

## WALPOLE PLANNING BOARD MINUTES OF DECEMBER 5, 2013

A regular meeting of the Walpole Planning Board was held on Thursday, December 5, 2013 at 7:30 p.m. in the Main Meeting Room, Town Hall. The following members were present: Richard Nottebart, Chairman; Edward Forsberg, Vice Chairman; John Murtagh, Clerk; John Conroy, Richard Mazzocca, Margaret Walker, Town Engineer; and, Atty. Ilana Quirk, Town Counsel.

**Evaluation:** Mr. Nottebart moved to approve the secretary's evaluation as submitted by the board. Motion seconded by Mr. Murtagh and voted 5-0-0.

**FY 2015 Budget:** Mr. Nottebart moved to accept the budget as presented. Motion seconded by Mr. Murtagh and voted 5-0-0.

**Northridge Farm Sewer Discussion:** Ms. Walker asked Atty. Quirk if the inclusion of the sewer from an ANR lot into the subdivision would constitute a modification of the subdivision. Atty. Quirk stated no.

**Town Planner Position:** Mr. Nottebart stated he will forward five organizational charts tomorrow to the board for their review. He asked that the board think about the charts and then we can discuss and vote one of them. Mr. Conroy stated he would like to invite Sharon Wason, Foxboro Town Planner, to come in and talk to us before we make any decisions. The board agreed that would be a good idea.

**7:30 p.m. High Oaks IV Major Modification:** Mr. Forsberg moved to waive the reading of the public hearing notice. Motion seconded by Mr. Murtagh and voted 5-0-0. The applicant was represented by Atty. Timothy McGahan, Attleboro, MA and John Anderson. Mr. McGahan stated the applicant has filed a request to modify the 1997 decision. He asked that two items be modified: 1) requirement of Condition #3, construction of a ball field and related amenities on Lot 115 and 2) Waiver #1 be modified. In lieu of that modification, the applicant would like to make an in-kind donation of \$200,000 and a restrictive covenant be placed on Lot 115 to preclude the construction of anything but a single family residence. There is currently an access and utility easement in front of the lot. The request before the board is that in lieu of the construction of the ball field that a cash contribution be paid to the board. He stated the modification will not affect the title of anyone involved. Mr. Nottebart read comment letters from the Board of Health, Police Department, Sewer and Water, ConCom and Engineering. Mr. McGahan asked if the oil and gas separator will remain now that this will not be a ball field. Mr. Nottebart stated the board will look into that. Atty. Quirk stated the town would continue to have oil and gas separator if they are within the easements. Ms. Walker stated yes they are. Atty. Quirk stated the town's rights for the requirements for Lot 115 to provide area to support the drainage would not go away. Mr. Conroy stated if this is already a lot, would that all be under Lot 115 and Ms. Walker stated she believes so. It says the town will maintain all the grass strips, which must have been the practice when this was approved. Mr. Conroy asked Mr. Anderson when he re-did the plan in 1997, there was a tweak, but all else remained the same.

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Mr. Anderson stated there was a road that went through Shady Lane to Lady Slipper that the town didn't like, but the plans are pretty much the same. With regard to Lot 115, Mr. Conroy questioned the square footage of this lot and also asked if this will be one lot only. Mr. McGahan stated yes, but sections could be further divided and could join existing lots, but they couldn't become additional building lots. He asked if this could be a single family group home. Atty. Quirk stated only one single family is allowed but State law says that a 40-A can't be discriminated against. It could happen so long as it is a group home of not more than four people. More than that would mean it is a multi-family use. Mr. Murtagh asked how they intend to take from Lot 115 and sell to the abutting properties. Ms. Quirk stated they need to be able to meet current zoning regarding lot size requirements and they cannot create another buildable lot. Mr. Murtagh asked if the language is strong and we are safe-guarded and Ms. Quirk stated yes. Mr. Forsberg stated it won't eliminate the possibility of a group home and Ms. Quirk stated that is correct, but it can't be for more than four people. Mr. Forsberg questioned the ball field being conveyed to the town. Ms. Quirk stated there is a note on the 1996-97 plan with regard to conveyance of the ball field which the developer has asked be removed. She stated the board could go into executive session to discuss this. Mr. Forsberg stated he couldn't find any reference to this in the decision, but now he understands that it is on the plan. Ms. Quirk stated the board could go into executive session to discuss the town's interest in the land. Mr. Conroy suggested we just stated that Lot 115 can never be subdivided without giving us options. Mr. McGhane stated Lot 115 is a large lot. The sum of money recently discussed was \$200,000 with the agreement that he could offer small sections to abutters. He may not necessarily do that, but Mr. Walsh would like to reserve the right to do so. Mr. Conroy asked why they just don't leave it the size it presently is and Mr. McGhane stated it could become sections of existing lots and those lots would then become bigger. Lot 115 would be pared down a bit, but they don't know if anyone bordering Lot 115 would want to buy a piece of it to increase their lot size. Mr. Conroy asked if that option would be on the table and Mr. McGhane asked why wouldn't it be. Mr. Conroy stated that it could cause problems for the people abutting Lot 115. It has been this way since 1986. Mr. McGahan stated his understanding is that the Board of Selectmen don't want this lot or a ball field because of the added expense, so this proposal would be a win-win for both sides. Mr. Conroy suggested it be left the way it is. Mr. Forsberg asked about an ANR to get rid of the pork chop. Ms. Quirk stated the original proposal was for one single family lot and then it was discussed that there would be no other buildable lot. An abutter could possibly want more square footage for a shed or garage or whatever. Mr. Mazzocca asked if we know if someone has specifically made a request for this and Ms. Quirk stated no. Mr. Mazzocca asked if the current owner is Toll Bros. and Ms. Quirk stated yes.

Mr. Nottebart asked Mr. Snuffer who was in the audience if he wanted to add anything and Mr. Snuffer stated he was only here tonight to observe. Mr. Forsberg asked if the Selectmen have an opinion on this and Mr. Snuffer stated he is not sure.

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Michael Ryan, Millbrook Avenue, stated he is not speaking for himself, not the abutters. He would like to see the lot 1) stay as is; 2) become a ball field; or 3) be one single family house with the value commensurate to what is there now. The \$200,000 price leaves the potential to build a nice house but below the value of the abutting houses. One house is okay with him but with a value commensurate to what the neighborhood is but he doesn't know how that could be controlled. Mr. McGahan asked that Mr. Ryan's comments be disregarded as he is not representing the neighbors. Mr. Mazzocca stated he didn't say he was representing the neighbors, just himself. Mr. McGahan stated there is a restrictive covenant that addresses the houses that can be built on any of the lots in the subdivision. Mr. Conroy asked if he knows what the minimum square footage. Mr. McGahan stated he doesn't know but can find out. This lot is subject to that restrictive covenant. Mr. Conroy stated that Toll Bros. has the same restrictions that Walsh does. Mr. McGahan thinks that is correct. He spoke with the people on Lot 116 who asked him for a copy of the restrictive covenant which he in turn emailed to them. Ms. Quirk stated this board cannot discuss the price of the land as it was negotiated by the Town Administrator, not the Planning Board. Mr. Conroy stated we have nothing from the Selectmen yet they are involved. What if we approve this and nothing else happens. Does Walsh get a free lot? We cannot bind another board. Ms. Quirk stated we wouldn't be binding another board. Mr. Conroy stated the Planning Board cannot negotiate contracts or money. He doesn't want the board to create something that will go nowhere and then there would be nothing binding here. Ms. Quirk stated they would surrender Lot 115, which could be part of the Planning Board decision. Mr. Conroy asked who surrenders and Ms. Quirk stated the builder. Mr. Conroy stated we don't have anything from the Selectmen in writing. Mr. Mazzocca asked if this is a different board and Mr. Conroy stated yes. Mr. McGahan stated \$200,000 is twice what was originally discussed. Mr. Conroy stated we have nothing from them right now. Mr. McGahan stated there is a memo from two years ago that started out at \$100,000 and now we are at \$200,000. He doesn't think there is any issue. Mr. Conroy stated that was two years ago and under a different board. It wasn't a vote, it was a consensus. Mr. McGahan stated there is no issue with that sum of money. Ms. Quirk stated she spoke with the Town Administrator and he is in agreement. Mr. Conroy stated that Mr. McGahan previously said that Mr. Ryan couldn't speak for the neighbors, and we can't speak for the Board of Selectmen. Mr. McGahan stated this meeting was continued to allow the neighbors to come forward with an attorney and now no one is here. Mr. Conroy stated he won't make a decision with holes in it. He doesn't think that asking for a letter from the Selectmen is too much to ask for. A letter from a chairman that is no longer here doesn't work for him. Mr. Forsberg asked if we could add something to the decision and Ms. Quirk stated absolutely. Mr. Snuffer stated he is not aware of a previous board's action, but if this came before the presently seated board, he would ask the following questions: 1) were we aware at that point in time that there was a lot that was to be negotiated on; and, 2) was it a lot that had other potentials. This could potentially change his opinion on how to negotiate the situation. Michael Ryan stated if this lot is going to have a house built on it, he is concerned about protecting the value of the surrounding properties. The minimum price several years ago was \$300,000 and now it is \$450,000 or more.

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Everyone up there paid \$400-500,000. Therefore, \$200,000 is short money for this area. Mr. McGahan stated it is a number in lieu of constructing the ball field. Ms. Walker stated the ball field that is listed in her bond has always been \$125,000.

Mr. Conroy stated he is not here to be an obstructionist; he just wants to do this right. He is here to look out for the people who elected him, like Mr. Ryan and his neighbors. He stated he would like to know what the restrictive covenant mandates for square footage of a house in this neighborhood. That would be important to his prospective on this request. Mr. McGahan stated he will provide a copy of the restrictive covenant to the board in the morning. Mr. Conroy stated he agrees with Mr. Ryan. Everybody is afraid they will get houses like the ones Toll built in East Walpole. Atty. Quirk stated she agrees with both Mr. McGahan and Mr. Conroy. She believes the restrictive covenant should be reviewed. In the event the board votes the modification and in the event this lot is created, it is subject to the covenant. Mr. Murtagh stated he would feel more comfortable if Lot 115 stayed as one entity rather than being broken up and he feels that should be part of the restrictive covenant. Mr. Mazzocca stated clearly it is a money issue and stated the question is does the town getting a good deal or a bad deal. In his mind that is the elephant in the room. Mr. Nottebart stated that after looking at the paperwork, he is not sure how he feels about this. The ball field didn't mean anything to Jack Walsh and he did get to extend Lady Slipper Drive. Mr. McGahan stated to his knowledge the neighbors and the town don't want the ball field. He does believe this is a trade off. Mr. Forsberg stated the \$100,000 was a first offer and we were under the impression that the town would retain the property. Mr. McGahan stated the Board of Selectmen negotiated the number. Mr. Conroy stated he is here to protect everybody. He asked if it makes sense to do a ball field and do the neighbors want it? Possibly not. Do they want another house? Probably not. He stated he doesn't care how the board votes as long as the restrictive covenant addresses what they can build. Mr. Forsberg stated the lot is now worth \$400,000.

Michael Boynton, Town Administrator, verified that what has been stated is correct. The original offer was \$100,000 and then it became \$200,000 making it a better deal. He doesn't want to be in the real estate business, but if the board is of the opinion that it is worth more, the developer can choose to meet the existing conditions and build a ball field and there is nothing in the decision that states what type of ball field. They can't complete the subdivision until that condition is satisfied or we release them from that requirement. If the ball field is built, it will be given to Recreation and they will be told to utilize it.

Mr. Conroy stated parking for the field was never addressed. It's like a field behind someone's house. He stated he worked with Mr. Walsh's son, John, back in 1997 and at that time the town was short on fields and the ones we had were lousy. John Walsh offered to build this ball field or he would fix up another field in town for waivers. It was a trade off.

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Mr. McGahan stated they offered \$100,000, but the Board of Selectmen wanted \$200,000. With respect to the money, he has tried to get the best price for the town. We have existing fields that need to be upgraded. He respects the will of the Planning Board and the Board of Selectmen. If you go with the proposal, the town will get a check to utilize on other town fields or they will build a field there. Mr. Forsberg stated in 1997 when this was approved, the bond showed \$125,000 for the ball field. He would rather we take the \$100,000 and the town retain the ownership of the lot and possibly sell it for \$400,000. The town and the neighbors don't want a ball field. He knows the Selectmen want the money for other fields, but feels we are getting low balled on the price.

John Anderson, Anderson & Associates, stated both he and Jack Walsh were before the board in 1997. There were five parking spaces on the approved plan. A letter came in 2011 from the Board of Selectmen to the Planning Board stating they didn't want a ball field. That is where this all started.

Mr. Murtagh agrees with Mr. Forsberg. He feels that the lot is worth between \$300,000 and \$350,000 and that \$200,000 is a raw deal for the town. Ms. Quirk asked if the board wants to go into executive session to discuss this. Mr. Conroy thinks everyone has an idea of what it is worth, but that doesn't mean anything in front of a judge. He is going to shoot a number off. He asked if an appraisal is in order for this. Mr. Nottebart stated he has wanted to go into executive session for the last forty-five minutes to 1) vote the modification or 2) discuss the money. Ms. Quirk stated you could go into executive session to discuss the value of the property. Mr. Mazzocca asked who makes the decision here and Ms. Quirk stated the choices are 1) take the modified \$200,000 offer and do away with the ball field or 2) say no and keep the condition as is. Mr. Mazzocca asked how we can move forward without an actual confirmed number. Ms. Quirk stated it could be a gift or escrow agreement with the Board of Selectmen done separately. But again, there might be some value to discussing this in executive session. Mr. Conroy asked if we are setting ourselves up to set a price and Ms. Quirk stated the board would be going into executive session to discuss the town's position in negotiating the amount of money. Mr. Murtagh stated we are not the executive branch and that figure should come from the Board of Selectmen. Ms. Quirk stated that is correct, you would not be negotiating a price. Mr. Nottebart stated he has tried to separate himself from the money. Mr. Mazzocca stated we need to continue this no matter which way we go. He agrees with Mr. Conroy. This is a new Board of Selectmen and a new chairman. We need to be on their agenda; however, what is taking place tonight sets the tone. Mr. McGhane stated his understanding is that the sentiment of the current Board of Selectmen is that the \$200,000 number is correct. Mr. Boynton stated he agrees with everything Mr. Conroy has said. Mr. Forsberg stated with regard to continuing this, he will not be here on December 19 or January 23.

Mr. McGahan gave the board an extension of time up to and including February 28, 2014 in order to hold and complete the public hearing process including the decision.

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Mr. Forsberg moved to accept an extension of time up to and including February 28, 2014. Motion seconded by Mr. Nottebart and voted 5-0-0.

Mr. Forsberg stated the decision will have to be made by February 27, 2014 to allow for filing with the town clerk.

Mr. Nottebart moved to continue this hearing to February 6, 2014 at 7:45 p.m. Motion seconded by Mr. Mazzocca and voted 5-0-0. Ms. Quirk stated she will be available for that meeting and potentially could be executive session.

Mr. Conroy asked that the restrictive covenant be sent to Mr. Nottebart and the also to the board's secretary. Mr. McGahan agreed.

Ms. Quirk stated she will be present on February 6, 2014 at 7:45 p.m. and recommends the board go into executive session at the beginning of the hearing.

It was moved, seconded and voted to adjourn. The meeting adjourned at 8:50 p.m.

Respectfully submitted,

John Murtagh, Clerk

Accepted 2/6/14