

WALPOLE PLANNING BOARD MINUTES OF OCTOBER 10, 2013

A special meeting of the Planning Board was held on Thursday, October 10, 2013 at 7:00 p.m. in Room 112 at Town Hall. The following members were present: Richard Nottebart, Chairman; Edward Forsberg, Vice Chairman; John Murtagh, Clerk; John Conroy, (7:05 p.m.); Margaret Walker, Town Engineer; Ilana Quirk, Town Counsel.

Mr. Nottebart opened the meeting at 7:05 p.m. to discuss Tall Pines Subdivision.

Atty. Robert Mangiaratti, Quincy, MA stated he appreciates the attention the board is giving the Tall Pines project and feels they are demonstrating good faith and earnestness by coming in for this special meeting. He feels they have resolved all the issues raised by both town counsel and the town engineer. The applicant's entire team is present at this meeting and he think they have done everything they should and asks the board to vote on this. They are ready to address any concerns and questions.

Mr. Nottebart asked that all questions and comments go through the chair. He turned the meeting over to town counsel.

Atty. Quirk stated she had asked to look at the submitted material and she forwarded an opinion to the Planning Board on October 2, 2013. She identified her issues, one of which was Lot 28, and she also looked at the most recently revised plan dated September 26, 2013. She asked the developer to verify the area of Lot 28. She further stated that the town engineer has assured her that her office could have verified what the applicant's engineer submitted, but the AutoCAD in her office is not working. Atty. Quirk stated her other issue is the front yard setback for Lot 28, which has an Old Post Road address. The house faces Old Post Road now, but when Lot 28 becomes a corner lot, the present driveway to Old Post Road will go away and it will then be on Saboites Way. She feels this is a 911 issue as there can only be one official address although we could ask the applicant to put a marker in place. Ms. Walker stated she will speak to the 911 person to find out if they would be willing to maintain the Old Post Road address even though the driveway goes to the subdivision roadway. Atty. Quirk also discussed the Summit Street ancient way. She had previously agreed with the town engineer's recommendation asking for slope and temporary easements. She has received certification from Atty. Mark Gladstone, but asks that the letters received today be certified. She asked if the easements have been recorded and if so the certifications are okay; if not, that would need to be updated with date of recording.

Mr. Nottebart asked for input from the applicant. Atty. Mangiaretti stated he takes no issue with town counsel's report or her requests. The easements have not been recorded, and he doesn't object to certifying the date of recording when done. Regarding the front yard setbacks, he understands it is an Old Post Road address and doesn't think there needs to be a sign in the front of Lot 28 as the setback is only about 30'. He respectfully suggests that the issue of frontage has been satisfactorily resolved. He also asked the board to consider taking the testimony of the survey that the second certification is the accurate one.

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Paul DeSimone, Land Surveyor, stated he did the plan and had made a mistake, but when he brought it to land court, they didn't care as they don't decree on the area. He told them that would be changed as they would be taking the corner out and Lot 28 will have a different number. The roundings have been in and then out and the area of 21,043 s.f. is the number decreed on the boundaries. That number will change when the corner roundings come out. Mr. Forsberg stated the plan dated 4/15/13 showed that amount, so where is the mistake. Mr. DeSimone stated the final plan had the correct s.f. Mr. Forsberg questioned the frontage and Mr. DeSimone explained it to him. Atty. Mangiaratti submitted a newer plot plan showing the setbacks and pointed out that the lot doesn't become more non-conforming. Atty. Quirk stated there needs to be certification of the title and that all the owners and their mortgagees should sign subordination instruments. She recommended that the town engineer investigate that Lot 28 as shown on the plan dated September 25, 2013 conforms to zoning. Ms. Walker has said to her that she would get a letter from the E911 person. Further, she will defer any other non-compliance issues to the town engineer.

Mr. Forsberg stated the frontage would still be on Old Post Road and asked if they can use the easement as frontage from Lot 28 on Old Post Road. He also questioned the roundings and asked if there is a better way. Atty. Quirk deferred to Ms. Walker. Mr. Merrikin stated that this morning Ms. Walker was looking to see if there were zoning issues. Mr. Walker stated she cannot issue an opinion on this, only the Building Inspector can. She wanted the house and the setbacks verified and she sent them to Mr. Mee, Building Inspector. However, he had three plans and all three were different. Mr. Merrikin stated that the front yard setback is 30' and it can only protrude 26' into the setback. This open porch protrudes 27', so it conforms. He feels it meets the requirements based on Mr. DeSimone's plans. Mr. DeSimone stated there are three plans: foundation plan, proposed porch plan, and as as-built. Ms. Walker stated on the plan there is 136' of frontage. When you take the corner roundings off, the side yards will stay the same and the 27.16' porch will still meet the frontage requirements. It is adequate. Ms. Walker stated when part of your frontage is on the corner, you can only take the distance where you start the curve and you can use some measure of it only. Therefore, this meets the requirements. Atty. Quirk questioned the 60 degree question and Ms. Walker explained it compliant as per the Zoning Bylaw. Atty. Quirk stated the September 25 plan was stamped in the appropriate places by a registered engineer and asked if it needs to be done by a PLS also. Ms. Walker stated she believes it does. Mr. Merrikin agreed with Ms. Walker. Mr. Conroy stated it is not an option, it is required by M.G.L. and also Section III.4.a of the Planning Board Rules and Regulations and it should have been done when it was submitted. Mr. Merrikin stated that Sheets 3 and 4 do have a land surveyor stamp. Mr. Conroy stated that the ANR plan dated April 12 shows a different square footage of 20,981. Mr. DeSimone stated that when they did the final plan, the wrong area got on the plan. Mr. Nottebart asked if the ANR plan is wrong and Mr. Merrikin stated yes. Mr. Conroy stated the square footage for Lot 28 isn't even on the plan. Mr. Merrikin stated Lot 28 is not part of the subdivision any more. Mr. Conroy stated but you are using some of the land for the subdivision.

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Atty. Mangiaratti stated town counsel has said she is satisfied at this time. He is sorry there have been mistakes made, but he doesn't think it is worthy for us to say we caught you. They admitted the mistake and they are fixing it. There were errors made. Mr. Conroy stated we have every right to do this and we are not accusing anyone of doing anything. It strikes him odd that the square footage is not on there and he could not approve this plan as presented as we have no idea of the square footage. Mr. Merrikin stated it was on the plan when this was a six lot subdivision, but in order to not make it confusing, we took it out and just used the abutters' name. It is clear that it is a five lot subdivision, but he has no problem putting the square footage back on the plan. Mr. Conroy stated it should be on there and Mr. Merrikin agreed to put it back on. Atty. Quirk stated that since Sheets 3 and 4 are going to be stamped by the land surveyor, they could be revised to show the square footage of Lot 28 and then there would be no confusion. Both Mr. Merrikin and Mr. DeSimone agreed. Mr. Conroy stated but they don't own the lot, so can they do that? Atty. Quirk stated they need the permission of the owner which I assume they do have. It is her opinion that land court rules allow a mistake to be corrected and a new plan presented as long as no lot lines are changed. The board should consider having the AutoCAD done by the town engineer. Mr. DeSimone agrees with town counsel. Mr. Conroy asked if they have permission from the landowner. He stated you have an owner that you are changing her lot and it would have been nice to inform her. Mr. Merrikin asked if he would like a letter and Mr. Conroy stated yes. Mr. Merrikin agreed.

Atty. Quirk feels the land court would allow a correction. They don't care because the square footage was changing and going up. Mr. Conroy asked Mr. DeSimone if he did the final survey with the porch and he stated yes. They built the house then they got a call from the homeowner to add the porch. It was done after the house was built, but before they passed papers on it. Mr. Merrikin stated that Jack Mee said he might have had it in his file and lost it. Mr. Nottebart stated we are very serious about our job. We want to do it right and he is sorry if we are not doing things the way you think we should. He doesn't feel Atty. Mangiaratti has been respectful to us and is trying to ream this through. Mr. Nottebart feels he has been patient with Mr. Fox and Mr. Gladstone by trying to make the problems more understandable and he doesn't think he has been fair in his assessment. Atty. Mangiaratti stated he didn't mean to offend Mr. Nottebart and he apologizes. He recognizes that you are volunteers and here for the good of the town. It is not his intent to be disrespectful. However, as an advocate, it is his job to point out things that are critical to them. He respectfully disagrees that he reamed him out as he feels a responsibility to advocate for his client.

Mr. Murtagh questioned whether or not this conforms and Ms. Walker stated yes by 4'. Mr. Murtagh stated in his opinion Lot 28 meets the requirements. Mr. Forsberg asked if the corner round of the 21, 043 s.f. will be conveyed to the developer or stay under the ownership of Lot 28. Mr. Merrikin stated it will stay under the ownership of Lot 28. Mr. Forsberg asked if that corner rounding can be used as both the square footage of the development and also the rounding. Atty. Quirk stated no; however, with the new change

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in the square footage of the lot area and if that is backed out, they still meet the s.f. requirement. However, this does create assessing issues. This would be in limbo and not assessed. Mr. Conroy stated we had plans in the office dated September 15, 2013 and Rick Merrikin came in and took them back. Atty. Quirk questioned that plans were dropped off in the office on September 16, 2013 and the engineer came in and took them back. Mr. Conroy stated that is correct. She asked if we kept a copy and Mr. Conroy stated yes. He asked if this should show in the title block as a revision and Atty. Quirk stated yes. Mr. Merrikin stated he will do that. Mr. Conroy stated he did some calculations based on the April 15, 2013 plan versus the September 25, 2013 plan and came up with a difference of 354 s.f. and feels this needs to be rectified. Atty. Quirk understands his concern about the discrepancy, but feels the board resolved this issue earlier tonight as Sheets 3 and 4 will be one again and stamped again by both the PE and RLS. Mr. Conroy added everything up and compared them and asks that this be checked out. Mr. DeSimone stated he did check the areas because the road changed. Mr. Nottebart asked that all these issues be addressed and certified and Mr. Merrikin agreed. Mr. DeSimone stated the areas will be correct on the final plan. Mr. Conroy stated that regarding Sheet 5, on the April 16 plan, they had a note regarding visibility and it disappeared and asked if that has been taken care of. Mr. Merrikin stated he had talked to Bob LeBlanc and Maggie Walker who asked that it be removed, so they did. Mr. Conroy questioned the phasing schedule. Mr. Merrikin stated the phasing schedule was done and also the land disturbance permit with the Conservation Commission has been issued. Mr. DeSimone stated he will provide closure sheets to Ms. Walker. Mr. Conroy agreed and questioned the back lot line. Mr. DeSimone stated it will be whatever it shows on the land court plan. Mr. Conroy asked if when Mr. DeSimone fixes it, it will be correct and Mr. DeSimone stated 100% correct.

Atty. Quirk recommended that the board discuss with the applicant that upon approval, if that occurs, that an additional condition would be an entrance as-built plan be submitted to make sure the road is absolutely where it should be. Mr. Merrikin agreed. Mr. Conroy asked if they submitted a development schedule and Mr. Merrikin stated yes. Atty. Quirk read a letter from the Board of Health dated October 8, 2013. She suggested the Planning Board send a quick memo to the Board of Health mentioning the September 25, 2013 plan to confirm they have no issue. Mr. Conroy agreed and stated we need to know the Board of Health has no issues. Mr. Merrikin stated he will talk to them. Mr. Conroy questioned the slope easement and Atty. Quirk stated certification of title and certification that all mortgagees of record have assented to this could be a condition of approval.

Mr. Conroy feels there are some issues that need to be put on the plans, but he has no further comments. His concerns have been addressed, but would like a letter from E911. He feels it is in their court to get all stuff back. Mr. Nottebart asked Ms. Walker what time frame they are looking at after you get the information from Mr. Merrikin and Mr. DeSimone and Ms. Walker stated it shouldn't take too long, but she cannot say if it will

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be six week or six months. Mr. DeSimone stated he will give her the information for the whole subdivision.

Mr. Merrikin stated that the owner of Lot 28, Maria Miles, 412 Old Post Road was present. She stated she was happy with everything. She is here tonight to voice her support with this subdivision.

Atty. Quirk stated we need the following: 1) certification letter dated 10/10/13 from Atty. Mark Gladstone; 2) AutoCAD confirmation of 21,003 s.f. or closure calcs so Ms. Walker can report her findings back to the board; 3) letter from fire department agreeing that Old Post Road is the frontage of the property; 4) two new sheets revising sheets 3 and 4 both stamped by a professional engineer and professional land surveyor; 5) square footage area of Lot 28 will be placed on Sheets 3 and 4 showing 21,003 s.f.; 6) the board is satisfied with the statement from Ms. Miles so there is no need for a letter at this time; 7) plan revisions of September 15 will be put on the revised plan in the appropriate block; 8) the Board of Health will be contacted to make sure they have no issue with the September 25 plan; 9) the applicant agrees there will be an entrance as-built after the roadway is in.

Mr. Nottebart asked for comments from the public.

Anthony Zographos, 382 Old Post Road stated he wants to make sure the land that is Summit Way will be useable again as he hasn't been able to access it and Mr. Merrikin stated it will be.

Atty. Quirk stated more information will be received and we have an October 30, 2013 deadline and is asking for an extension of time. Mr. Merrikin asked her if she has finished her review of the documents and she stated not yet, but her assistant will be back tomorrow and will do so. Mr. Nottebart would like to continue this until November 7 and asked for an extension of time. Atty. Quirk stated she will not be available on November 7th. Mr. Nottebart asked the board if they feel she needs to be there and the board said no. She asked if they want a draft decision and Mr. Nottebart stated yes. Mr. Nottebart asked that the applicant have everything in house by October 24 and Mr. Merrikin agreed. Atty. Gladstone stated the easements will not be on record. Atty. Quirk asked for an update when they do go on record. Atty. Gladstone agreed. Atty. Mangiaratti asked if he can submit information directly to her or through the Planning Board and Atty. Quirk stated both. Mr. Nottebart asked that the emails be limited after October 24 and Atty. Mangiaratti agreed. Mr. Forsberg asked if Ms. Walker's concerns of October 9 were addressed and Mr. Merrikin stated he has all the site distances and they will put that on the plan. Ms. Walker stated that the items in bold print on her comment letter should be included in the decision. Mr. Nottebart if she would go back and red line the ones that have been done and she stated it would be hard to recreate that. Mr. Conroy asked that they cloud the revisions on the plan and Mr. Merrikin stated that would mean there would be clouds on the final plan. Dan Merrikin stated that the final endorsed plan should not

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have clouds on them. The endorsement set will not have the clouds with no revision date. Atty. Mangiaratti asked that there be two sets of plans, one with clouds and one without. Mr. Nottebart stated we will be requesting small plans and PDF's.

Atty. Gladstone granted the board an extension of time on which to take action up to and including November 30, 2013. Atty. Mangiaratti asked if they can see the draft decision and Atty. Quirk stated when she prepares a draft decision she will share it with the developer and attorneys. Atty. Mangiaratti stated he wants to make sure they do everything they need to do and assumes that Ms. Walker will give her the conditions and he won't have to.

Mr. Forsberg moved to accept an extension of time up and including November 30, 2013. Motion seconded by Mr. Murtagh and voted 4-0-0.

Mr. Nottebart continued the hearing to November 7, 2013 at 7:25 p.m. with the stipulation that all information would be submitted and in house by October 24, 2013 at 4:00 p.m. Motion seconded by Mr. Forsberg and voted 4-0-0.

It was moved, seconded and voted to adjourn. The meeting adjourned at 8:40 p.m.

Respectfully submitted,

John Murtagh, Clerk