

WALPOLE PLANNING BOARD MINUTES OF AUGUST 19, 2021

A regular meeting of the Walpole Planning Board was held on Thursday, August 19, 2021 at 7:00 p.m. in the Main Meeting at Town Hall. The following members were present: John Conroy, Chair; John O'Leary, Vice Chair; Catherine Turco-Abate, Clerk; Philip Czachorowski and Sarah Khatib.

Minutes: Mr. Conroy stated that the minutes of May 6, 2021, May 20, 2021, June 17, 2021, June 24, 2021, and July 15, 2021 are presently before the board for a vote. Ms. Khatib asked to hold the minutes of May 6, 2021, May 20, 2021, and June 17, 2021. Mr. Conroy moved to accept the minutes of June 24, 2021 and July 15, 2021. Motion seconded by Mr. Czachorowski and voted 5-0-0.

Olmsted Estates Final Bond Release and Residents' Hearing: Mr. Conroy continued this discussion to September 2, 2021 as Mr. Balduf was not present tonight and Mr. Conroy feels that he needs to be in attendance to answer any questions that may occur.

Tall Pines Bond Update: Mr. Conroy continued this hearing to September 2, 2021 as Mr. Balduf was not present tonight and he has been handling this request.

Master Plan: Mr. Conroy moved to nominate Ms. Abate and Mr. Czachorowski to the Master Plan Steering Committee. Motion seconded by Mr. O'Leary and voted 5-0-0. Mr. O'Leary moved to send a letter to other town boards asking them to choose a representative to the Master Plan Steering Committee. It is requested that the person designated be a member of the committee submitting their name. Motion seconded by Mr. Conroy and voted 5-0-0. Ms. Abate moved to have Kate Delaney coordinate and advertise for the two members at large. Motion seconded by Ms. Khatib and voted 5-0-0.

Bristol Subdivision Continued Hearing: Mr. Conroy read a request from Atty. Jeffrey Tocchio, Hingham, MA, requesting a continuance to the Board's September 16, 2021 meeting. Ms. Khatib asked if there is a point when we say enough. Mr. O'Leary feels there is. Mr. Conroy moved to continue this hearing to September 16, 2021 at 7:05 p.m. as requested. Motion seconded by Mr. Czachorowski and voted 5-0-0.

Planning Board Zoning Article as Reviewed by Town Counsel: Ms. Abate stated she originally brought this article forward to give the Planning Board some power and protection until a bigger solution was put in place. She stated we have no power to request affordable housing when the big projects come before us. Further, because she has never written an article before, she asked for town counsel to review it for suggestions and assistance. Town counsel did review it and only put forth the issues they found with it, but didn't offer any suggestions. As a result of town counsel's response and the lack of time available to revise it, she is making a motion to withdraw it without prejudice. She noted that the discussions that were on Facebook are not the reason she is asking to withdraw. Motion seconded by Mr. O'Leary. Ms. Khatib said thank you as she feels we should all be working to the same goal. Motion voted 5-0-0.

New World Estates Continued Hearing: The applicant was represented by Dan Merrikin, Legacy Engineering, Millis, MA. Mr. Conroy read the comments. Mr. Merrikin stated that he has addressed the

issues presented by Carl Balduf, Town Engineer, and submitted revised plans, which the board has not reviewed yet. The street name accepted by Paul Barry, Deputy Fire Chief, has been revised to Litchfield Way. Mr. O'Leary asked the location of the mailboxes and Mr. Merrikin showed him on the plans. Ms. Abate asked the results of the discussion with the developer about the possibility of reducing the road width and making this a private way, which she feels will make the houses more attractive and keeping within the look of the neighborhood. Mr. Merrikin stated that are not interested in that suggestion, but will make a representation to the board showing that the houses will fit in with the neighborhood, especially the house in the front by the road. He also said that architectural control is not part of subdivision control. Ms. Abate stated she is disappointed with that response. Mr. Czachorowski asked several questions with regard to the drainage, the drainage impacting Morrissey Way and the drainage on Lot 4. He further stated that he agrees with keeping Peach Street looking the same is important and is worried about the drainage basin. Mr. Merrikin explained the infiltration basins. He said the basin is sheltered with a wall and growth and therefore should not stand out. Ms. Khatib asked for an update on the ANR being recorded for Lot 4. Mr. Merrikin stated it will be recorded with the New World subdivision documents when and if they are approved. Ms. Khatib asked if that is an appropriate time frame and Mr. Merrikin stated there is no time frame for recording an ANR plan. She asked if the Conservation Commission has approved this and if so when. Mr. Merrikin stated it was approved by them last Wednesday, August 11, 2021. He stated that the new plan that he dropped off in the Planning Board office shows no major changes. Ms. Khatib asked for pictures of similar storm water basins for the residents to see. Mr. Merrikin stated he will send them to the office along with pictures of basins with grass bottoms. Mr. Conroy stated they are not closing tonight. Mr. Merrikin agreed because of the new plan that he submitted. Mr. Merrikin granted the board an extension of time up to and including September 30, 2021. Mr. Conroy moved to accept an extension of time up to and including September 30, 2021. Motion seconded by Ms. Abate and voted 5-0-0. Mr. Conroy continued this hearing to September 2, 2021 at 7:06 p.m.

Lincoln Estates Continued Hearing: The applicant was represented by Atty. Brian Almeida, Main Street, Walpole. John Walsh and Rob Truax, GLM Engineering, Holliston were also present. Mr. Conroy stated he has requested an opinion from town counsel regarding several issues. 1) One issue was regarding shooting within 500 feet. Town Counsel indicated that as long as they get permission it would be okay; 2) Mr. Conroy questioned frontage and moving it. Town Counsel stated it is good planning practice; 3) Mr. Conroy questioned the removal of all the gravel removal versus just moving enough to build a roadway. Town counsel stated they can remove enough for the roads. Further, if they are proceeding with the removal in excess of just building the roads, the applicant must apply for a special permit from the Zoning Board. Attorney Almeida has an issue with what has to be done engineering wise compared to what is necessary and what is not necessary. He has not seen the letter from town counsel and he would like a copy as he feels the disagreement is with the lots. Mr. Conroy stated the board needs a new plan showing what will stay and what will go. Mr. Truax stated he understands what the chair is asking for on the plan. Ms. Khatib clarified that as a board we think they need to go to the Zoning Board of Appeals for a special permit. Mr. Conroy clarified for the public if the applicant wants all the gravel removed then they need to go to the Zoning Board for a special permit that would allow a commercial gravel removal operation, but if they are only removing gravel to put in the roads, he can just come

before the Planning Board. Mr. Almeida stated he would also like to review this. Mr. Conroy discussed the floating easement that is in existence and Atty. Almeida is questioning if that easement even exists.

Betsy Dyer, a resident from Lewis Avenue and also a member of the Conservation Commission questioned a prior meeting discussion regarding a 500' buffer between the Gun Club and houses versus having a large berm and/or hill. Mr. Conroy stated they are not doing the 500' buffer, but are doing a berm. Ms. Dyer feels that the large amount of gravel discussed seems to be quite a lot and asked at what point would this become a commercial gravel operation. She is asking this because of the deed restriction on at least a portion of the property which states there cannot be a commercial gravel operation here. Mr. Conroy stated he is not aware of that deed restriction. Ms. Dyer stated the Conservation Commission had reviewed it and also forwarded it to the Planning Board. Ms. Dyer stated she is also interested in right of ways and also questioned adverse possession. Mr. Conroy stated it would be up to the Gun Club to claim adverse possession, not the Planning Board. Atty. Almeida stated it would not be adverse possession because they had permission to use it.

Mr. Truax asked for clarification of what was wanted on the plans for the next meeting.

John Saia from the Gun Club stated they are not looking to enter through the neighborhoods because they don't want to receive noise complaints from the police. A lot of their members have diesel trucks which are noisy, especially when leaving at midnight. The existing road would provide a buffer. Mr. Conroy stated this is the time for the Gun Club to get everything corrected and fully discussed with the Walsh's. Mr. Saia stated he needs to present all the information to the Club members.

Mark Robinson, Gun Club Vice President, clarified that at their August meeting they put forth two items for votes. The first was to nominate Atty. Philip Macchi, Norwood as their spokesman and secondly to put forth a position opposing what has been proposed, as the 500' was not authorized by the Club membership.

Mr. Conroy moved to accept an extension of time up to and including October 31, 2021 as presented by Mr. Truax. Motion seconded by Mr. O'Leary and voted 5-0-0. Mr. Conroy continued this hearing to October 7, 2021 at 7:30 p.m.

Paragon, 130 West Street & 25 Spring Street, Case No. 21-04: Mr. Conroy opened the public hearing to continue without testimony. Mr. Conroy moved to accept an extension of time up to and including September 30, 2021 as presented by the applicant's attorney, Philip Macchi. Motion seconded by Mr. O'Leary and voted 5-0-0. Mr. Conroy continued this hearing to September 2, 2021 at 7:30 p.m.

Alsarabi Subdivision Continued Hearing: The applicant was represented by Dan Merrikin, Legacy Engineering, Millis, MA. Mr. Conroy read the comments received and discussed the requested waivers. Ms. Khatib asked about the utility easements specific to water and asked about the water main problems. Ms. Abate stated the town doesn't want to accept liability for pipes, etc. Mr. Merrikin agreed to strike Waiver #7 as they will be responsible for anything on their property and would be willing to grant an easement to allow same. Mr. Conroy read the remaining waiver requests. Ms. Khatib asked if Mr. Balduf has approved these requests and Mr. Merrikin responded yes. Mr.

Czachorowski stated that Mr. Balduf had stated he agreed with the waivers. Mr. Conroy moved to accept the waiver, with the omission of No. 7. Motion seconded by Ms. Abate and voted 5-0-0.

Mr. Conroy discussed the special conditions. Mr. Czachorowski stated he would like a self-help clause regarding the covenant. Mr. Balduf did not comment, so the Planning Board will leave it as is. Ms. Khatib stated that the lot lines between pages 2 and 3 are inconsistent. Mr. Merrikin explained that the street layout on C-5 is correct. The lines on Sheet C-4 disappeared because they had to draw it both ways. Mr. Merrikin stated the zoning table is on Sheet C-5 at the top. Ms. Khatib asked for Gun Club updates and Mr. Merrikin said Conservation is all set and approved what was submitted. Ms. Khatib asked about the special conditions requested by the Fire Department. Mr. Merrikin stated he will add snow storage and road maintenance.

Mr. Conroy moved to approve the special conditions as discussed. Motion seconded by Ms. Abate and voted 5-0-0. Mr. Conroy moved to modify the standard conditions as reviewed by the Board. Motion seconded by Ms. Abate and voted 5-0-0. Mr. Conroy moved to close the public hearing. Mr. O'Leary seconded the motion and it was voted 5-0-0. Mr. Conroy moved to approve the Alsarabi definitive plan as presented. Motion seconded by Mr. Czachorowski and voted 5-0-0.

Proposed Zoning Articles: Ms. Abate stated she originally proposed two zoning articles; the first was for 400 Summer Street, which she withdrew. The other article was to change the zoning district for the new sports fields on Route 1A from R to PSRC. After a brief discussion, Ms. Abate moved to sponsor the article changing the zoning for the fields located at 2400 Main Street from R to PSRC. Motion seconded by Mr. Conroy and voted 5-0-0.

Mr. O'Leary started to discuss the Inclusionary Zoning Bylaw Subcommittee draft proposal. Ms. Abate asked if we are still moving forward with that based on a response received from town counsel. The remainder of the Board stated they did not receive anything from town counsel on that. Ms. Abate stated she received an email that was sent today, which was also forwarded to Mr. Conroy. However, Mr. Conroy never received it as it was sent to an incorrect email address.

Ms. Abate read the email from town counsel. In summary, Ms. Abate stated the opinion from town counsel stated the Planning Board should not bring the IZB bylaw forward for two years. Ms. Khatib stated only if it is not sponsored by the Planning Board as a prior town counsel had stated that if substantial changes were made the Planning Board can bring it forward. Ms. Abate disagreed with Ms. Khatib. She stated that the email blatantly states in the first and last paragraph that his recommendation is that we not bring it forward. Ms. Khatib stated town counsel is saying there could be an issue, potentially, maybe. Ms. Abate stated that is not how she read the opinion. Ms. Khatib and Mr. Czachorowski presented their reasons for moving forward based on their interpretation of counsel's opinion. Mr. Conroy stated that when town counsel commented on the article presented by Ms. Abate that Mr. Czachorowski and Ms. Khatib agreed the Planning Board couldn't move forward; however, when town counsel makes the same recommendation on the IZB article they both feel we can move forward. Ms. Khatib stated that Ms. Abate withdrew her article. Mr. Conroy agreed and stated because Mr. Czachorowski and Ms. Khatib were all over it. Ms. Abate stated that is different discussion as she

was called out on Facebook by Ms. Khatib. However, this is a new day and a different discussion. Town Counsel clearly recommended that in order to remove any doubt on the validity of Town Meeting actions, the proposed Inclusionary Zoning bylaw not be presented to town meeting until at least two years have passed. She feels there is nothing to twist here as it is all very clear. Mr. Czachorowski and Mr. O'Leary both agree that is what is being said. Mr. Czachorowski stated it is an interpretation of the vote which could be the point of contention. Mr. Conroy questioned what did town counsel actually say? Ms. Khatib stated the only risk would be if we go forward and the attorney general turns it down. Ms. Abate feels there is a double standard here. When she brings something forward it gets ripped apart. She pulled back the article due to the recommendation from town counsel. Mr. Conroy asked why we would send something to town counsel and then not listen to him.

Mr. Czachorowski applauded the joint committee for their efforts. He feels the legal opinion that was received certainly throws a monkey wrench into things. Mr. O'Leary stated in his opinion town counsel is unsure if the current or prior article would take priority. He stated that all along he has felt that the Planning Board should approve this article, but not sponsor it. Due to the fact that it was brought forth by the WHP, he feels it is their responsibility to sponsor it. He would have preferred to have this move forward to see what happens with it, but based on town counsel's email he doesn't feel it can. Ms. Abate stated she didn't know if the article presented by the IZB would come forward in time, which is why she came up with her article. She wants something in place as does everyone else; but, based on the fact that town counsel is blatantly saying not to go forward she doesn't understand how we as a board can go against that. Ms. Khatib stated tonight is it. We either sponsor it or it dies. Ms. Abate asked why it has to die as town counsel is only saying wait. Mr. Conroy asked why this was so last minute. Ms. Khatib stated this board should sponsor this as we are in charge of zoning and planning. Mr. Conroy stated the WHP is in charge of that article. Mr. Czachorowski wants to move forward to get more time. Mr. Conroy reminded the board that once we vote it will be placed on the warrant and we can't change it. He will not put his name to anything that goes against town counsel's recommendation. He has said that if the Planning Board receives something from Engineering, Fire, Police or town counsel we need to support their recommendations. They are our people. Mr. Czachorowski feels we need to move forward, but acknowledge what town counsel has said as his legal opinion is clear.

Mr. Czachorowski moved that the Planning Board sponsor this article. Ms. Abate stated there is no way she can support it when town counsel has twice said not to. She can't ethically do that. It is not a situation of wanting it. We all know we need something in place but it needs to be legally correct. Mr. Czachorowski repeated his motion that the Planning Board support this article. The motion was seconded by Ms. Khatib and voted 2-3-0 (O'Leary, Abate, Conroy voting against the motion)

The WHP chair left the meeting and yelled in the hallway: "This is bull****!" Ms. Khatib asked Mr. O'Leary if the Select Board would have to propose this article in the future as the WHP cannot propose an article. Mr. O'Leary responded that anyone can sponsor an article; however, it should be the Select Board of the WHP.

Ms. Abate stated this is not the end of this. It is frustrating, but more frustrating to have to have no say over Affordable Housing. We cannot let this be dead, but we can't do it right here and now. Mr. Czachorowski asked for it to be an agenda item and will send his request via email.

Ms. Khatib asked if we set a deadline for Master Plan appointees and Mr. Conroy stated it was September 16, 2021.

Mr. Conroy moved to adjourn. Motion seconded by Mr. Czachorowski and voted 5-0-0. The meeting adjourned at 9:56 p.m.

Respectfully submitted,

Catherine Turco-Abate, Clerk

Accepted 9/16/21