

WALPOLE PLANNING BOARD MINUTES OF OCTOBER 21, 2010

A regular meeting of the Town of Walpole Planning Board was held on Thursday, October 21, 2010 in the Main Meeting Room at Town Hall. The following members were present: John Conroy, Chairman; Edward Forsberg, Vice Chairman; John Murtagh, Clerk; Richard Mazzocca, Richard Nottebart, Donald Johnson, Planner; Margaret Walker, Town Engineer.

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

Mr. Mazzocca arrived at 7:07 p.m.

ANR – Shea, 390 West Street: The applicant was represented by Rick Merrikin, Merrikin Engineering. Mr. Conroy noted the frontage is correct. Mr. Merrikin stated this is still under one owner.

Mr. Conroy moved to endorse an ANR plan entitled "West Street ANR Plan of Land in Walpole, MA" dated October 4, 2010 by Merrikin Engineering finding Form A in order and subdivision control not required as per an application submitted by the applicant, Michael Shea, 28 Crosswoods Path, Walpole, MA. The owner's title to the land is derived under deed from Robert C. Sansone dated September 4, 2010 and recorded in Norfolk County Registry of Deeds Book 27043, Page 245. Said property is shown as Assessors' Map 32, Parcel 39, WRPOD 3, within the Flood Plain, Zoning District Industrial. Motion seconded by Mr. Nottebart and voted 4-0-0.

Legacy Lane Bond: Mr. Conroy asked what is going on with the acceptance of this bond. Mr. Johnson stated we don't have a bond form in place; therefore, he checked the format of the insurance bond submitted by the McPhee's with town counsel. Mr. McPhee stated the insurance company wants the agreement to be between them and the bonding company; however, town counsel wants it between all three, which includes the town. Mr. Johnson stated the bond was okay according to counsel, but the agreement was not. The applicant asked the board to wait for Mr. Macchi to arrive.

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

Mr. Conroy asked Mr. Johnson to send out what is going on to the entire board. Mr. Johnson stated that town counsel wanted an agreement in addition to the bond similar to Toll Bros. Mr. Conroy stated we have never signed a bond since he has been here. Mr. Johnson stated this is the first bond he has seen since he has been here. Mr. Conroy stated he wants a copy of everything submitted to date.

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Berkeley Drive Final Bond Release: Ms. Walker stated she gave the board a copy of her punch list of remaining items and emailed the same to John Hasenjaeger. Mr. Conroy asked if she gave Mr. Hasenjaeger a drop dead date and Ms. Walker stated she didn't know she needed to. Mr. Conroy asked Ms. Walker to let Mr. Hasenjaeger know the dates for town meeting and the cut-off dates they need to go by.

Commerford's Corner: Mr. Conroy asked the planner to do the modification decision and file it.

Hollowdale Farm: Ms. Walker stated if they pave on Saturday, she has someone who can go out there. She has spoken with Mr. Delapa and they are almost finished with the binder. They will either ask for a bond reduction or a release, depending on the plans. Mr. Johnson stated he has taken pictures.

Legacy Lane: Mr. Conroy asked if the bond has been checked and Mr. Johnson stated yes. Mr. Conroy moved to accept the bond in the amount of \$68,000 which was received as a Bank of America Cashier's Check No. 2109941 dated October 21, 2010 payable to the Town of Walpole or Rosemarie McPhee. Motion seconded by Mr. Forsberg and voted 5-0-0.

Mr. Conroy moved to release the Form F covenant for Lots 1, 2, and 3 for Legacy Lane as per a Form I Release of Covenant in consideration of the provision of an alternative performance guarantee to secure the performance of the construction of ways and installation of municipal services required by the covenant dated April 1, 2010 and recorded in Norfolk Registry of Deeds, Book 27589, Page 466 for the lots shown on a plan entitled "Definitive Subdivision Plan "Legacy Lane" Walpole, MA drawn by Dunn McKenzie, dated October 7, 2009 last amended January 14, 2010 and owned by Gary and Rosemarie McPhee and recorded with said Registry of Deeds, Plan Book 599, page 35. Motion seconded by Mr. Nottbart and voted 5-0-0.

Pinebrook Estates: Mr. Conroy noted receipt of a memo dated October 20, 2010 from the Selectmen stating that at their meeting of October 19, 2010, the Board of Selectmen voted to approve the settlement and release agreement and agreement for disposition of Bank Passbook Account Number 01-00-016508 for the Pinebrook Estates subdivision and to authorize the Chairman to sign said agreement.

Gulla, 173 Mylod Street: Mr. Forsberg stated that he noticed a public hearing scheduled for October 27th with the Zoning Board stating that Mr. Gulla is seeking a variance to allow minimum side yard setback of 40' to 12.6' at closest and minimum front yard setback of 50' to 6.3 feet at closest. He questioned how he can do that if he hasn't completed the site plan as approved by the Planning Board. He was told they want to demolish the house and rebuild it closer to the property line. He questioned whether or not the Board should send a letter to the Zoning Board.

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Mr. Conroy stated they can get their approval for this, but they would have to come back to us before doing anything as this would be a modification to a site plan. Mr. Forsberg asked how much time is left before the site plan approval lapses and the Mr. Johnson stated 2-1/2 years. Mr. Murtagh stated he feels the site is far from finished.

Mr. Forsberg asked the planner to send a letter to the Zoning Board informing them there is an open site plan. He also asked they be given a copy of our decision and case number.

Beckett's, Main Street: Mr. Conroy read the amended decision as filed with the town clerk and forwarded to the Board of Selectmen.

7:40 p.m. Walpole Park South VIII Realty Trust Special Permit, Case No. 10-6 Continued Hearing and Site Plan Approval, Case No. 10-7 Continued Hearing: The applicant was represented by Philip Macchi, II and Dan Merrikin. Mr. Macchi stated they would like to request that the Board act on the Site Plan Approval and Impervious Cover Special Permit only. He stated that Mr. Johnson has received names of companies to perform a peer review, but as yet the Board has not picked anyone. The special permit rests on that review; therefore, they are requesting that nothing further be done until that peer review has been received and reviewed. Mr. Conroy asked if they want to hold the special permit and proceed with the site plan approval and Mr. Macchi stated yes as the Board needs to pick the consultant. They have no additional information to add tonight on the special permit as everything is subject to that peer review. He granted the board an extension of time up to November 30, 2010.

Mr. Conroy moved to accept an extension of time upon which to take action on the special permit up to and including November 30, 2010. Motion seconded by Mr. Nottebart and voted 5-0-0. Mr. Conroy continued this hearing to November 18, 2010 at 7:45 P.M.

Mr. Johnson stated three peer review proposals have been received: Cambridge Environmental at a cost not to exceed \$6500; The Isosceles Group for a lump sum fee of \$1200; Environmental Health & Engineering at an estimated cost of \$9,850. Mr. Conroy asked who is the most qualified. Mr. Johnson stated he feels Cambridge Environmental because of their involvement with risk assessment. Mr. Murtagh asked if there would be any conflict to hire them. Mr. Johnson stated he got two names from Ray Johnson. Mr. Murtagh asked if it is possible to ask Ray Johnson for a referral. Mr. Nottebart asked Mr. Macchi if this is the first time he has seen the letters from the three companies and he stated yes. Mr. Nottebart stated that the Isosceles Group is the lowest, but it doesn't look like we will get what we want. He stated the board has not done due diligence on this and he is not totally comfortable. Mr. Conroy asked the town planner if he did a comparison and Mr. Johnson stated no. Mr. Mazzocca asked if any of the three jumped out as being better and Mr. Johnson stated Cambridge Environmental appeared to be more specific. Mr. Mazzocca stated they do seem to be more detailed.

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Mr. Conroy asked if anyone has a preference and Mr. Mazzocca stated Cambridge Environmental seems to provide more detail; Mr. Forsberg, Mr. Nottebart and Mr. Murtagh agreed with Mr. Mazzocca.

Mr. Conroy moved to go with Cambridge Environmental. Motion seconded by Mr. Mazzocca and voted 5-0-0. Mr. Macchi stated he will get the board a check tomorrow in the amount of \$6500. Mr. Conroy asked the planner to send a thank you to the other two companies.

Mr. Conroy stated we are going to concentrate on the site plan approval tonight and the impervious cover special permit; however, we can't finish until both hearings are completed. Mr. Macchi stated that the impervious cover portion allows the site plan. Mr. Merrikin stated he has made a few minor changes to the plan. He checked with the Trails Organization regarding access to Pine Street and they drafted a license to negotiate with the Trails Committee. He has given Mr. Johnson a copy of this showing three potentials for trail access, but because of the liability on the part of Walpole Park South, he is not sure how the board wants to deal with this. They are willing to enter into a licensed agreement, but they are not sure if the Trails Committee is. Mr. Merrikin presented the three options to the board for discussion. Mr. Conroy asked which one would work the best. Mr. Macchi stated he feels the best one is the one that is not on the property that is before the board tonight. Mr. Forsberg asked if it avoids the lot completely and Mr. Macchi stated yes; however, he doesn't want an answer tonight, but would like Mr. Johnson to contact the Trails people and take care of this separately from the hearing process. Mr. Johnson stated he will contact Donnell Murphy and the Trails group. Mr. Forsberg stated he would like these people to come into the next MPIC meeting. Mr. Forsberg asked who would actually do the agreement and Mr. Johnson stated it would probably be the Bay Circuit Trail. Mr. Macchi stated they have some liability issues they want to discuss. This is a discussion item, but has nothing to do with the site plan.

Mr. Merrikin stated they made changes according to Ms. Walker's comments. They will add a "no left turn" to the Jersey barrier if DOT will allow them to. Mr. Nottebart asked if there is enough space for someone driving into the parking lot, which could just be a directional sign. Mr. Merrikin stated he doesn't want to use a directory as it will slow people down. Mr. Nottebart asked if the main parking entrance is to the left and Mr. Merrikin stated yes.

Mr. Conroy read new correspondence which was received and Ms. Walker discussed her outstanding issues. She questioned the inter-lot easements and Mr. Macchi stated he will record them at the end of this process. Mr. Johnson stated that could be a condition of approval. Mr. Macchi stated that recording an easement is not difficult; removing it is. Mr. Merrikin stated they are going to abandon the old easement. Mr. Murtagh asked if they have finalized the line between Area 2 and Area 3.

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Mr. Merrikin asked what he means by “finalized”. Mr. Murtagh asked if they can pinpoint it and is it all done by survey. He stated that Area 2 and 4 are different and he thinks they may have to re-do the site plan to focus on Area 3. He is not against the building. Mr. Merrikin stated that no hazardous material can be used in Area 2. Mr. Johnson stated without the special permit, nothing can be used in Area 3 either. Mr. Murtagh asked without a variance, what can go in the building. Mr. Macchi stated the uses are different and more strict in Area 2 than Area 3. Mr. Murtagh asked if there is room to push the building back. Mr. Merrikin stated no because there is a loading area in the back; 110’ is tight; 120-130’ is preferred. Mr. Murtagh stated he doesn’t want to see a big ugly warehouse. Mr. Merrikin feels it will look nice. It will basically be an office/warehouse mix. They are not building a strip mall. Mr. Murtagh stated this is a prime location. Mr. Merrikin stated it is in an area with industrial uses. If retail use becomes more prominent, Mr. Murphy may change this. Mr. Murtagh stated this is not attractive to him. Mr. Murphy could put up a trophy building here. Mr. Merrikin stated that Mr. Murphy is happy with the look of the building. Mr. Nottebart stated it does fit the look of that neighborhood. Mr. Mazzocca thinks it fits. Mr. Merrikin stated that maybe 10-20 years from now it will be more of a retail area. Mr. Mazzocca feels we need to go by what the Sewer and Water dictates. This is their area.

Mr. Merrikin stated that office uses are not a high priority right now. They are also going to re-petition for the Area 2 change. He will market to what is out there. It is not a Sewer and Water Committee issue, it is a Zoning issue. Mr. Mazzocca stated it is in the WRPOD and feels that Sewer and Water are elected to run that. Mr. Macchi stated this is between the Planning Board and Board of Health according to our bylaw. Mr. Merrikin stated they have storm water management systems that exceed State standards. There is no risk or threat here. The use is allowed. Mr. Mazzocca asked why not write into the agreement this end of the building will be for office uses only. Mr. Merrikin stated because there are warehouse uses that don’t require storage of hazardous materials. Mr. Macchi stated they have met the specific criteria put forth in Section 12. Mr. Merrikin stated they are talking about substances that don’t represent a threat to the drinking water supply. There may be no hazardous uses proposed. Mr. Macchi stated they have to get the building up before they can lease it. Mr. Merrikin stated it is too big of a building to lease to only one tenant. Mr. Forsberg stated he is comfortable that the building will not be occupied until the Board of Health and Fire Department both sign off. The problem is if one tenant is in both Area 2 and Area 3, there would be not control over it. Mr. Macchi stated this could be conditioned to prevent that. Mr. Forsberg asked what about a solid wall to separate the two areas; then, there would be no issue. Mr. Merrikin stated he can explore that with Mr. Murphy. They will look at this as if there are no hazardous materials because there is a real possibility this permit isn’t granted for hazardous materials. He will talk to Mr. Murphy. Mr. Johnson asked if he could bring this up before November 18th. Mr. Merrikin stated absolutely. Mr. Murtagh feels they should have consulted already with the Sewer and Water Department.

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Mr. Merrikin stated that when the review is done they will go to the Sewer and Water Commission and Board of Health. It is premature to go now. Mr. Murtagh stated he wants things done properly. Mr. Merrikin stated they will do that.

Mr. Nottebart stated his question is regarding the small section they are concerned about. How many other buildings in town are like this. Mr. Merrikin stated there are several throughout the town. Mr. Conroy stated we did the site plans on those buildings, but not the special permits. Mr. Nottebart questioned if there have been buildings permitted in the aquifer previously and Mr. Merrikin stated yes, even in Area 1. Mr. Macchi stated that if everything wasn't put together, they would be before the Zoning Board after the building was built for the special permits.

Mr. Conroy read other correspondence that was received, including the Zoning Board approval, Land Disturbance Permit from the Conservation Commission, and a memo from the Sewer and Water Commission.

Kevin Muti, Chairman of the Sewer and Water Commission: stated they have been at this now for about a year. He doesn't disagree with building a building, but not in Area 2. He questioned why they can't re-engineer this and make it fit in Area 3. He doesn't see why they can't do that – they just need to reduce their square footage. With regard to special permits, they granted them for Walpole Park South many times and look at what they are dealing with now – contamination. You could be dealing with hazardous waste if this goes through. They are trying to prevent the histories of the past. If something is already built in Area 1, it is done. We don't want to go backwards.

Mr. Muti stated that the Sewer and Water Commission have not seen comments or the plan yet, but it is on their agenda for Monday night. They don't have a plan before them though. To say it is not part of the Sewer and Water Commission's charge to look at this is wrong on Mr. Macchi's part. It is a courtesy to let Sewer and Water look at this. Right now, Sewer and Water is opposed to this, but they haven't seen anything. He doesn't think they are opposed to having a building in Area 3 and leaving Area 2 alone. There should be a compromise to put the building in Area 3 and leave Area 2 alone. He thinks the Sewer and Water Commission would be amicable to dealing with a building in Area 3 – no guarantees, but he thinks so. He is going in and suggest they look at this strictly from Area 3 and they allow them to go forward with the concept of putting the building in Area 3, not Area 2. It should be a win-win for everyone.

Mr. Macchi stated he didn't know about Monday's meeting, but he will be happy to show up. All plans were distributed according to the Zoning Bylaw, but thirty-five days have past. Regarding alleged contamination, it has been an expensive situation paid for by Mr. Murphy and has been going on for five years. It is now ready to be closed out with no contamination found. He would continue tonight to let the board hear from Ray Johnson if they want. Mr. Merrikin stated a building is better than having nothing on the site in Area 2. It is also cleaner than most everything else.

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He will ask to continue this hearing and they will meet with the Sewer and Water Commission, but again there is nothing magical about this line. It is a line on a piece of paper. There is nothing scientific about the line. He hopes they can work it out with Sewer and Water.

Bill Hamilton, South Walpole: stated he was there when the lines were drawn by IEP. DEP and the secretary of Environmental Affairs have zones 1, 2, and 3. The town made a big concession in the aquifer protection. Area 1 is the same as Zone 1; Area 2 can become Area 1 if wells are put there. Area 3 and Area 2 are what we have for Zone 2. Area 2 was only to be residential, not commercial. This should be Residence A. It was conceded to make it Area 3 so buildings could be done. That is enough. All of Walpole Park South was Residence A. This is the last place we can have wells. This is a very precious area. Town Meeting said buy it and the Selectmen sent it back for another vote and it was turned down. They have made past mistakes and shouldn't do more. If they have to go to MWRA, it will be an expensive proposal. The estimate could be as much as \$50 million dollars. Mr. Merrikin stated they are not connecting to MWRA. Walpole has plenty of water. DEP allows commercial development in Zone 2 with certain restrictions and these are listed in our bylaw. He stated they meet the criteria and guidelines. You can't put a well there. You are within 100-200' of Route 1. This is a subject of a lot of controversy. Mr. Muti stated you are within 200' of School Meadow Brook. We are the sole source aquifer as designated by the EPA.

Mr. Merrikin stated they have been studying this for five years and there is no information showing that Walpole Park South has contaminated anything. There is no remediation going on in Walpole Park South. They will continue to report to the town twice a year. Mr. Murtagh asked if Minuteman up the street can contaminate this. Mr. Merrikin stated he doesn't know; he just knows the park is not contaminating the water.

Mr. Muti stated they are asking for a delay in the site plan process. They never got the plan. Mr. Conroy stated you got the plan on August 4 or thereabouts. Mr. Conroy asked Mr. Muti if he was saying they never got a copy and are you saying you never saw them. Mr. Muti stated they never saw the plans.

Mr. Macchi stated that every building and special permit at Walpole Park South has been opposed to by the Sewer and Water Commission.

Mr. Macchi granted an extension of time through November 30 for the site plan and impervious cover. Mr. Conroy moved to accept an extension of time up to and including November 30, 2010 to take action on the site plan and impervious cover special permit. Motion seconded by Mr. Murtagh and voted 5-0-0.

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Mr. Hamilton stated that contamination is a difficult thing to deal with. Mr. Conroy stated you said you can't prove anything.

Mr. Murtagh stated he expects a good faith effort on the part of Sewer and Water to work with the applicant. Mr. Muti stated they are not against business.

Mr. Conroy continued this hearing to November 18, 2010 at 7:46 p.m.

It was moved, seconded and voted to adjourn. The meeting adjourned at 9:15 p.m.

Respectfully submitted,

John Murtagh, Clerk

Approved and Accepted: 11/4/10