

WALPOLE PLANNING BOARD MINUTES OF JANUARY 6, 2011

A regular meeting of the Town of Walpole Planning Board was held on Thursday, January 6, 2011 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, Richard Nottebart, Donald Johnson, Town Planner, Margaret Walker, Town Engineer.

Minutes: Mr. Conroy moved to accept the minutes of November 18, 2010 as submitted. Motion seconded by Mr. Nottebart and voted 5-0-0.

Mr. Conroy moved to accept the minutes of December 2, 2010 without the changes to the Zoning Bylaw part of the minutes (Page 8) as suggested by the town planner. Motion seconded by Mr. Nottebart and voted 5-0-0.

Mr. Conroy moved to amend the minutes of December 2, 2010 by adding the following to "The Bird Estates Phases III and IV" (Page 1): "The Phase IV bond endorsement also includes a rider, increasing the bond amount by \$318,450 in order to accommodate the Phase I off-site improvements that are now transferring to Phase IV (Mansion Drive improvements and traffic light design)." Motion seconded by Mr. Mazzocca and voted 5-0-0.

Legacy Lane Bond: Mr. Conroy moved to accept Insurance Bond No. 71029333 in the amount of \$68,000.00 issued by Western Surety Company dated November 23, 2010 to Rosemarie G. and Gary R. McPhee. Said Insurance Bond will replace Bank of America Cashier's Check No. 2109941 dated October 21, 2010 payable to the Town of Walpole or Rosemarie McPhee and accepted by the Planning Board on October 21, 2010 in the amount of \$68,000.00. Motion seconded by Mr. Mazzocca.

Mr. Conroy noted that we have an email dated January 5, 2011 from Mark Good, Town of Walpole Finance Director stating the insurance bond as reviewed by him is satisfactory.

Mr. Johnson questioned the terminology of the insurance bond. Mr. Conroy asked him if the insurance bonds posted by John Hasenjaeger and Jack Walsh are any different from the McPhee's insurance bond. Mr. Johnson stated that the difference is they have a two-year time frame. Mr. Macchi stated this bond is more encompassing than those two bonds.

Motion voted 5-0-0.

Hollowdale Farm Subdivision: Atty. David Hern, Norwood, represented the developer, Anthony Delapa. He stated Mr. Delapa doesn't want to entire bond released because they know there are several items that need to be completed, but they would like the bond reduced down to \$17-\$18,000 and \$110,000 released.

Ms. Walker stated in a letter dated November 23, 2010, that due to the fact that there are several items that are not finished, Mr. Delapa would be entitled to a bond reduction, not a bond release.

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On behalf of his client, Mr. Hern is requesting a bond reduction which was their intent in the first place. His client did the required work as requested by the Engineering Department and he knows it was done satisfactorily. There is nothing in the board's rules and regulations that say the bond can or should be held. He stated that both Mr. Delapa and John O'Brien, who did the paving, are present tonight to answer any of the board's questions. There is nothing written anywhere that says the work gets done and then it is watched to see if anything goes wrong and they have nothing that says the work was not done properly. Mr. Delapa wouldn't have done the work if he thought the town would wait.

Mr. Murtagh stated he has every confidence in the Town Engineer. It was late in the season and there was frost on the ground when this was paved. The seam in the center of the road is not perfect, but it should be. In his opinion, waiting until April or May to determine whether or not this paving job is satisfactory is acceptable. Mr. Hern stated that the remaining funds would be adequate to protect the town's position. There is nothing that says the funds should stay on deposit. Mr. O'Brien did the work with the Engineering people on site and he feels nothing was done to a substandard condition. They are not asking for a complete release. Mr. Murtagh stated that the outcome of the finish coat is most important and we need to wait to make sure it is satisfactory. Mr. Hern stated the Rules and Regulations state the bond will be released when the work is done satisfactorily, not take a wait and see approach. He is asking the board to approve the reduction. They didn't receive complaints when the work was being done and questions that they are now. Ms. Walker stated it is not standard operating procedure to have work down and just hold money for an indeterminate amount of time. Typically, when the work is done, they go back and check it, then release the funds. She brought an inspector in on Saturday to inspect, not supervise. There were some serious reservations a few days later about what the seams looked like. They didn't wait forever; they told Tony Delapa right away. His contractor went out and bought a piece of machinery to join the seams. She was afraid the seams will open up. They did act in good faith, but she is concerned the seams will not make it through the winter. This is not typical, but they don't want water to get in the seams. They did come back and re-do it, but she still has concerns. The unit costs have also changed. If this bond was current, they would probably release some of it, but not in this case because we only have half the amount because it is an old bond. Maybe after the winter it will look okay. People have called and complained about the work. Mr. Hern stated they didn't know of any concerns until December 20th. Ms. Walker stated sometimes it takes a couple of days to see any problems. If there is a problem with the seams, keep the money that it would cost to fix the seams. To hold up the entire amount is not proper. They are holding back an excessive amount. This wasn't supervised by the Engineers, but they were on site and could have commented. They wouldn't have done this work now if they weren't going to get money back. Anthony Delapa, Jr. stated he contacted the Engineering Department back in August. It was agreed they would do the road completely, not in pieces. They ripped up 90% of the binder coat. There was also concern about frost. Paving was delayed because there wasn't anyone to go out there from the Engineering Department.

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There are seams showing, but they don't feel they will expand because they would have already if they were going to. He would like some consideration.

John O'Brien, O'Brien Paving, asked if anyone has seen the seams out there. There is no flaking out there. The board said no, they have not seen it. He stated he is the expert. He spent \$9500 out of his own pocket buying an infra-red machine to fix this. Every single paving job has a seam.

Mr. Forsberg stated he agrees with Mr. Hern – there should be a compromise. We have to have enough money to cover any repairs. He suggested holding back \$50,000. Mr. Hern stated they are not ready to have this accepted in the Spring. Mr. Forsberg stated that makes for a different story. He stated we wanted the road stabilized and you decided to do it totally. Mr. Delapa agreed. He stated it wasn't worth it to just patch it. Ms. Walker stated it is major work to fix this if something happens. Her biggest concern is getting to March or April. Even if they did this in March, she would want to wait. Mr. Conroy stated the two amounts you have for paving total \$36,000. Ms. Walker stated that originally she thought they were requesting a bond release. Mr. Conroy asked if they were given a copy of Ms. Walker's spreadsheet and she stated she's not sure. Mr. Conroy asked her to get him a copy so he can go over it and then meet with her. He stated that this subdivision is more than five years old. Further, Mr. Hern had stated there is nothing in the Board's rules and regulations about holding money, but there is something in there that they only have two years to finish the roadway. This has been going on a lot longer than two years. Ms. Walker stated she is spinning off \$121,000 as per the December 22nd spreadsheet.

Mr. Hern stated he would like to address Mr. Forsberg again. They would be looking to finish up in the spring. Mr. Conroy stated we would like this done. Mr. Hern stated they will deal with Ms. Walker and come up with a number. He asked when they can come back and Mr. Conroy stated when you are ready. Ms. Walker stated she will mail the spreadsheet to Mr. Hern.

7:43 p.m. 504 High Street and 866 North Street Scenic Road Hearing: Mr. Conroy read the public hearing notice. Robert LeBlanc, Tree Warden, was also present. He stated the trees have significant defects and are hazardous to pedestrians and traffic and therefore should be removed.

Mr. Conroy read correspondence from the Historical Commission dated January 3, 2011 stating they are not opposed to removal of the two trees and a memo dated January 5, 2011 from Margaret Walker, Town Engineer concurring with the recommendation of the tree warden. Mr. Forsberg questioned the defect to the tree on High Street. Mr. LeBlanc stated there is significant rot within the center of the tree, comprising its integrity. He has also had several phone calls regarding the safety of the trees. Both the tree warden and the town planner submitted pictures of the trees to be removed.

There were no public comments.

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Mr. Conroy moved to close the public hearing. Motion seconded by Mr. Nottebart and voted 5-0-0. Mr. Conroy moved to concur with the recommendations and approve the request of the Tree Warden to remove one 37" dbh Oak tree at 504 High Street and one 23" dbh Elm tree at 866 North Street. Motion seconded by Mr. Nottebart and voted 5-0-0.

7:50 p.m. Walpole Park South VIII Special Permit Case No. 10-6 Continued

Hearing: The applicant was represented by Philip Macchi II, Esq., 1256 Washington Street, Norwood, MA. Mr. Macchi stated they met with Sewer and Water just before Christmas to review the peer review and materials list. Sewer and Water asked for some changes, which the applicant agreed to. Sewer and Water submitted a letter dated December 21, 2010 entitled Final Peer Review Report. The items they questioned have been incorporated into the conditions of approval in the proposed decision.

Mr. Macchi stated that on December 20, 2010, they met with Don Johnson, Town Planner, Jack Mee, Building Inspector, Michael Laracy, Deputy Fire Chief and Robin Chapell, Health Agent. The Board of Health did not see any problem with what was presented, but there were not meeting before tonight's meeting. A handful of chemicals were determined be improper for this site and they were removed. There is also a list of what is appropriate as long as Sewer and Water, Board of Health, Fire Department and Inspection Department agree.

Mr. Conroy read comment letters from Michael Laracy dated January 4, 2011, Sewer and Water dated December 21, 2010 and Roger Turner dated December 21, 2010. Mr. Macchi stated he has reviewed the decision and his comments have been addressed. He stated they are not talking about a warehouse full of chemicals. This whole process was crafted to help Donnell Murphy attract tenants, but there are conditions that would allow the town to still be in control. He has to give the town everything up front. The option for a peer review was a condition added at the request of Robin Chapell.

Mr. Mazzocca stated he is concerned with the building being split and doesn't see how that is workable. He asked why they don't just carve that unit out and not put anything in there. His other question is why are you going through all this? There are so many tenants that don't need this. It seems like you are going overboard. Mr. Murphy stated that out of 35 tenants, 15 need this special permit. He is going through this because he doesn't want to lose a tenant. Mr. Murphy stated that time is of the essence. He can usually get an answer from the town within thirty days and he can't get a special permit in thirty days. Mr. Mazzocca stated this building is in a bad spot as it borders on the town's water source. Mr. Mazzocca asked how this differs from what is in place now. Mr. Macchi stated peer comments from Robin Chapell and others. Mr. Mazzocca stated that on Page 8 in the decision, Section 5(d) which states "the lease between the Applicant and his/its tenant(s) shall include a provision that acknowledges the receipt of the Special Permit and an agreement that the tenant comply with the conditions of the same" should be stronger. Mr. Forsberg asked if there another place the applicant needs to sign off and Mr. Macchi stated yes as per Section 4(a), but it can be added again to 5(d), if necessary. Mr. Murphy stated that he signs off that he has given the tenant a copy of everything and doesn't enter into a lease until he receives everything back.

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Mr. Forsberg would like it added to Section 5(d). He asked if they go through this now with other buildings that are up there and Mr. Murphy stated the tenants submit a list, but with regard to this building, Mr. Murphy will do so. Mr. Forsberg asked if he oversees the others and Mr. Murphy stated no, everything goes directly to Jack Mee. Mr. Forsberg asked if he makes sure it gets done every year and Mr. Murphy stated yes.

Mr. Murtagh agrees with Mr. Forsberg and Mr. Mazzocca. The tenant needs to uphold their end of the bargain. He thanked the applicant for meeting with Sewer and Water and is glad they are on board. Mr. Macchi stated that the 4-0-0 vote from that shows that are on board. The applicant agreed to every suggestion and/or question they had. Mr. Nottebart stated this has been well thought out. He questioned Section 3(h) in the decision. Ray Johnson stated that everything going off site has to be copied to the State. The tenant also keeps a copy. Mr. Nottebart asked if there is something that makes them notice Donnell Murphy in case of a spill. Mr. Murphy stated they need to report it. Mr. Nottebart stated he is favor of the special permit with controls in place. We don't know the tenants. This needs to be covered by the regulations. Mr. Macchi stated when they added the Fire Dept., Sewer and Water, Board of Health and Building Inspector they have more power. Mr. Nottebart stated we need to make sure Donnell Murphy is informed also. Ray Johnson stated we can add that any spilled quantity needs to be reported to Donnell Murphy.

Ms. Walker and Mr. Johnson had no comments or questions.

Bill Hamilton, South Walpole stated he knows there was a big effort put into this but that was eight years ago. They had a list that was approved but at that time we didn't know there was a problem until later. The effort is flawed. We may find out in the next 8-10 years something should not be there. Metal Bellows cost us great pain to our water supply. Using a list like this is disastrous to our water supply.

Mr. Conroy asked for comments on the items that disappeared and why. Ray Johnson stated Cambridge Environmental would have to comment on that. There may have been new data received. Any time there is a new tenant, Mr. Murphy has to submit their approval to the various town boards. Every chemical on the list has a number. In five years from now, if we find out something is a carcinogen that wasn't now, it would not be allowed. Mr. Mazzocca asked who is "we" and Ray Johnson stated whoever Donnell Murphy hires. Mr. Macchi stated if Donnell Murphy has a tenant that the town doesn't like, Mr. Murphy will have lost them anyway. Mr. Mazzocca asked if in 2013 a study comes out showing something is a carcinogen, this would not be your field. He wants a chemical engineer or chemist to review this. Ray Johnson stated that Cambridge Environmental didn't have a chemical engineer. Mr. Forsberg asked if a red flag would come up and Ray Johnson stated yes and that is why they put in CAS numbers. Mr. Forsberg asked if they did a report on the CAS number and Ray Johnson stated yes and all that information would be submitted with the application. They have to check off whether or not something is a carcinogenic.

Mr. Conroy stated this is not the only building in an Area 3. He asked if the town has its own list and do they have to keep a running list. Mr. Conroy asked what happens if you find next week there is a chemical that is determined to be a carcinogen?

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Mr. Johnson stated if it is a zoning matter, it would be grandfathered. The Board of Health regulations would kick in. If a substance gets declared hazardous, there are State and Federal regulations that must be met. Mr. Conroy asked if there is anything in our bylaw that addresses this. The town would need to tell them they need to remove it. Mr. Johnson stated he doesn't think so. Mr. Conroy stated this isn't the only building in Area 2 either. Bill Hamilton is correct; it is not just these people. Robin Chapell doesn't check this out on a weekly basis. Mr. Johnson stated Michael Laracy asked for this so that when someone comes in with an application, he can check the CAS number.

Mr. Macchi stated there is nothing in Section 12 of the Zoning Bylaw and therefore not prohibited by the bylaws. They are putting in a lot of effort up front to make this work. Mr. Conroy stated we don't have anyone who keeps a check on this. Mr. Murtagh asked who monitors the chemical list in town. Mr. Conroy stated no one. Mr. Johnson stated the DEP and EPA require certain filings. Mr. Conroy asked if anyone has ever said what happened to those chemicals that came off the list. Mr. Macchi stated no one asked. The list is never completely reviewed. If you are not asking to store something, no one is looking at the list. You could add to 4(b) in the decision to cover that. Mr. Conroy stated it is "big brother" telling you what to do, but "big brother" doesn't take care of his own house. This should be brought up to the Board of Health. Bill Hamilton stated that the Board of Health stated at a meeting at the start of the summer they didn't want to deal with an approved list. A company could be grandfathered. Mr. Conroy stated not when the Board of Health is involved. Mr. Hamilton stated there would be liabilities to a company. Mr. Conroy stated he doesn't think a chemical can be grandfathered.

Mr. Nottebart feels we are making this more complicated than it needs to be. We want to give Mr. Murphy the ability to go out and market his property while protecting the town. Would it be appropriate to have the list reviewed every two years? Mr. Macchi stated that costs \$8500. Mr. Nottebart stated that everyone's garage is probably a victim of what is happening here. He agrees with Bill Hamilton. Is this list only a marketing tool as each chemical stored needs to be reviewed individually? Mr. Conroy stated if the peer review says it is bad, that ends it. Mr. Forsberg asked if the cast number is the review and Mr. Macchi stated yes. If you granted a special permit today to something that becomes a hazard, it would be addressed by the Board of Health. Mr. Murtagh asked if we discover down the road there is a chemical that is dangerous, can the Board of Health address this. Mr. Macchi stated yes, regardless of what zoning says because of public safety. Mr. Conroy stated the Board of Health can override anything. Mr. Nottebart stated that 5© says they have to give us a list. Mr. Macchi stated they could do it twice a year if you are more comfortable. Mr. Nottebart stated that once a year is enough.

Mr. Mazzocca questioned the difference between Table A and Table B. Ray Johnson stated that Table A chemicals have a classified matrix in their report. Anything that has a low toxicity is on Table A. Anything carcinogenic was off the list. Toxicity and solubility were also looked at. They did a very thorough study. Mr. Mazzocca stated they are only talking about 50 chemicals that would need to go before Sewer and Water and the Board of Health. Ray Johnson stated he thinks there are 62 and some are on both lists.

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There were no more comments or questions from the board or the public.

Mr. Conroy moved to close the special permit public hearing. Motion seconded by Mr. Murtagh and voted 5-0-0.

Mr. Conroy moved to grant a special permit under but not limited to Section 12:3.C(2) and 12:3.C(6) of the Zoning Bylaw to allow those activities allowed in the underlying zoning district that involve the handling of toxic or hazardous materials in amounts greater than normal household quantities and the storage of liquid hazardous materials, as defined in M.G.L. c21E and/or liquid petroleum products in those areas of the proposed building located within WRPOD Area 3. Motion seconded by Mr. Nottebart and voted 4-1-0 (Mr. Conroy, Mr. Forsberg, Mr. Murtagh, and Mr. Nottebart in favor, Mr. Mazzocca in opposition) and subject to five detailed conditions of approval.

9:14 P.M. Bird Estates Phase I and II Residents' Hearing: Mr. Conroy read the public hearing notice. The applicant was represented by Atty. Philip Macchi, II and Jason Witham. Mr. Macchi stated that all engineering issues have been resolved. Mr. Conroy read a letter dated January 6, 2011 from Margaret Walker. Mr. Conroy explained the process to the public and informed them we are here because of the roadway bond.

Dave Rafferty, 1 Endean Drive: questioned the item that was transferred to Phase IV. Mr. Macchi stated Toll Bros. had agreed to fund some things, such as the traffic light. There were no other questions from the public.

Mr. Conroy moved to close the public hearing. Motion seconded by Mr. Forsberg and voted 5-0-0.

Mr. Conroy moved to release the Phase I and II bond for Olympic and Hildene Drive in its entirety. Motion seconded by Mr. Forsberg and voted 5-0-0. It was agreed to write a letter to the selectmen asking them to proceed with the street acceptance process.

Commerford's Corner: Mr. Conroy moved to set the bond at \$56,000 as per recommendation of Margaret Walker, Town Engineer. Motion seconded by Mr. Forsberg. Ms. Walker stated that included in the bond figure is a \$15,000 line item or \$5,000 per utility pole, which is an estimated price for moving three poles. She cannot give the board an exact amount as she has been unable to get any information from Nstar. Motion voted 5-0-0.

Walmart: Mr. Conroy moved to endorse the mylars for Walmart as submitted by Atty. Philip Macchi, II showing the latest revision date of December 8, 2010. Said mylars were reviewed by Ms. Walker and Mr. Johnson. Motion seconded by Mr. Mazzocca and voted 5-0-0.

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Mr. Forsberg asked that the board send a letter to the Board of Selectmen stating the traffic lights are part of our site plan approval and we highly recommend they endorse the installation of same.

CVS: Last week, Mr. Forsberg questioned snow removal in the parking lot. Mr. Johnson followed up on that complaint and stated that Jack Mee will be sending an enforcement letter.

Time Cards: Mr. Conroy moved to approve the secretary's time cards. Motion seconded by Mr. Nottebart and voted 5-0-0. Mr. Conroy moved to approve the planner's time cards. Motion seconded by Mr. Murtagh and voted 5-0-0.

Evaluation: Mr. Conroy moved to accept the secretary's evaluation as presented. Motion seconded by Mr. Nottebart and voted 3-0-0 (Conroy, Murtagh, Nottebart).

Cambridge Environmental: Mr. Conroy moved to pay in full the final invoice received for the WPS VIII peer review in the amount of \$2621.25. Motion seconded by Mr. Murtagh and voted 3-0-0 (Conroy, Murtagh, Nottebart).

2010 Town Report: Mr. Johnson had emailed the board a copy of the final town report. Mr. Conroy moved that it be submitted to Jim Johnson as written. Motion seconded by Mr. Murtagh and voted 3-0-0 (Conroy, Murtagh, Nottebart).

Walpole Mall Modification: The applicant was represented by Atty. Philip Macchi, Don Myer, Norwood Engineering and Rich Costanzo, Owner of Walpole Mall. Mr. Macchi stated they are seeking a determination from the board that the changes as presented for Pad 3 and the main building be considered a minor modification. He stated there is no change to the parking, but there is a change in the placement of the bank drive through and a change in the angle of the main building. Mr. Johnson asked if there is a modification or change of the special permit and Mr. Macchi stated no. This application was approved by the Planning Board only, not the Zoning Board.

Mr. Mazzocca stated he thought Panda Express would be addressed also. Mr. Macchi stated that basically the tenant puts up the building, but Panda wanted to do it themselves. The foundation for Texas Roadhouse is off approximately 18" and they will file their own modification request. Mr. Myers stated he is filing Texas Roadhouse tonight and Panda Express will be coming in a couple of weeks. Mr. Conroy reminded him the owner has to sign off on those requests. Mr. Murtagh asked if these are the last two pads. Mr. Macchi stated Texas Roadhouse is the end.

Mr. Conroy moved to determine the changes to Pad 3 and the main building as presented be considered a minor modification. Motion seconded by Mr. Mazzocca and voted 5-0-0. They will be back with the plan for endorsement.

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New Fisher Lane: Mr. Conroy set the residents' hearing for January 20, 2011 at 7:20 p.m. Ms. Walker stated she will check on the status of the waiver request for the bounds.

High Oaks IV: Ms. Walker questioned whether the board would do a full release on that piece of Millbrook Avenue or a partial reduction. She is not sure what Mr. Walsh wants. She thinks he wants the pump station accepted, but not the street; however, these two items go hand in hand. Mr. Conroy asked Ms. Walker to send a letter asking Mr. Walsh if he wants a total bond release, a partial reduction or do nothing at this time. Mr. Forsberg suggested she send it from both the board and herself.

Spring Town Meeting Articles: Mr. Johnson gave the board four draft articles. Mr. Conroy asked if the Selectmen are sponsoring these and Mr. Johnson stated no. Ms. Walker stated one is a zoning article and she had asked the Selectmen's secretary about it and was told by her that the Planning Board has to be the one to do it. Mr. Conroy stated he checked with Cindy and she didn't say that to him. Mr. Forsberg asked if Jack Mee can sponsor them and Mr. Conroy stated it can be any committee. Mr. Johnson stated disagreed. He stated that the ZBA and Jack Mee have a problem with non-conforming situations. The zoning article will help avoid "McMansions".

Mr. Conroy asked that the zoning articles be put on our January 20th agenda and asked that the people who want these come in and explain them to us.

Regarding the flood plain map, Ms. Walker stated that FEMA had requested these changes be done. Ms. Walker asked if she should formally write up the changes and Mr. Conroy stated yes. He asked her to send a letter to everyone under his signature.

Margaret Walker and Kate Delaney left at 10:35 p.m.

The board discussed the Planner's evaluation with him. Attached is the checklist that the board discussed with the Planner.

The board adjourned at 11:30 p.m.

Respectfully submitted,

John Murtagh, Clerk

Accepted 1/20/11