice. She would like the easements to be done sooner than June of 2013. Mr. Macchi feels they will be ready in about two months. Mr. Merrikin stated that Mr. Murphy's intention is to have a contractor to have the work done in May and then come back for a full bond release. Atty. Quirk stated she will have everything ready for the board's March 1st meeting.

Mr. Conroy added Walpole Park South to the March 1st agenda at 7:15 p.m.

9:05 P.M. Minuteman Truck, Case No. 11-10 and 11-11 Continued Hearings:

Mr. Conroy read an email from Jack Mee which stated he is okay with what has been presented by Cambridge Environmental. Deputy Chief Laracy concurs with Mr. Mee. Atty. Philip Macchi II stated they have not received anything from Robin Chappell, Health Agent. He stated he does have the final report and asks the board to go forward tonight, but understands if we don't. Mr. Conroy stated we could go ahead and if the Board of Health has an issue, you will need to start over. We do realize that you are just waiting for Robin. Mr. Macchi asked if there are any questions the board might have. He stated they will address the landscaping when they come back.

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Mr. Forsberg questioned the gas separator and asked if they looked into that. Mr. Wichter stated drains are not allowed in a paint booth because of the possibility of hazardous waste leaks. He also stated they have met with Jack Mee.

Mr. Macchi granted an extension of time up to and including March 31, 2012 for the board to take action and to allow for input from the Board of Health. Mr. Conroy moved to accept an extension of time up to and including March 31, 2012 for the board to take action on Case No. 11-10 and 11-11 as per the applicant's attorney. Motion seconded by Mr. Forsberg and voted 5-0-0.

Norfolk County Agricultural School: Mr. Forsberg moved to endorse the site plans as presented and as reviewed by Margaret Walker, Town Engineer. Motion seconded by Mr. Mazzocca and voted 3-0-0 (Forsberg, Mazzocca, Murtagh).

It was moved, seconded and voted to adjourn. The meeting adjourned at 9:30 p.m.

Respectfully submitted,

John Murtagh, Clerk

Accepted 3/15/12