

WALPOLE PLANNING BOARD MINUTES OF OCTOBER 4, 2012

A regular meeting of the Walpole Planning Board was held on Thursday, October 4, 2012 at 7:00 p.m. in the Town Hall Main Meeting Room. The following members were present: Edward Forsberg, Chairman; Richard Nottebart, Vice Chairman; John Murtagh, Clerk; John Conroy, Richard Mazzocca, Margaret Walker, Town Engineer and Ilana Quirk, Town Counsel.

7:08 P.M. Blades Realty Trust, LLC/Iorio, 2130 Providence Highway, Assessors' Map 54, Parcel 17, Request to Endorse Site Plan, Case No. 11-4: Ms. Walker and Atty. Quirk stated they are set with this request and they have no questions or issues regarding the request to endorse.

There were no comments from the public.

Mr. Forsberg moved to endorse a plan entitled "Common Drive Plan, 2130 Providence Highway, Walpole, Massachusetts" dated December 15, 2010, revised 3/10/11 and 9/18/12 as drawn by GLM Engineering Consultants, Inc., 19 Exchange Street, Holliston, MA. Motion seconded by Mr. Murtagh. Mr. Conroy questioned the revision date of September 18, 2012 and Mr. Truax stated that was the date that the conditions of approval were added to the plan. Mr. Conroy asked if this is all one site plan and Atty. Quirk stated yes. Mr. Conroy asked if in fact they sell one of the lots, what do we have left as enforcement. Atty. Quirk stated in the event of any violation, enforcement would rest with the Zoning Enforcement Officer. Mr. Conroy stated this will cease to exist and Atty. Quirk stated each parcel has to conform to zoning and that will be up to the Zoning Enforcement Officer. Mr. Conroy stated we have other conditions that were stated. There is nothing here if someone wanted to cut off that access to the south as determined back in 1986 by the Safety Officer. Atty. Quirk stated that what is before the board this evening is whether or not to endorse the plan. In the event that any action is taken by the holder of the site plan approval that creates a zoning violation, it is up to the Zoning Enforcement Officer to take action. Mr. Conroy stated that presently there are two storage trailers behind the rink and asked how do we handle that. Atty. Quirk stated if they need an occupancy certificate or relief that rests with the Zoning Enforcement Officer. If there is an issue, it should be brought to his attention. Mr. Conroy stated they are there so this plan doesn't accurately represent what is there. Atty. Quirk stated the plan and site was approved the way it was. They had to meet specific conditions or zoning violations could be raised. Mr. Conroy questioned if the board should sign this plan and Atty. Quirk stated yes and you would be saying this conforms with the approval issued in 2011 and that those conditions are satisfied. You are raising a good point as that would raise an enforcement issue if it is different. Mr. Conroy asked if it becomes a zoning issue and Atty. Quirk states yes or the State Building Code and handled through zoning or the State Building Code. Motion voted 5-0-0.

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7:28 P.M. Executive Session to Discuss Litigation Strategy; Viano, Trustee v. Planning Board and Beatty, Norfolk Superior Court C.A. No. NOCV2012-01177:

Mr. Forsberg declared that under G.L., 30A, s21(b)(3) and (4), the purpose of the executive session will be to discuss litigation strategy regarding litigation known as: Viano, Trustee v. Diane Beatty and Walpole Planning Board, Norfolk Superior Court, C.A. No. NOCV2012-01177; and a discussion of the litigation strategy in open session could compromise the purpose for the executive session; and the Board shall return to open session at the conclusion of the executive session.

Mr. Forsberg moved that the Planning Board go into executive session, under G.L. c30A, s21(a)(), regarding litigation concerning the Planning Board's site plan decision for land on Washington Street owned by Hollingsworth and Vose for the purposes and reasons declared by the chairman, with the Board to return to open session. Motion seconded by Mr. Nottebart and voted 5-0-0. Mr. Forsberg asked for a roll call vote to enter into executive session: Mr. Forsberg, yes; Mr. Mazzocca, yes; Mr. Conroy, yes; Mr. Murtagh, yes; Mr. Nottebart, yes. The board entered into executive session at 7:30 p.m.

Mr. Forsberg moved that the Planning Board come out of executive session and return to open session. Motion seconded by Mr. Nottebart and voted 5-0-0. Mr. Forsberg asked for a roll call vote to come out of executive session: Mr. Forsberg, yes; Mr. Mazzocca, yes; Mr. Conroy, yes; Mr. Murtagh, yes; Mr. Nottebart, yes. The Planning Board came out of executive session into regular session at 7:40 p.m.

7:42 P.M. Fall Town Meeting, Article 17, Solar Overlay: Mr. Forsberg moved to waive the reading of the public hearing notice. Motion seconded by Mr. Nottebart and voted 5-0-0. The article was presented by Stephanie Mercandetti, Economic and Community Development Director. She stated that the bylaw as presented is the same as last year, but the Planning Board wanted to see it in its own bubble at the end of the zoning bylaw. The bylaw doesn't apply to homeowners that want to put up panels on their roof or businesses that want to do the same or anything less than 250kw. This is for larger type requests. The underlying zoning will still exist.

Mr. Forsberg read comments from the Fire Department dated September 21, 2012. Ms. Mercandetti stated she talked with Michael Laracy, Deputy Fire Chief regarding his comment that Walpole's proposed Bylaw, Section 15.5 has identical language to the model Bylaw with the exception of the requirements for a Professional Engineer's signature and he feels that language should be added. She stated that this is in addition to what is required by Section 13.8 Site Plan Review and is covered already in that section. Also, they require an O&M plan which could be addressed in the site plan approval process. Mr. Forsberg asked if grass or gravel is being proposed and Ms. Mercandetti stated it depends on the plan that comes before the Planning Board.

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Ms. Mercandetti introduced Jared Connell, Project Developer from Borrego Solar and David Albrecht, Civil Engineer also from Borrego Solar and stated they have been working with S. M.. Lorusso.

Jared Connell, Borrego Solar stated they have been working with Mr. Lorusso at the Industrial Road site and he is here to support the bylaw. He has permitted several projects in other towns. He offered the board an opportunity to tour one of the other sites. He stated they will be doing a geo-tech study on this site. The system will probably be a pile driven screw type system. Mr. Conroy asked him the average lot size and Mr. Connell stated there are 19 acres at this site, but wetlands and setbacks need to be factored in. They are also limited by utility structures. There is also a size limit in Massachusetts, so the biggest project in this state is 6 megawatts. Mr. Conroy asked how many s.f. and Mr. Connell stated typically 1 megawatt per every 5 acres of property, but the current system is a little under that. Mr. Conroy stated you are in Area 3 and 4 and need 15% impervious cover. Mr. Connell stated this is a fixed tilt system and will face 180 degrees due south. Mr. Conroy asked if there will be much reflection off them and Mr. Connell stated no as they are built not to be reflective. Mr. Murtagh asked if he thinks we should have a height restriction and Ms. Mercandetti stated yes. He asked how high are these and Mr. Connell stated they are 5 modules across and 4 modules high. Mr. Murtagh asked him if they did any work on the stadium and Mr. Connell stated no. Mr. Murtagh stated the impervious cover doesn't count and Mr. Connell agreed and stated that no one has ever considered this impervious. They are not changing the water flow. Ms. Mercandetti stated none of them have hit that 15% impervious cover. Mr. Murtagh stated he is excited about the project. Mr. Nottebart stated he did a site visit today and feels drainage should be an important issue as the pictures he saw did show lots of water. They are clean and simple, but he questioned the transformer and the inverter.

Jared Connell stated that solar panels produce DC. The inverter converts the power to AC. Mr. Nottebart stated the units are pretty big and sitting on a 12" pad. Mr. Connell stated this project will have two converter pads with two inverters sitting on them. In addition to the site plan approval they need to get building permits. Mr. Mazzocca asked if there is anything in the article that is too restrictive that will make it difficult for this project or other ones in the area. Mr. Connell stated they have to talk about a financial security. They have found in the surety market that is a bond that doesn't really exist.

Mr. Mazzocca asked if the height okay and Mr. Connell stated yes. Mr. Conroy asked the life span and when will it disappear and Mr. Connell stated 25 year warranty on the modules, but we expect them to last up to thirty years. Mr. Conroy asked if there is a problem hooking up to utilities and Mr. Connell stated that takes the longest to do in the entire project. Construction is 4-5 months. They have been developing this project for a long time with Tony Lorusso and are at the final step right now. Mr. Conroy asked when they get dirty do we get as much out of them and Mr. Connell stated they do wash the module two or three times a year and also when it rains they being washed.

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Mr. Forsberg asked if we should have something in there about no chemicals and Ms. Mercandetti stated that it is addressed already as this will be in the WRPOD. Mr. Nottebart stated this is modeled after a State model and Ms. Mercandetti stated that is correct. Mr. Nottebart asked if they also do wind structures and Mr. Connell stated no. Mr. Murtagh asked why they didn't mention the Lincoln Road landfill for an area to put this and Ms. Mercandetti stated they are trying to stick to sites recommended by the EDC study. However, at the end of the day it is up to the Selectmen where this should go and they didn't suggest Lincoln Road. Mr. Murtagh asked the pay back period for a project like this and Mr. Connell stated it depends on a few things, but usually supply and demand which is typically 4-5 years. Mr. Forsberg asked if they get a letter from the power company when they find a site like this. Should we look at this to ensure it is not over kill. Mr. Connell stated they do call the utility company and give them the pole number and they will let them know what is feasible in a particular area. The power from these panels is not being sold to the utility company.

Mr. Nottebart questioned security. Mr. Connell stated they have a fence with barbed wire. Mr. Conroy asked if Jared is the developer and he stated developer and general contractor. They lease the site. Mr. Murtagh questioned the use of a surveillance camera and Mr. Connell stated they don't use one and they have to satisfy whatever the insurance company wants. Mr. Forsberg questioned the chrome frame and reflection. Mr. Connell stated they actually have aluminum frames around the outside which faces in, not out; therefore, there will be very little reflection from it. Mr. Conroy asked the amount of taxes expected on this and Ms. Mercandetti stated that is hard to estimate because they haven't talked to the Assessors yet. Mr. Conroy stated someone will ask that question at town meeting. Ms. Mercandetti stated it will be more revenue than what we are getting now. Mr. Murtagh stated that is not our purview, it is the Board of Selectmen's purview. Mr. Conroy stated he has the right to ask that question.

Joe Moraski, Precinct 8 stated he was going to ask that same question about the tax issue and feels it should be included in the overall presentation and would like a ballpark figure. He is also concerned about security. He suggests we add a sentence to the proposed amendment that is explicit about the requirement for a security system, including motion, alarms, cameras which would make it difficult to detach the panels. There was an article in the Globe a few months ago regarding security. The area in Carver is similar to Industrial Road. We don't want to burden the Walpole Police Department. His recommendation is not to add a lengthy paragraph about security, but the fact that security will be a requirement which will be explicitly referenced in the bylaw. He is also concerned about the placement of this article. The Fall Town meeting is for zoning articles and the Planning Board should make a motion to make this Article #2.

Carol Lane, Precinct 8 asked in places where these are already developed, have there been complaints afterwards and Mr. Connell stated not from the projects they have built.

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Philip Sanford, North Street thinks this is a marvelous thing for the town and it is the right way to go today.

Mr. Conroy stated that regarding Mr. Moraski's comment about the placement of the article, it is not our article; however, it shouldn't be last on the warrant because they need a 2/3 vote and there may not be a quorum or enough people to get that by the end of the night. Ms. Lane stated it is expected that zoning articles should come up first in the Fall town meeting. Ms. Mercandetti stated she has no control over the placement of the article. Atty. Quirk stated that the warrant belongs to the Board of Selectmen and there is a procedure where it could be moved up. A word to the town administrator would be good idea. Mr. Conroy questioned the security suggestion and Atty. Quirk stated it could be considered as part of the scope of the article and could be addressed during the site plan review process, but shouldn't be too restrictive. Mr. Conroy asked Carol Lane if that can be done and Ms. Lane stated as long as they are told it is all right to do that. Ms. Mercandetti stated it could be controlled under the O&M part of the bylaw. Mr. Mazzocca stated he doesn't agree with this as this is a private entity, plus there will be a fence. Atty. Quirk stated it shouldn't be too restrictive as it is the owner's discretion. Mr. Forsberg stated a fence could be adequate enough.

There were no further questions or comments. Mr. Forsberg moved to close the public hearing. Motion seconded by Mr. Nottebart and voted 5-0-0.

Mr. Forsberg moved to recommend Favorable Action on Article 17 with the addition of the wording "and adequate security" after the word "landscaping" under the proposed Section 15.7 Operation & Maintenance Plan. Motion seconded by Mr. Nottebart and voted 5-0-0.

ANR – Lewis Park Trust, 470 East Street: Mr. Forsberg stated this will be put on the board's October 18th agenda because there are a few issues raised by Atty. Quirk who stated this ANR is on two sheets and there is no reference back and forth to the two sheets. It could be dealt with a note being put on the plan. She also feels that Ms. Walker has some questions to discuss. David Wakefield, Lewis Park Trust, would like to know what the issues are and Atty. Quirk stated she has not thoroughly reviewed the ANR that is before the board. Mr. Wakefield wants the Form A plan signed tonight. Ms. Walker stated she did not pick up the lack of reference of Sheet 1 to Sheet 2. David Wakefield stated there are three mylars before the board right now and he wants the board to go ahead tonight. Atty. Quirk stated the board can accept the ANR and act within the required time of twenty days. Ms. Walker stated she has some questions. David Wakefield stated this is a Form A plan and it meets the requirements, therefore, he would like the board to act tonight. Atty. Quirk stated she is not at this meeting tonight to discuss this matter.

Mr. Forsberg tabled this discussion until the end of the meeting.

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8:55 p.m. Northridge Farm Subdivision Continued Hearing: Mr. Viano submitted revised plans and stated this hearing had been continued to allow time for town counsel to review the subdivision documents. Atty. Quirk stated the documents were submitted at the last meeting and forwarded to town counsel; however, she didn't receive a copy of the plan until yesterday and because of that the review is not completed, but will be done in short order. Mr. Viano stated the docs were submitted 3 ½ weeks ago and he wants to close the hearing tonight and asks that the board voted subject to the review of documents. Mr. Forsberg stated he doesn't have a problem with moving forward. Mr. Conroy asked Atty. Quirk if she sees any issue and she stated no as long it is subject to town counsel.

Mr. Forsberg read a letter dated October 2, 2012 from the Sewer and Water Commission. Ms. Walker stated she is all set and has no outstanding issues.

Joe Moraski, Precinct 8, asked who will take care of any clogs in the sewer system. People are getting nervous. Ms. Walker stated what he is saying is they want gravity from Covey Road to the subdivision. Mr. Viano stated they can't get gravity that far. Mr. Moraski stated they worked hard to get that pipe into the second hole and Mr. Viano stated they offered it. Mr. Moraski stated they would like the second line left dry and not tapped into by the residents in the subdivision as it should be left for the people who were promised that line. Mr. Forsberg stated one will be given to the town and one will belong to the Homeowners Association. Mr. Moraski stated there is a lot of run off onto North Street. The people who live there want to be assured that there will be catch basins that will preclude run off. Mr. Forsberg stated this has been addressed. Ms. Walker asked doesn't this run down and Mr. Viano stated yes, everything flows down to the catch basins. Mr. Moraski questioned the 61A land and asked when the town will address that. Mr. Forsberg stated that is not under our purview. Mr. Conroy asked if this subdivision was ever offered to the town and Atty. Amara stated yes. Mr. Conroy asked if they presented a P&S for this and Atty. Amara stated yes. Atty. Quirk stated they are still questioning the ANR and 61A as the Selectmen tabled this. Mr. Conroy asked if this affects us and Atty. Quirk stated no. Mr. Moraski asked if the clock is ticking on back taxes and Atty. Quirk stated that is not this board's place to answer.

Phil Sanford, Precinct 8 stated he understands Mr. Murtagh's point about the grinder pumps and asked why we don't put in a legitimate main to that point. Mr. Viano stated North Street is only 18' wide and is a scenic road. They would have to dig down 16' to service these homes. To make a gravity sewer work, you would have to go down deep to a gas main and large water main. Mr. Forsberg stated we discussed this earlier and we have a document from the Sewer and Water Commission stating they approved this system.

Carol Lane, Precinct 8, stated town counsel says 61A has nothing to do with this and she thinks this is the first layer. If they are giving up rights under 61A, there is a plan. Atty. Quirk stated that is not for this board.

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Ms. Lane stated it is not completed until it is done. It seems to be floundering. Atty. Quirk stated that is before the Board of Selectmen and the Planning Board can't tell you the status of this. If there are 61A issues, they will be dealt with. Mr. Conroy stated this is similar to Adams Farm and Pulte. They have to give a legitimate offer. If the town wants to buy the property, he spent a lot of money on paper. Regarding the 2" sewer line, does that come up to Viano's subdivision and Mr. Viano stated yes. Mr. Forsberg asked if the Homeowner's Association is responsible for the 2" line the whole way and Mr. Viano stated yes. It is only servicing seven homes. The other line is servicing 19 homes and that is 3". Mr. Nottebart is concerned with the 2" pipe and stuff being pushed or forced through it. Ms. Walker stated we have this at other locations. Mr. Nottebart asked if the town approved this and Ms. Walker stated it has been endorsed by the Sewer and Water Commission. Mr. Nottebart stated he is not sure how well they looked at this. Mr. Nottebart asked if they have taken the wall down yet and Mr. Viano stated not yet, but have done test pits. There were no further comments. Mr. Viano asked to close the hearing. Atty. Quirk stated there should be a draft decision reviewed, especially Condition #6. She doesn't like the endorsement part. Her concern with the board not endorsing is endorsement starts the freeze running and not to endorse would extend the freeze time. There needs to be a procedure for endorsement within a particular time. Mr. Viano stated that Ms. Walker stated it could be bonded. Atty. Quirk stated the sewer line can be tied into construction, not endorsement and that would safeguard the process. Mr. Forsberg questioned a bond for the subdivision and a separate bond for off site work. Atty. Quirk stated no construction, no clearing. She feels we can make changes to Mr. Viano's draft Condition #6. She stated she will review the decision and send to Kate and she can give them to Ms. Walker and Mr. Viano. Mr. Viano stated they do not want this involved with the subdivision bond. Ms. Walker stated he is agreeing not to seek a building permit until the subdivision is bonded. Atty. Quirk stated he can't do anything until the plan is endorsed. Also, once the hearing is close, Mr. Viano cannot offer any further comments. Atty. Amara stated her concern is waiting for another hearing. Nothing can be done. If you do vote based on conditions approved by town counsel, then they are good to go. Atty. Quirk stated it is up to the board. Mr. Viano wants to look at the draft decision and his condition #6 that she will be reviewing. She is waiting for a real estate attorney to come back with the documents that Ms. Walker submitted. She would like something to circulate early next week. Mr. Viano asked if construction on this subdivision and the sewer can start before the plans are signed. Atty. Quirk asked why would he be waiting to endorse and Mr. Viano stated he doesn't own the land yet. Ms. Walker stated she will need proof that the homeowners' association document has been recorded before issuing a street opening permit. Atty. Quirk stated some amount of money needs to go into the Homeowners Association which will build awareness among the homeowners. It could be as little as \$100. Also the HOA will need a requirement that they will meet once a year. Mr. Forsberg informed the applicant that he will be out of town on October 18, 2012. Mr. Viano stated he still wanted to move ahead with that date for a decision.

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Mr. Forsberg moved to continue this public hearing to October 18, 2012 at 7:30 p.m. Motion seconded by Mr. Nottebart and voted 5-0-0.

10:15 p.m. Tall Pines Subdivision Continued Hearing: Mr. Forsberg read a request from the applicant to continue this hearing November 1, 2012 at 8:00 p.m. and also giving the board an extension of time up to and including November 30, 2012. Mr. Forsberg moved to accept an extension of time up to and including November 30, 2012. Motion seconded by Mr. Nottebart and voted 5-0-0.

Mr. Forsberg moved to continue the public hearing to November 1, 2012 at 8:00 p.m. Motion seconded by Mr. Nottebart and voted 5-0-0.

ANR – Lewis Park Trust, 470 East Street: Atty. Quirk stated she would like a note on each plan to cross reference the plans. David Wakefield stated he would rather not change or reference anything on the plan with a note.

Mr. Forsberg moved to endorse an ANR plan of land consisting of two pages both entitled “Plan of Land in Walpole” prepared for Lewis Park Trust, P. O. Box 125, Walpole, MA” dated September 15, 2012 by GLM Engineering, Holliston, MA. Said property is shown as Assessor’s Map 27, Parcel 383, Zoning District Residence A and consists of both recorded land and land court land. Said plan shows registered land as follows: LC Lot 23 = 8,149 s.f.; LC Lot 24 = 1,560 s.f.; LC Lot 28 = 33,039 s.f.; LC Lot 27 = 19,566 s.f. and Recorded Land Parcel E = 588 s.f. finding Form A in order and subdivision control not required. Motion seconded by Mr. Nottebart and voted 5-0-0. It was noted that endorsement does not constitute a determination of compliance with zoning or that any lot is buildable.

Time Cards: Mr. Forsberg moved to endorse time cards as submitted. Motion seconded by Mr. Nottebart and voted 5-0-0.

Minutes: Mr. Forsberg moved to accept the minutes of September 6, 2012 and September 20, 2012.

Wisteria Way Bond Release: Ms. Walker questioned whether or not the streets within this subdivision are tied together. Mr. Conroy stated there was specific phasing for this subdivision.

Old Post Road Water Tank: Ms. Walker stated she is all set with this plan and it is ready for endorsement. Mr. Forsberg moved to endorse a plan entitled “Walpole Sewer and Water Department, Walpole, MA Contract Drawings for New Central Zone Water Storage Tank” dated January 12, 2012, latest revision May 2012 drawn by Wright Pierce Engineering and consisting of eight (8) pages. Motion seconded by Mr. Mazzocca and voted 5-0-0.

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It was moved, seconded and voted to adjourn. The meeting adjourned at 10:45 p.m.

Respectfully submitted,

John Murtagh, Clerk

Accepted 10/18/12