

WALPOLE PLANNING BOARD MINUTES OF FEBRUARY 6, 2014

A regular meeting of the Walpole Planning Board was held on Thursday, February 6, 2014 at 7:00 p.m. in the Main Meeting Room at Town Hall. The following members were present: Richard Nottebart, Chairman; Edward Forsberg, Vice Chairman; John Murtagh, Clerk; John Conroy (7:05 p.m.); Richard Mazzocca, Margaret Walker, Town Clerk; and Ilana Quirk, Town Counsel.

Mr. Nottebart opened the meeting at 7:03 p.m.

Minutes: Mr. Nottebart moved to accept the minutes of December 5, 2013, December 19, 2013 and January 9, 2014. Motion seconded by Mr. Murtagh and voted 4-0-0.

Mr. Conroy arrived at 7:04 p.m.

7:05 p.m. John Coakley discussion re: Oakwood Estates: Mr. Nottebart read a letter dated January 24, 2014 from John Coakley, 22 Deborah Drive, requesting time on the Planning Board's agenda to discuss Shaker Lane house placement and engineering for the water gulley. Mr. Nottebart informed Mr. Coakley he would have ten minutes to make his presentation to the board. Mr. Coakley stated he is here because the placement of the next house to be built on Shaker Lane is crucial to his property. Ms. Walker stated the swale that is built will stay in place. Mr. Coakley stated it doesn't go to the retention basin and Ms. Walker stated it does. She further stated she will talk to Jack Mee if the board instructs her. Mr. Murtagh stated this could be serious. Ms. Walker stated that the water would need to be pumped into the basin, not the gulley. She will also write to the Board of Health because of the leaching field. Mr. Coakley stated his yard is a lot better since this area was built up, but this could crush him. He has had his yard graded three times. Ms. Walker stated there is a condition in either the subdivision approval or site plan approval that says there is a person to contact in case of a problem. Mr. Conroy asked if this subdivision is still under bonding and Ms. Walker stated yes. Mr. Conroy asked if they disturbed what was on the plan and Ms. Walker stated not yet.

Mr. Nottebart moved that Ms. Walker send a letter to Mr. Mee and the Board of Health to make them aware of the issues and to caution them to be careful with the placement of the houses and leaching fields. Motion seconded by Mr. Mazzocca and voted 5-0-0. Mr. Nottebart asked her to copy the Planning Board. Mr. Mazzocca moved Ms. Walker send a letter to the contractor to let them know what was discussed tonight and to make them aware of possible issues. Motion seconded by Mr. Murtagh and voted 5-0-0.

7:25 p.m. Plimptonville, Case No. 12-7 Request for Modification Determination: The applicant, John Marini, was represented by Atty. Paul Schneiders, 779 Washington Street, Canton, MA who stated that in the Spring of 2013 an abutter was before the board asking for additional landscaping between Tilton Court and himself. All the units have been sold and Mr. Marini would like to accommodate the abutters by doubling the amount of landscaping and making the trees bigger and higher. He is asking the board consider this a minor modification.

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Mr. Nottebart asked if the plan before the board tonight is the exact plan as before and Mr. Marini stated it is the same and that nothing has changed on it. He previously hired a professional landscaper and this is the plan they came up with. The new trees will be 15-17' high and there will be 125 shrubs there and by Lubold's property. Mr. Nottebart asked if this will affect Ms. Rubini and Mr. Marini stated she will also get more shrubs. Mr. Murtagh stated that Cosmos is the best and if the neighbors are on board, certainly we are. He feels this should be considered a minor modification. Mr. Forsberg agrees. Mr. Conroy feels it is minor if the neighbors that are the direct abutters agree.

Charlie Carr, 236 Plimpton Street stated he is in favor of the plan before the board tonight which had been previously withdrawn and he is a direct abutter. Mr. Conroy asked this be in writing from both both abutters. Mr. Carr, 236 Plimpton Street and Mr. Cieplik, 224 Plimpton Street submitted a letter at the meeting stating they are satisfied with what is being proposed.

Mr. Murtagh moved to determine this to be a minor modification. Motion seconded by Mr. Mazzocca and voted 5-0-0. Mr. Nottebart stated the board will sign the modification at the next meeting. Atty. Schneiders stated he will get the plans into the office next week and agrees with the February 20th signing date.

7:47 p.m. High Oaks IV Modification Continued Public Hearing: The applicant was represented by John Anderson, Anderson & Associates and Atty. Timothy McGahane. Atty. McGahane stated that at the last meeting one of the proposals was to determine the position of the current Board of Selectmen with respect to the in-kind payment. He understands that \$200,000 is also acceptable as agreed by the past Board of Selectmen and present Board of Selectmen. Atty. Quirk presented a recap stating the ball field was to be completed no later than the completion of Lester Gray Drive. It looks cut in, but is not yet finished. Ms. Walker stated it is at binder grade. Ms. Quirk stated that in exchange for the ball field, the board gave a waiver for Lady Slipper Drive to be longer than what was allowed. The issue that brings the board back this evening is the recommendation by the Board of Selectmen. She received a package from the chairman that she hadn't previously seen and went over the correspondence received from the Board of Selectmen. The issue before the board is whether or not to allow the modification as requested by the developer that deals with restrictions on Lot 115. Mr. Nottebart stated he is satisfied. Mr. Murtagh agrees we should move forward. Mr. Forsberg stated he is disappointed we didn't meet with the Board of Selectmen and he feels the town is leaving a lot on the table. Nothing has been brought to him to make him change his mind. Mr. Mazzocca asked how we address the quality of the home. Atty. Quirk stated there was a discussion before and there is a design restriction on the overall property that Atty. McGahane sent to her. It doesn't have a minimum size, but it requires Walsh has to approve the design.

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In the event all the lots are sold, then 2/3 of the other lot holders can approve this as well. Atty. McGahane stated his client has a long history in Walpole developing subdivisions. He builds what is in character in those neighborhoods, which is why there is a restrictive covenant and why there isn't much of a concern.

Mr. Mazzocca stated it was an issue that was previously raised by an abutter. Atty. McGahane stated it shouldn't be an issue. Mr. Mazzocca stated then we should put it in our decision to protect the neighbors. He asked if there is something in writing that says this has to be consistent with the other homes in the neighborhood. Atty. McGahane stated no. There is no square footage listed anywhere, but the restrictive covenant states what is in harmony with what is there. There is nothing anyone has presented. Mr. Mazzocca asked could someone just answer the question. Atty. Quirk stated the restrictive covenant says nothing can be added without advance approval, but there is nothing that states the size of the house. Mr. Forsberg stated when he built his house, there was a Schedule A. He asked if the people in the High Oaks subdivision had to sign a Schedule A and if so does it carry over to Toll. Atty. Quirk stated there is a restrictive covenant which includes in part satellite dishes, landscaping, grade of the lot, business signs and has a thirty day approval process. Atty. McGahane stated the Schedule A is now incorporated into the restrictive covenant. Mr. Forsberg asked if it gets carried over to Toll Bros and Atty. McGahane stated yes. Mr. Conroy stated the covenant isn't that restrictive and he was told it is only enforceable if everyone agrees. If one person says no, it falls apart. By the time someone goes to buy this lot, he is not sure the covenant will hold up. Atty. Quirk stated it is owned by the developer. Atty. McGahane stated the homeowners in the neighborhood will benefit from this. Mr. Conroy stated it is a paper tiger and is not enforceable. Atty. McGahane stated he has nothing from anyone stating that anything they have done is not acceptable to the neighbors. Mr. Conroy stated Toll Bros. will probably buy this. He agrees with Mr. Mazzocca and he also would like to set the size of the house and the garage in the decision. Mr. Mazzocca agreed with that. Atty. Quirk stated that right now it says Lot 115 says only one single family house, so the board could put down the size of the house. Mr. Mazzocca stated he would like the decision to state a minimum and maximum size. Mr. Forsberg stated he would like it no smaller than the smallest house in the subdivision currently and no bigger than the biggest. Mr. Conroy suggested it be 4,000 s.f. with a three-car garage. Mr. Nottebart stated that the neighbors are more concerned because Walsh sold the subdivision off and he agrees with Mr. Mazzocca and Mr. Conroy and agrees this should be part of our decision.

Atty. McGahane stated at the first meeting there were neighbors that were going to hire an attorney and tonight there is no one here. He doesn't think there is a need to challenge what is in the subdivision. Mr. Murtagh asked why they want to subdivide some of Lot 115. Atty. McGahane stated it will benefit some of the neighbors who live there and there will only be one buildable lot. Atty. Quirk stated the town administrator had concerns that maybe some of the neighbors would like some additional land, but no additional lot would be within the subdivision.

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Atty. Quirk suggested the following language: Lot 115 may be used for a single family dwelling with a minimum s.f. of 4,500 s.f. and a three car garage. Mr. Murtagh stated we should make it 4500 s.f. and a three car garage. Mr. Anderson stated that 70'x40' is what is a standard house that Toll builds.

Atty. McGahane stated he doesn't understand the board's problem with what Walsh is building. He doesn't think there should be any minimum requirements. Thirty-five years is a good track record and it is unlikely it will change. He asked who will determine the square footage and asked what if the basement is finished. Atty. Quirk stated the definition of living area will be according to the Mass Building Code. Atty. McGahane asked why not just say harmonious with the neighborhood. Mr. Nottebart stated he agrees with not less than 4,500 s.f. and a three car garage and asked Atty. Quirk to write that in her decision. He asked Mr. Mazzocca if he wants a "top" range and Mr. Mazzocca stated he is okay with what has been said. Atty. McGahane stated it appears the board picked some arbitrary numbers and he feels that it should just say they should keep it in harmony with what's up there now. Mr. Conroy stated he doesn't feel this is arbitrary. Atty. McGahane stated there is nothing up there that requires a certain square footage. The board has just seemed to pick some numbers. Mr. Conroy stated it is a nice deal to have a \$200,000 lot up there. He is trying to keep this consistent. Mr. Anderson asked if the garage is included in the living space and Mr. Conroy stated no, 4,500 s.f. plus garages. Mr. Mazzocca asked if there is a concern that someone would put in a house less than 4,500 s.f. and Atty. McGahane stated they would put up a house that is in harmony with the neighborhood. Mr. Mazzocca stated Atty. McGahane knows someone will buy the lot. We are talking about who buys the property and builds on it. Atty. McGahane stated he is not aware of the square footage of the other houses in the neighborhood. Mr. Mazzocca stated we can find out and address this at the next meeting. Mr. Nottebart asked Atty. McGahane why does he want to defend the fact that we want to put a restriction on this. No one thought Walsh would sell out this subdivision. Atty. McGahane stated his only issue is Lot 115 and there is not an instance where there is another restrictive covenant. He feels the board should rely on his client's past practice. Mr. Murtagh stated if you don't meet the board half way, this could go down in defeat. Atty. McGahane stated you have the neighborhood restriction and Mr. Murtagh stated that is not enough. Mr. Nottebart stated everyone pretty much agrees with Mr. Mazzocca and asked if we go ahead with the 4,500 s.f. and three car garage, would Atty. McGahane agree. Atty. Quirk stated if the board conditions Lot 115 to a minimum living area of 4,500 s.f. and a three car garage and the developer doesn't agree, he could appeal. The deal would go away as the developer doesn't agree. Mr. Conroy stated we are not in negotiations on the covenant. This is our parameter. Atty. McGahane stated he had discussed this with Atty. Quirk. Atty. Quirk stated the board had it also. Mr. Conroy stated the Board of Selectmen set the \$200,000 price, which is a bargain. He is stuck on 1) how is it we are fulfilling the Lady Slipper Drive waiver. Atty. Quirk stated you are amending the Lady Slipper Drive waiver. Mr. Conroy stated 2) the town was suppose to acquire the property at the conclusion of this, but it hasn't been said how that can be done. Atty. Quirk stated it needs to be in writing to be enforceable.

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There were a number of lots in the right of way and Lot 115. When street acceptance happens, this list is to be deeded to the town. That is a reflection of the developer, but it is not binding to convey to the town.

Mr. Conroy stated he would like that in writing from Atty. Quirk so that it shows up on a title search. Right now, it is not in writing. He doesn't want a title problem down the road. Atty. Quirk stated that what you really want is that there is not an obligation under this to convey.

There were no further questions. Atty. Quirk checked the extension of time as submitted by Atty. McGahane with regard to proper form. Mr. Nottebart moved to extend to Jack Walsh an extension of time up to and including March 31, 2014 plus an additional fourteen days to file the decision. Motion seconded by Mr. Mazzocca and voted 5-0-0. Mr. Nottebart moved to continue this hearing to February 20, 2014 at 7:45 p.m. in the Main Meeting Room at town hall. Motion seconded by Mr. Mazzocca and voted 5-0-0. Atty. Quirk stated the extension of time needs to be filed with the Town Clerk on Friday or as soon as possible. She further stated she will make adjustments to the decision that was originally forwarded to the board on December 5 and will re-send it to the board.

Rules and Regulations: Mr. Nottebart asked town counsel if a 3-2 vote would carry on a subdivision modification and she stated yes. Mr. Nottebart stated Ms. Mercandetti is working on the board's Rules and Regulations. Atty. Quirk stated the drainage calculations need to be clarified and should also be added to the board's Rules and Regulations. Further, this has been a past issue on 40-B's, but she has not been asked to do anything as yet. Mr. Nottebart stated Mr. Boynton is concerned. Atty. Quirk stated she raised this with the planner six years ago. Mr. Nottebart stated he feels we should do a workshop with town counsel. All members could submit two or three questions and she could pick a couple for us to work on.

Tall Pines: Atty. Quirk stated she is reviewing the covenant and easements, but is not finished yet. She stated the board can move forward by 1) endorsing the definitive plan with the mistake on it; 2) hold it in escrow; 3) do the ANR; 4) correct the definitive plan; 5) require the plan and ANR be recorded at the same time.

Atty. Gladstone had sent a letter to Ms. Quirk in the middle of January. She stated she will check to see if she has it. Mr. Nottebart placed this on the February 20, 2014 agenda.

8:55 p.m. Prime Acura Continued Hearing, Case No. 13-9: Mr. Nottebart moved to continue this public hearing to March 6, 2014 at 7:30 p.m. as per request of Matt McGovern. Motion seconded by Mr. Forsberg and voted 5-0-0.

Toll Residents' Hearing for Phases 3, 4, 5: Mr. Nottebart moved to allow the applicant to withdraw without prejudice per request of Atty. Philip Macchi. Motion seconded by Mr. Murtagh and voted 5-0-0.

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High Oaks IV Bond Reduction: Ms. Walker stated the board needs to continue this request out because of weather. It was agreed to carry it on every agenda until it is done because there could be a break in the weather.

High Oaks Street Acceptance: Mr. Nottebart read Ms. Walker's outstanding issues. She stated this can probably go forward for a residents' hearing on April 17, 2014, but she will let us know as the time draws nearer.

It was moved, seconded and voted to adjourn. The meeting adjourned at 9:50 p.m.

Respectfully submitted,

John Murtagh, Clerk

Minutes Approved 2/20/14