

## WALPOLE PLANNING BOARD MINUTES OF MARCH 3, 2016

A regular meeting of the Planning Board was held on Thursday, March 3, 2016 at 7:00 p.m. in the Main Meeting Room, Town Hall. The following members were present: John Conroy, Chairman; Richard Nottebart, Vice Chairman; John Murtagh, Clerk; Elizabeth Gaffey, and Richard Mazzocca (7:08 p.m.); Elizabeth Dennehy, Community Development Director and Ilana Quirk, Town Counsel.

Mr. Conroy opened the meeting at 7:05 p.m.

**Subdivision Rules and Regulations:** Mr. Murtagh asked if a public hearing is required after we make changes and Ms. Dennehy stated no. Mr. Nottebart asked that this be put on our next agenda as he is not ready to discuss. Mr. Murtagh agreed with him.

**7:15 p.m. High Meadows Subdivision, 54 High Street Continued Hearing:** The applicant was represented by Rob Truax, GLM Engineering, Holliston, MA. He stated at the last meeting there was a discussion about an easement for the drainage line. At this point, John Walsh is comfortable with the written permission he received.

There were no further board comments or public comments.

Mr. Conroy moved to close the hearing. Motion seconded by Mr. Nottebart and voted 5-0-0. Mr. Conroy moved to approve the High Meadows Subdivision with the board's standard conditions and two special conditions as drafted by Ms. Dennehy and as discussed by the board. Motion seconded by Mr. Nottebart and voted 5-0-0.

**7:20 p.m. The League School, 250 Moosehill Road Continued Hearing, Case No. 15-13:** The applicant was represented by Nicole Dunphy, High Point Engineering. Ms. Dennehy gave the board a draft decision and discussed the conditions. There were no board or public comments. Mr. Conroy moved to close the public hearing. Motion seconded by Mr. Nottebart and voted 5-0-0. Mr. Conroy moved to approve the site plan for The League School. Motion seconded by Mr. Nottebart and voted 5-0-0.

**7:31 p.m. John DiSangro, 24 & 28 Production Road, Case No. 16-1 Site Plan Approval:** Mr. Conroy read the public hearing notice. The applicant was represented by Frank Gallagher, Gallagher Engineering, Foxboro. Mr. Gallagher stated this is a new lot created by an ANR. It is 2.64 acres and they are seeking approval for a combination of an office and warehouse totaling 40,500 s.f. including the second floor. This is a spec building at this time. They are providing 81 parking spaces even though only 41 are required. Lighting will be on the building and there will be a couple of dumpsters on site. Parking will be angled and there will be one way in and one way out.

Mr. Conroy read board comments. Ms. Dennehy discussed her comments and Ms. Walker's comments. She stated that Ms. Walker would like the results of the test pits. Mr. Gallagher

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stated that is on the plan. Further basins 7 and 8 are leaching basins. Ms. Dennehy stated she will send Mr. Gallagher a copy of Ms. Walker's comments. Mr. Murtagh asked if they have filed with the Conservation Commission yet and Mr. Gallagher stated no. Mr. Murtagh asked if they hired a landscape architect and Mr. Gallagher stated no they don't have one, but plantings are shown on the plan. Mr. Murtagh feels that is sketchy. Mr. Murtagh asked if an underground water system is being provided and Mr. Gallagher stated yes. Mr. Nottebart asked if there is sewer there and Mr. DiSangro stated yes they have already put it in. Mr. Nottebart asked what the building will be and Mr. DiSangro stated he doesn't know yet, but it is definitely a spec building, although there has been a lot of interest in wholesale car stuff. Mr. Nottebart feels this is an improvement to the industrial park. Mr. Nottebart questioned the street. Mr. DiSangro stated it will eventually have to be dug up. Mr. Nottebart suggested he work with the town. He feels this area could be spruced up. Mr. DiSangro stated when they bought this there were all small businesses here, now they are going to bigger businesses. Ms. Gaffey asked if the old Orlando garage is behind that building and Mr. DiSangro stated no there is a big pond about 150' away from his property. Ms. Gaffey didn't know if he would have neighbor issues. Ms. Dennehy stated there is a wetland on this site. Ms. Gaffey questioned whether or not this will bother the abutters even they can't see anything, but could hear it. Mr. DiSangro stated they are allowed to work 24 hours a day, seven days a week throughout the year. He does his best to keep things quiet and has never had a complaint. Mr. Mazzocca suggested they meet with Ms. Walker before our next meeting on March 17<sup>th</sup>. Mr. Conroy asked if the infiltration is what DEP allows and Mr. Gallagher stated yes. Mr. Conroy suggested they get a list of what they think is allowed for chemicals by special permit. Mr. DiSangro asked if he means like a blanket list and Mr. Conroy stated yes.

There were no public comments. Mr. Conroy moved to continue this hearing to March 17, 2016 at 7:29 p.m. Motion seconded by Mr. Nottebart and voted 5-0-0.

### **8:05 p.m. John DiSangro, 23 & 27 Production Road, Case No. 16-2 Site Plan Approval:**

Mr. Conroy read the public hearing notice. He asked if this is a mirror application to the previous site plan and Mr. Gallagher stated pretty much. The only difference is they are doing more work here on this site as it is a larger lot. They are proposing 100 spaces. They are also proposing public water and public sewer. There will be dumpsters on site and they are proposing basic landscaping. There will be a little more infiltration as there is more impervious surface. There will be a total of 62% impervious; however, this is almost a 3-1/2 acre lot.

Mr. Conroy read comments that were received and Ms. Dennehy stated her comments are the same as the previous hearing. Mr. Murtagh asked if there is a specific use for this building and Mr. DiSangro stated it will be for a medical supplier. Mr. Murtagh feels the landscaping is sketchy. Mr. Gallagher stated he will leave that up to what the board wants as this is an industrial area. There will be nothing here other than an industrial use. It is a wooded area.

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There will be landscaping across the front of the building to shield the dumpsters. Mr. Murtagh stated the landscaping will have to be low so as not to affect sight lines. Mr. Nottebart stated we have been suggesting that everyone that comes before us have a landscape plan. Mr. Nottebart stated he has the same issues that he had on the other hearing. Mr. Murtagh knows the landscaping has to be limited. Mr. Nottebart likes the way the two buildings are laid out. Mr. DiSangro stated he knows they need signage. Mr. Nottebart questioned the detention basin and Mr. Mazzocca questioned the height of the retaining wall. Mr. Gallagher stated at the highest it will be about 7-8' high and knows he needs a stamped plan as it is over 4' and also a fence. Mr. Mazzocca asked if this is the very end of Production Road and Mr. DiSangro stated no, they still have the rail side parcel available.

There were no public comments. Mr. Conroy moved to continue this hearing to March 17, 2016 at 7:28 p.m. Motion seconded by Mr. Nottebart and voted 5-0-0.

**8:25 p.m. Olmsted Estates Modification Continued Hearing:** Mr. Conroy opened the continued hearing. He stated we received a request from the applicant for town counsel to be here under 53g. The applicant was represented by Atty. Johanna Schneider, Rackemann, Sawyer & Brewster, 160 Federal Street, Boston, MA. She stated that is correct and that they have already deposited those funds in escrow with the town. Mr. Conroy stated this had to be done at our first meeting according to the board's rules and regulations. Atty. Schneider asked why that wasn't raised at the last meeting when the board took a vote. Mr. Conroy stated he just found this. Atty. Schneider if the board would like to dismiss town counsel and return their check, they are okay with that. Mr. Conroy stated he is just bringing it up. Arty Quirk stated that based on the regulations, it says "to the extent practical" so she doesn't think there will be a problem. Mr. Conroy stated it will be the pleasure of the board. Mr. Murtagh feels it is good that Mr. Conroy brought this up, but he is going with town counsel's opinion. Mr. Nottebart agrees with Mr. Murtagh, but feels it would have been more appropriate the last time. He doesn't see this as an appeal issue. Ms. Gaffey asked why they would pay to have our counsel here. Mr. Mazzocca stated the presence of counsel here would only make things go smoother.

Mr. Nottebart moved that we accept Ilana Quirk here as an observer tonight based on the applicant paying for her presence. Motion seconded by Mr. Murtagh. Mr. Mazzocca asked that we add to the motion that this is being done at the second meeting. Mr. Nottebart amended his motion and Mr. Murtagh seconded it. Motion voted 3-2-0 (Gaffey, Conroy voted against the motion). Mr. Conroy stated he does things by the book.

Atty. Schneider stated they were last before the board on February 4, 2016 and they have since that time presented revised plans and a comment letter dated March 1, 2016 from the town engineer who is not here this evening. If there are any other questions or issues they can address them now. Mr. Glossa stated he will discuss the changes. Mr. Conroy asked if Ms. Walker sent

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her comments directly to them and Mr. Glossa stated yes. Atty. Schneider stated the documents were submitted to the board on January 21 and have also been sent to town counsel. Mr. Glossa stated that regarding a fence, it will never be built, but it shows on the plan. Mr. Conroy stated we had an issue like this on Brush Hill. We had them put up a black vinyl chain link fence. Mr. Glossa stated they just forgot to specify the fence. Mr. Conroy questioned the utility pole. Mr. Glossa stated that is on Fisher Street and there is a work order with NStar to have it removed and replaced. Mr. Viano stated that will be done in the month of March. Mr. Conroy asked when it will be pulled out and Mr. Viano stated in March. Mr. Conroy stated it is right smack in the middle of the road and feels they have created a safety hazard. Atty. Schneider stated the town engineer suggested it be included as a condition of approval, Pole #337. They will do what NStar needs them to do. Mr. Conroy doesn't think there should be a pole in the middle of the road for safety reasons. Atty. Quirk stated it should be up to the developer to seek the permits. Atty. Schneider stated that anyone who takes ownership of a lot is bound by the board's decision. Mr. Conroy asked if we can condition this that the Building Inspector cannot issue a certificate of occupancy until this is moved. Atty. Quirk stated the Planning Board is the enforcing authority, so yes they can. Mr. Conroy stated we could say a condition is you can't bond the subdivision until the pole is moved. Atty. Quirk stated a relocation hearing doesn't take long. Mr. Conroy stated we won't sign off on lots until that pole is moved. We can also say we won't allow the bond to be posted until it is moved. Atty. Quirk stated any reasonable condition is acceptable. Atty. Schneider stated this was there when the board did the original decision. Mr. Conroy stated this is a whole new hearing and he did expect it to have been moved by now. Atty. Schneider stated that Mr. Viano has been in touch with Eversource. Mr. McEntee stated they won't do anything without an endorsed plan. Mr. Conroy stated the subdivision could be done and the pole will be there forever. Atty. Schneider stated in a realistic world that could happen. Mr. Murtagh stated his top priority is the safety fence. Mr. Glossa asked him what he expects the safety fence to be and Mr. Murtagh stated something people can see at night and enclose the pole with a metal fence. Mr. Conroy asked if they think this needs to be approved by the fire department and will they have an issue with it. Mr. Murtagh stated he will be comfortable with the fence. Ms. Gaffey asked the width of the street and Mr. Glossa stated 26'. Mr. Conroy stated if the fire department signs off, he won't have an issue with this. Ms. Gaffey agrees. Mr. Nottebart thinks it needs to be safe and he will go with Dep. Laracy's opinion. Mr. Glossa stated on the north side, there is 24' between the pole and the curb. On the south side, there is 13' between the pole and the curb. The wider side is the north side. He will see the deputy chief as he is concerned about the ambulance and the ladder truck. Mr. Murtagh asked if the pole will be moved before it is black topped and Mr. Conroy stated no, they will go right over it. Mr. Glossa understands the board's concerns. Atty. Schneider stated there were questions about needing a clarification of the road length as some of the numbers were transposed. The actual dimensions are: Emerald Way is 809.81' to the end of the cul-de-sac and Olmsted Way is 805.23'. Mr. Glossa stated everything is straightened out. Atty. Schneider

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stated that now that they have the correct length, she thinks that should be included in a waiver vote. Mr. Conroy asked if she wants the board to vote that and she stated yes.

Mr. Conroy moved to allow a waiver for Emerald Way to be 809.81'. Motion seconded by Mr. Nottebart and voted 5-0-0. Mr. Conroy moved to allow a waiver for Olmsted Way to be 805.23'. Motion seconded by Mr. Nottbart and voted 5-0-0.

Mr. Conroy questioned Parcel 5, which is now combined with Lot 4. Atty. Schneider stated they re-labeled it as a parcel. Mr. Conroy stated you will have to combine Parcel 5 with Lot 4. Atty. Schneider stated she would like Mr. Conroy to provide her with the wording as per the board's Rules and Regulations regarding the definition of a lot. There is no parcel definition. She objects to Mr. Conroy's interpretation. That Lot is labeled "unbuildable". They are not trying to build on this. It is an "unbuildable parcel of land". Mr. Conroy stated he understands the intent very much. Mr. Murtagh asked Ms. Dennehy to weigh in. Ms. Dennehy deferred to town counsel. Atty. Quirk discussed the subdivision control law and stated it is not unusual for a parcel to be labeled a "non-buildable" lot. She asked how do you deal with drainage basins and Mr. Conroy stated it is on the lots. Atty. Quirk stated drainage basins are on separate parcels and the Homeowners' Association has the ability to deal with them. Mr. Conroy stated there is no Homeowners' Association. Atty. Quirk stated that most subdivisions do even though they are not required. Mr. Conroy stated we have nothing out there. He asked what's wrong with combining it with Lot 4. Mr. Glossa stated it creates a problem later because it could be a buildable lot when the road passes through. Mr. Conroy asked why not combine it now. Mr. Glossa stated they wouldn't be able to sell Lot 4. Mr. Conroy stated that is the driving force. It could be done but you are choosing not to do it. It comes down to money. Mr. Glossa thinks he could find ten plans that have this. If it is combined, it cannot be sold. Mr. Conroy stated Lot 5 is gone no matter what. It just comes down to money. He sees this as an issue. It was advertised as an 11-lot subdivision. Atty. Schnider stated to address the public notice issue, generally speaking you can go down but not up. You can approve something smaller, not larger. Mr. Conroy stated we didn't tell you to label it a parcel. We told you to come back with an answer. Atty. Schneider stated this is their answer.

There were no public comments.

Ms. Dennehy stated she presently has nothing to add. Mr. Nottebart stated this is a situation where we know the intent of the applicant. This will be buildable in the future. He is not all that concerned and is okay with this. Ms. Gaffey asked that even if the next subdivision goes through, is this still unbuildable. Mr. Glossa stated no. Ms. Gaffey asked what subdivision it would belong to and Mr. Glossa stated Olmsted. Ms. Gaffey stated no one will take responsibility. It could become a hockey rink or whatever. She doesn't think we can leave this just hanging and would like to know this is tied up before we do Roscommon. Mr. Glossa stated

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if the board would like a temporary condition, they would put it in a Homeowners Association or a trust so it can't be used as a hockey rink. Mr. Nottebart stated we advertised this as an 11-lot subdivision and he would like some assurance that we can approve this as ten lots versus 11 lots and then protect it so it doesn't become a hockey rink. Atty. Quirk recommends a Homeowners' Association. Mr. Nottebart asked if there is any way that counsels on both side could work to protect us. Atty. Quirk stated they agreed to a homeowners association. Atty. Schneider agreed with that statement. Mr. Conroy doesn't agree with a condition of approval being a homeowners' association as we would have no ability to review it. Mr. Nottebart again asked if it is within our purview to accept this as ten lots not eleven. Atty. Quirk stated yes, based on a Homeowner's Association. Mr. Conroy stated we didn't create this problem. Everything that was brought up is not because of us. Now, you want to approve this with a homeowners' association. Mr. Nottebart asked if there is another vehicle other than a homeowners' association. Atty. Quirk stated a trust. Atty. Schneider stated she has no problem with this. Mr. Murtagh stated it is non-buildable and could be combined so it will be a buildable lot in the future. We could put restrictions on this. End of story.

Mr. Conroy asked Atty. Quirk for a written decision backing up what she said, such as this is allowed under M.G.L. and there is no reason we can't do this. Ms. Gaffey would rather a restriction than a homeowners' association. She doesn't want to force this onto a single family home. The restriction is it could be recreational. Atty. Quirk stated only passive recreation and Ms. Gaffey agreed. Mr. Conroy wants an opinion contrary to his opinion. Atty. Quirk stated a condition that says there will be a restricted covenant on Parcel 5 stating it will be an unbuildable lot to be used for passive recreation or can be combined with other land to become a buildable lot. Mr. Conroy asked for her opinion on a lot vs. a parcel. Ms. Gaffey would like the words "to be maintained by the developer" added. Mr. Conroy would also like something from the fire department regarding the pole and Mr. Glossa stated he will go see the deputy chief tomorrow. Mr. Conroy asked that it be on the plan for next time. Mr. Glossa would like it to be a condition of approval. Mr. Conroy stated it will absolutely not be a condition of approval as it is too big an issue with him. Mr. Murtagh stated he would condition it subject to approval from Mike Laracy. Mr. Mazzocca asked if that is the issue or no certificates of occupancy. Mr. Glossa stated if the fire chief wants a 5x5' fence around the pole that is what they will put on the plan. It will probably be installed by the time the plan is done. Mr. Mazzocca asked if NStar would allow them to put a fence around the pole. Mr. Conroy stated why not make the road wider on one side and make the road 26'. Atty. Schneider stated this is a very temporary condition. Mr. Conroy stated nothing is temporary with regard to safety. We know it will be here for a long time. Mr. Nottebart stated he will take Deputy Laracy's recommendation. He asked that they draw something up and submit it to Kate or Liz so we know what they are going to do. He doesn't want it willy-nilly. Mr. Conroy asked what they are going to do if Laracy says no because then we are done; it will be over. Mr. Glossa stated there is no house here, just people working.

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Ms. Gaffey stated that is who the ambulance is going to get, people working on the houses. Atty. Schneider asked if it is a condition and they can't comply, is it still approved. Mr. Nottebart stated it just shows on one plan, but not another. We can't hold him responsible. He knows that Mr. Conroy has a lot of knowledge and issues with this, but he would like to work this through together rather than draw it out. Mr. Conroy stated it is his job to point out problems. Mr. Nottebart stated there is a letter that he didn't get. Mr. Conroy stated it just came into the office today. Mr. Nottebart stated the process isn't all that great. It is hard to be a member of this board without receiving all the information. He doesn't feel he contributes to this board; therefore, he is not re-upping. He feels Mr. Conroy is a one-man board. He would like to see more harmony on this board. Mr. Murtagh agreed. He feels Mr. Conroy needs to be more diplomatic. Mr. Conroy asked how and Mr. Murtagh stated he shouldn't get so fired up. Mr. Nottebart stated it is never personal. Ms. Gaffey stated we need to decide about the pole. He raises a safety issue. Do you want to wait for the fire department? Mr. Murtagh asked if they would rather condition it. Ms. Gaffey asked where are we with this dangerous pole. Mr. Mazzocca stated he is comfortable with that as a condition. Ms. Gaffey asked can we condition this and Atty. Quirk stated yes. There is no decision to sign tonight so you can keep the hearing open, get information from the fire chief and then have a draft decision. Ms. Gaffey stated the other thing is that parcel. Mr. Murtagh stated Atty. Quirk already addressed that. Mr. Conroy asked if they want to close. Atty. Quirk suggested they continue and get a draft decision. Atty. Schneider stated she wanted to close and does think everything could be handled by a vote and an approved condition. She would like to close and have a vote tonight. Mr. Conroy stated that a condition would mean you are closing. Atty. Quirk stated it is her preference to have a draft decision to be circulated to the applicant and the public. That way, there is no misunderstanding. Ms. Dennehy stated if the hearing is continued to the next meeting, can she work with town counsel on this and also send it to the applicant's counsel. Mr. Conroy stated we have never done that. Ms. Dennehy asked if the prior conditions still exist and Mr. Conroy stated yes. Ms. Gaffey stated that once we approve the draft, it could be given to the applicant. Atty. Quirk asked if the board has a boiler plate decision. Also, the board can't deliberate until the next hearing. Mr. Conroy stated yes. Mr. Mazzocca asked why we can't close and write the conditions tonight. Atty. Quirk stated if you close tonight, there will be no input from the fire department. Ms. Gaffey stated we need to do this right.

Mr. Conroy continued this hearing to March 17, 2016 at 7:45 p.m. He asked if they receive something from the fire department, please forward it to us.

**9:52 p.m. Roscommon Subdivision (new):** Mr. Conroy stated we have a plan that doesn't have access, which is why we didn't open before. Atty. Quirk thought they ran together. Mr. Conroy stated they are two separate subdivisions and there is no access until it is bonded. Atty. Schneider stated the board is continuing to take the position that they can't go forward until Olmsted Estates is approved and bonded as you don't have a public way. The only way out is

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through Olmsted Estates. Out of respect to the neighbors, they won't come out on North Street. Also, frontage can be provided on a public street. Mr. Conroy asked an accepted way or a public way. It is basically an island right now. Mr. Glossa stated doesn't the developer own all the property out to Fisher Street and Mr. Conroy stated no. Regardless, had you combined them all at once it would be okay. Atty. Quirk thinks the developer can go forward and assume the risk that the Olmsted Modification will be approved and be built. Approval would be contingent on that. Mr. Murtagh asked if they are prepared to assume the risk and Atty. Schneider stated yes and feels the Olmsted Modification will be approved. Mr. Mazzocca stated he listened to town counsel and she feels we can go forward. He feels we should open and proceed with the hearing. Ms. Gaffey stated on January 21<sup>st</sup>, we told them they had no access which should have been part of their submission to the Planning Board. There has been no guidance from you guys and my guidance is our book. Mr. Nottbart agrees with Ms. Gaffey. It would probably be cleaner to wait, but he would go with town counsel on this. Mr. Murtagh stated you decided you are prepared to take the risk. We are guided by town counsel. Mr. Conroy stated his issue is if this gets appealed it will be up to you to town counsel to defend it and we would be liable and be involved in the suit. Atty. Quirk stated if you go forward and it is contingent on the other project being approved, that would mean you would be requiring that the access be there. She explained the process. Mr. Mazzocca stated if we delay this there could be a lawsuit by the developer against the town saying we caused this project to collapse. Ms. Dennehy stated she has never seen anyone move forward without access, but she is not an attorney. She spoke with Ms. Walker today and that is still an issue with her. Mr. Conroy asked if there has to be a vote to go forward legally and Atty. Quirk stated no.

Mr. Nottbart moved to open the hearing. Motion seconded by Mr. Murtagh and voted 4-1-0 (Mr. Conroy voting in the negative).

Mr. Conroy opened the hearing at 10:12 p.m. Mr. Conroy read the public hearing notice and stated the applicant is being represented by Atty. Schneider, Rackemann, Sawyer, & Brewster, Boston, MA. Atty. Schneider reviewed the background. She stated that on May 28, 2015, this board voted to grant a special permit for OSRD approval in accordance with Section 10-D of the zoning bylaw. They now need to present a definitive subdivision with thirty new lots. Mr. Conroy disagreed and said it was approved for 28 new lots.

Ms. Dennehy left at 10:20 p.m.

Mr. Glossa spoke to the definitive plan. He stated they have been to the Army Corps of Engineers to ask for permission to cross the wetlands. There are some wetland characteristics, but the Conservation Commission now endorses this location and it will not change. He explained the layout of the roads and lots. They wanted a community-based layout. They met with the fire department. Originally the roads were 24' wide, but it was changed to 26';



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therefore, there is no waiver requested. Mr. Glossa stated they would like monolithic berm which will be locked into the roadway so it can't be broken by a plow. There will be a sidewalk from Olmsted. Anywhere there is a lot, there will be a sidewalk. They have talked to the Sewer and Water Commission and Lot 30 will have to have a pump system because the ground water goes down well below the sewer. This has been recommended for approval by Beals & Thomas. They have tried to use natural areas to take care of drainage. They will not excavate anywhere but will allow the water to go onto the ground. They do provide an overflow as a failsafe. All the basins are created by constructing smaller berms 2-3' high. They have a proposal to bring a gas line from North Street and all utilities will be underground. They have asked for a waiver from street lights as each house will be required to have their outside lights on from dusk to dawn.

Mr. Conroy read comments from the Board of Health, Water and Sewer Commission, Conservation Commission, Police Department, Fire Department, DPW and the Tree Warden. Mr. Glossa stated he will follow up with the tree warden regarding curbing. Also, the big issue with Conservation is the wetland crossings.

Mr. Nottebart questioned Lots C and D. Mr. Glossa stated they have always been shown on the plan and were owned by the applicant. Atty. Schneider stated they were both previously created ANR lots from 2013. They will not be subdivided or used in the lot count. Mr. Conroy disagreed with her and stated they were part of the lot count. Atty. Schneider stated that they were addressed in the May 19, 2015 Beals & Thomas report. Mr. Conroy stated our decision has nothing to do with Beals & Thomas. They were only a recommendation body. Our plan is void of Lots C and D. He asked if they can get thirty lots out of what is before us. Atty. Schneider stated the plan has taken out five lots. We are talking about newly created. Mr. Mazzocca stated he would like to look at the OSRD minutes. Mr. Nottebart thought we approved 28 lots and C and D for a total of 30 lots. Mr. McEntee stated they are not debating that there is a special permit that covers Lots C and D. They are not subdividing C and D. They had to reduce from 35 to 30 and there is still a special permit that covers Lots C and D. They are not subdividing C and D; therefore, they don't belong on the subdivision plan. Mr. Conroy stated you submitted a plan and this plan doesn't seem like what we approved. Mr. McEntee stated that Lots C and D are not newly created. Atty. Quirk suggested the board look at the past minutes and the design process issue.

Mr. Mazzocca stated he is having trouble visualizing the change in grade and asked how the lots sit. Ms. Gaffey questioned the Form C that was submitted as the plans show three owners and the application only lists one. Atty. Schneider stated the plans show both names. Mr. Conroy stated the application only shows one. Ms. Gaffey asked for clarification on that. Mr. Conroy stated it is a simple application and you need all signatures, which is a requirement of M.G.L. The plan and the Form C are different, so how do we know what is correct. Atty. Quirk stated that the board's rules and regulations are clear and case law is clear. The owner of the land can

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sign off on the land, but she recommends that the applicant provide a letter stating they are the owner of both entities. Mr. Murtagh asked Atty. Quirk if she is comfortable with this. She stated yes and that the board can deny this, but they need to say every reason why they are denying. Mr. Conroy stated that Olmsted was withdrawn and they started over. Atty. Quirk asked if there were two owners on the subdivision ad and Atty. Schneider responded yes. Mr. Conroy asked that we be provided with who are owners. Atty. Schneider it is an LLC and the members are the beneficiaries. Mr. Conroy stated everything changes.

Mr. Conroy asked for comments from the public.

Joe Moraski, Precinct 8 stated the neighbors are in total agreement with the Planning Board and Ms. Dennehy's remarks about Lots C and D. They submitted two position papers asking that lots C and D be removed. Those papers and opinions were sent to Atty. Quirk who provided a legal opinion. They agree the count should be 28 plus C and D. Back in January when Michael Viano was before the Sewer and Water Commission, he stated that Whitman Homes bought the subdivision. They said it was 28 lots coming in in September of 2016. They want C and D excluded. The other think there was some discussion of phasing. He is not sure if that is Olmsted Estates or Roscommon, but he thinks it was both. The applicant was asked to submit a position paper stating how this will come out. Mr. Conroy stated they are going to have to re-do the phasing as this has a -40 points to start. Mr. Moraski stated these plans are different from what they have seen. Mr. Viano had stated that open space is open to the public; therefore, Sheet 28 needs to be clarified as it shows a paddock, etc. and is also part of the open space. Can anyone bring a horse to that area?

There were no further comments. Mr. Conroy stated we need an extension of time. Mr. Viano granted an extension up to and including April 15, 2016. Mr. Conroy moved to accept an extension of time up to and including April 15, 2016. Motion seconded by Mr. Murtagh and voted 5-0-0. Mr. Conroy continued this hearing to April 7, 2016 at 7:35 p.m.

Mr. Mazzocca moved to adjourn. Motion seconded by Mr. Nottebart and voted 5-0-0. The meeting adjourned at 11:40 p.m.

Respectfully submitted,

John Murtagh, Clerk

Approved: April 7, 2016

