

WALPOLE PLANNING BOARD MINUTES OF JANUARY 9, 2014

A regular meeting of the Walpole Planning Board was held on Thursday, January 9, 2014 at 7:00 p.m. in Room 112 Town Hall. The following members were present: Richard Nottebart, Chairman; Edward Forsberg, Vice Chairman; John Murtagh, Clerk; John Conroy, Richard Mazzocca, and Margaret Walker, Town Engineer.

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

643-703 Main Street, Case No. 00-07 Modification Determination: Bill Glaropoulos, the applicant, stated he wanted to take out some material and replace it with crushed stone as it will be easier to plow. He would like this to be a minor modification. Mr. Nottebart stated the work has already been done. Mr. Murtagh asked if he has a wetland delineation and Mr. Glaropoulos stated he has approval from the Conservation Commission already. Mr. Forsberg stated he thought Mr. Merrikin was going to let us know how many yards were going to be taken out, but he never came back after meeting with us. He feels we were left in limbo and also that they will be removing more than what is allowed according to the zoning bylaw. Mr. Glaropoulos stated they didn't even go down a foot and only removed the top stuff. The estimate for removal they received from Paul Cisternelli was 85 yards.

Mr. Conroy stated this probably meets a limited site plan, but he has no issues with determining it to be a minor modification. There were no other board comments. Mr. Murtagh moved this be a minor modification. His major concern was Conservation. Motion seconded by Mr. Mazzocca and voted 4-1-0 (Mr. Forsberg voted against the motion). Mr. Murtagh stated if they want to asphalt this in the future, it would be considered a major modification. Mr. Glaropoulos stated he knows that. Mr. Forsberg stated he has to play by the rules. He doesn't have an issue with what he did, just how he went about it. Mr. Conroy stated he needs to bring in the actual modification to our February 20th meeting and Mr. Glaropoulos agreed.

Tall Pines Subdivision: Mr. Nottebart stated that one house lot doesn't fit so Mr. Merrikin wants to do an ANR. He reminded the board we haven't signed the original subdivision plans and now we can't sign them because we know there is an error. Town Counsel said we can't do it the way Mr. Merrikin want us to and she feels they should talk to their own attorney and follow their advice. There are several ways to do this. They do need to withdraw the ANR and seek counsel as to how they should proceed with an incorrect plan. Dan Merrikin stated that all the lots have frontage and area. The road got shifted around and the circle didn't stay tangent, so one of the site lines needs to be angled. There are no changes to the plan other than that. Further, Section 81-O states they can just change the layout plan. If the board will endorse the subdivision plan tonight, they could do the ANR after that. Mr. Nottebart stated we know there is an error. Mr. Forsberg stated the second choice is that we hold the endorsed plan and then he would re-file the ANR plan. Mr. Conroy stated we have a plan that doesn't meet all the rules and regulations and he feels it should be withdrawn. We cannot approve an ANR for property that doesn't have legal frontage.

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Also, if you record this plan, land court will kick it back. Mr. Merrikin stated they won't because they don't care about zoning. It is a building permit issue. They could write "non-buildable" on the lot shown on the plan and then ANR it. Mr. Conroy stated you can't create an ANR on something that isn't legal until you bond it. Mr. Merrikin you have to provide surety, but it could be through a Form F. Mr. Conroy stated the applicant should propose what they want to do and we should send that to town counsel for her input. Mr. Nottebart stated that Ilana Quirk stated they should seek their own counsel and offer a solution that we can run by our counsel. He suggests they withdraw the ANR without prejudice. We cannot sign anything until we get an opinion. Mr. Merrikin stated they will file a letter with the board stating they will proceed via town counsel's second option. They will also forward that to counsel. He doesn't think there is much of an issue. This is also addressed in the ANR Handbook. Mr. Forsberg stated he would like the plan to reflect the lot in question as non-buildable and then we could proceed with the ANR. He would be more comfortable with that.

Mr. Merrikin submitted a letter requesting the ANR be withdrawn without prejudice. He does ask that board waive the filing fee when he refiles. Mr. Murtagh moved to waive the filing fee as requested by Mr. Merrkin. Mr. Merrikin stated they will submit a letter to the board's secretary to forward to town counsel. Mr. Murtagh withdrew his motion.

Mr. Nottebart moved to allow the applicant to withdraw the ANR before the board without prejudice as per town counsel's email of January 6, 2014 and to waive the filing fee when the ANR is resubmitted. Motion seconded by Mr. Murtagh and voted 4-0-1 (Mr. Conroy abstained). Mr. Conroy stated he abstained because he is not in favor of waiving the filing fees. It was agreed to send the information submitted by Mr. Merrikin to town counsel when they are received in the office.

7:39 p.m. Dedham Auto Mall, Case No. 13-3 Continued Hearing: Mr. Nottebart stated we keep giving extensions, but at some point we need to withdraw this and start the process over. He urged the board to do one additional extension and then we will either deny it or allow the applicant to withdraw without prejudice, whichever they choose. It was agreed that we would continue this one more time to February 20, 2014, with the understanding that the applicant will be ready at that time to move forward with a full site plan review.

Mr. Nottebart moved to accept an extension of time on which to take action on Dedham Auto Mall up to and including February 28, 2014 as per request of the applicant's engineer, Richard Merrikin, Merrikin Engineering. Motion seconded by Mr. Forsberg and voted 5-0-0.

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Mr. Nottebart moved to continue this hearing to February 20, 2014 at 7:30 p.m. as per request of the applicant's engineer, Richard Merrikin. Further, due to the lack of progress on this application, it was agreed to advise them that at their next hearing scheduled for February 20, 2014 you must be prepared to either 1) move forward with any and all new information and plans being submitted two weeks prior to the hearing; or 2) withdraw your application without prejudice. If you decline either option, the Planning Board will be forced to deny your application. Motion seconded by Mr. Forsberg and voted 5-0-0.

It was agreed to copy Jack Mee.

7:55 p.m. Bird Estates, Phases 3, 4, 5 and Mansion Drive Residents' Hearing:

The applicant was represented by Bill Keaton, Toll Bros. and Atty. Philip Macchi, 1256 Washington Street, Norwood, MA. He stated they have a punch list dated January 6, 2014 from Margaret Walker, Town Engineer and there are some outstanding issues: 1) there is a light pole that has not been installed due to the fact that NSTAR brought the pole to the site last summer and then took it away by mistake. He thanked Ms. Walker and the town administrator, Michael Boynton, for contacting NSTAR on their behalf to request the pole be returned. NSTAR gave them a letter stating the pole will be installed by January 10, 2014; 2) a transformer on Mansion Drive is scheduled to be installed by January 24, 2014; 3) they will pay the recording fees; 4) the subdivision and amenities were completed according to the plans. However, the Homeowners' Association brought up the fact that they were not happy with a wet basin. As a result, most of this week and part of last week has been spent dealing with this issue. They have provided the town engineer with information that the existing basin complies. They tracked down Chuck Utschig to find out the intent of Basin #3. The Homeowners' Association wants to know why it is wet. Mr. Macchi stated the elevation they are at is correct; however, another sheet showed it as a different elevation. He read a letter from Chuck Utschig, Lanagan Engineering that was forwarded to Ms. Walker and a letter from Gary & Handlin. In simple terms, if they raise it up one foot, there will be no more standing water. Mr. Nottebart stated we don't have any of this information. Ms. Walker stated both letters just came in today to her, but they were not given to the Planning Board.

Mr. Macchi stated the homeowners are happy with this, but they can speak for themselves. He asked if there is a mechanism that would allow the board to work with the town to get this on the Spring Town Meeting warrant. They would like some time so they can add a foot to the forebay rather than hold up the process until August. This is a correction. The Homeowners' Association president stated they would be happy as long as the basin drains properly. The stagnant water is a health concern. Toll has been very good trying to get to the bottom of why this one is different. He is aware that the design plan is wrong, but it was built correctly. Mr. Macchi stated he went to talk to Mr. Boynton to ask him to contact NSTAR, which he did.

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Mr. Nottebart stated the light pole isn't as big an issue for him, but the basin is. Mr. Murtagh asked if adding a foot to the elevation takes care of the water and Mr. Macchi stated he will give the board a copy of the letters from the engineers involved. Mr. Nottebart stated that is good as we don't have them. Mr. Macchi stated NSTAR will do the pole tomorrow and Ms. Walker stated that is if they follow through. Mr. Macchi stated they can withdraw the Mansion Drive portion as it is separate. Mr. Conroy asked where is the plan that shows the invert of the pipe. Mr. Keaton stated there is no sketch as it is a generic detail. Ms. Walker stated if it was 127' not 126' as shown on the plan, it would be dry. Mr. Conroy stated the plan being wrong is not the issue, it was sloppy at best. We have had wet basins. Ms. Walker stated that wet basins are not verboten, but this one was suppose to be dry. Mr. Conroy asked if it was presented to us as dry or wet and Mr. Macchi stated it was intended to be dry. Mr. Conroy stated then it is not as simple as 126' to 127'. The problem is that this was remanded back and we can't make changes. It should be run by town counsel. Mr. Macchi stated one plan shows 126' and one plan shows 127'. Mr. Conroy asked then why didn't we have both plans and Mr. Keaton stated he can give it to us. He submitted a letter to the board dated January 9, 2014 regarding Basin #3 from Chuck Utschig. The engineer thought that all basins were supposed to be dry basins. Mr. Forsberg asked the elevation of the pipe now and Mr. Keaton stated approximately 127.8'. Mr. Conroy stated he doesn't understand why it was wrong to start with. The whole deal should not have been wrong. Ms. Walker stated it should have been labeled 127' not 126'. Mr. Conroy stated it is whatever the lot numerically holds, so 126' it is. It wasn't designed wrong, it was built wrong. However, because this was a court case someone has to tell us how to do it. He is not against this, but we need to be told what we do is correct. They have to go back to the original thing to find out if this is wet or dry. Mr. Macchi asked do you want us to go back to court? Mr. Conroy stated that is not what he said. We need something from the engineer who did it. They built it wrong. Mr. Macchi stated the board now has a letter from Chuck Utschig. Mr. Conroy stated he doesn't care how they do it, but he wants to make sure it is done right. With regard to the transformer and the pole, they need to be completed before we can release any money and we can't release any bond money with outstanding items. Mr. Macchi stated so you want this letter addressed to you. Mr. Conroy stated we just got this letter tonight. We have never seen this. Mr. Nottebart stated we need a letter to take to town counsel to verify that what we are doing is okay. Mr. Macchi stated that Toll has been very forthright on this and they are not trying to circumvent anything. You are saying you are putting this off for another year. Mr. Nottebart stated there is the issue of the remand. Mr. Macchi stated this could be sent along. He is asking if the board will consider conditional approval so the Selectmen can put this on the warrant. He is aware that the warrant closes at the beginning of February. Mr. Conroy asked Ms. Walker if this can be done in the winter and Ms. Walker stated no, as it can't be stabilized in the winter. Mr. Conroy stated we can't sign off on this the way it is. The Selectmen don't want to put something on the warrant and then have to take it off. However, Mr. Macchi can try and make his deal with the Selectmen and the town administrator. It would be up to Mr. Macchi to go and see them. Mr. Macchi stated he doesn't disagree with Mr. Conroy.

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Mr. Forsberg stated if the letter from the Engineer is addressed to the Planning Board, he will be satisfied. He asked if this could be a field change if we receive a letter. Ms. Walker stated it is not a field change. Her problem is that she can't stand in front of the Selectmen this is ready for final bond release. Mr. Conroy stated we can't release the bond entirely; however, he asked if they want a partial release with the understanding that there has to be total release before it goes to town meeting. Mr. Macchi stated you could hold it until two weeks before town meeting if you want. Mr. Conroy stated the Selectmen have the upper hand with this, but we have to vote favorably before it goes to town meeting. Ms. Walker stated the street would be laid out the end of February or the beginning of March. At that time, she will be asked if everything is ok and at this time, she can't comfortably say yes as the basin won't be stabilized by then. Mr. Conroy stated this is all on Phil Macchi, not Maggie Walker. Ms. Walker stated Cindy Berube will not put it on the warrant until the Planning Board says they are all set. The Selectmen need the input from the Planning Board. Mr. Murtagh stated it is impossible to go before town meeting when it is not finished and you need April and May for the growth to fill in. Ms. Walker doesn't think they will be done in time. Mr. Macchi stated if Ms. Walker gives them a letter stating everything is done except the utility pole, the transformer and the forebay, it would be up to him to ask the Selectmen if they will allow this to be put on the warrant as long as this is completed prior to town meeting. He understands funds will not be released until then. Mr. Macchi requested that he be allowed to communicate with the Selectmen to request "place holders" for the street acceptance articles even though the bond was not released with the understanding that all of the above items would be completed in a timely manner which would in turn allow the Planning Board to release the bond. Ms. Walker stated the Board of Selectmen need something from this board for street acceptance. Mr. Conroy stated you are really only asking for time at this point.

Mr. Conroy moved that we send a letter to the selectmen stating the Planning Board held a residents' hearing for The Bird Estates on Thursday, January 9, 2014 as per Toll's request for final bond release and to start the street acceptance process. However, the Planning Board did not vote to release any monies at this time due to input from both the Town Engineer, Margaret Walker, and the applicant's attorney, Philip Macchi. The issues discussed were 1) a street light has not been installed as required; however, the applicant's attorney stated it was to be done on January 10th; 2) relocation of a transformer has not been done; however, the applicant's attorney stated it is to be done on January 14; 3) regrading of a retention basin; however, Ms. Walker stated this item cannot be completed until Spring as the basin cannot be stabilized until that time. Motion seconded by Mr. Murtagh and voted 5-0-0.

8:45 p.m. Allied Recycling Special Permit, Case No. 13-6 and Allied Recycling Site Plan Approval, Case No. 13-7 Continued Hearings: Mr. Nottebart read a letter from Shane Oates, Coneco Engineering, dated January 8, 2014 requesting this hearing be continued to March 6, 2014 and also granting the Board an extension of time up to and including March 31, 2014.

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Mr. Nottebart moved to accept an extension of time up to and including March 31, 2014 per request of Shane Oates dated January 8, 2014. Motion seconded by Mr. Conroy and voted 5-0-0.

Mr. Nottebart moved to reschedule this hearing to March 20, 2014 at 7:30 p.m. and 7:31 p.m. Motion seconded by Mr. Forsberg and voted 5-0-0.

Mr. Nottebart moved to send a letter to Mr. Oates stating that due to the lack of progress on these applications advising them that at their next hearing scheduled for March 20, 2014, they must be prepared to either 1) moved forward with the public hearing process with any new information or revised plans being submitted two weeks prior to the hearing; or, 2) withdraw the applications without prejudice. If they decline either option, the Planning Board will be forced to deny your application. Motion seconded by Mr. Conroy and voted 5-0-0.

8:49 p.m. North Street Across from Sunny Rock Drive Scenic Road Hearing:

The applicants, Michael Viano and Sean McGinty were present. Mr. Viano stated they are seeking to remove about 20' of stone wall, but no trees are to be removed. Mr. Nottebart read letters from the Walpole Police Department, the Tree Warden and Town Engineer. Mr. Viano stated the wall is loosely formed at this location. The isolated wetland is covered by the Town of Walpole Wetland Protection Act and doesn't fall under the State's jurisdiction at all. Mr. Murtagh questioned the sight distance and Ms. Walker stated she doesn't know. Mr. Viano stated it is pretty good. Mr. Conroy stated a driveway can be put anywhere on the property. Mr. Viano stated there will also be a stop sign.

There were no comments from the board or the public. Mr. Nottebart moved to close the hearing. Motion seconded by Mr. Mazzocca and voted 5-0-0.

Mr. Nottebart moved to approve the removal of approximately 20' of stone wall on North Street across from Sunny Rock Drive with the condition that the stones be reused to enhance the stone wall as per recommendation of the Tree Warden. Motion seconded by Mr. Murtagh and voted 5-0-0.

Buttimer Family Trust Conceptual Plan Discussion: Mr. Viano presented a discussion plan to the board for the development of farm land between North and Fisher Streets. He agreed that the discussion is non-binding. He stated there would be parks and trails that would be open to the public.

Millbrook Street Acceptance: Ms. Walker stated we are in receipt of a partial bond release request from Jack Walsh for Millbrook. She has the following questions: 1) can we release the bond due to the pending ball field issues? 2) the request shows incorrect stations; 3) the ball field is a bonded item; 4) she questioned the sewer pump station.

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Mr. Conroy stated you could just leave the ball field as a bonded item. Mr. Nottebart asked if the Sewer and Water Commission discussed this and Ms. Walker stated they have to vote to accept the pump station. She feels we need a corrected letter from them showing the correct stations and then we can proceed with the residents' hearing. She stated she will send them a letter and copy the Planning Board.

High Oaks IV: Mr. Nottebart read a letter from the Board of Selectmen dated January 8, 2014 confirming a vote of September 4, 2012 for favorable action to remove the restriction on Lot 113 (should be Lot 115) as requested by the Planning Board and asking if the Planning Board believes there is new information regarding this issue and asked if the Planning Board wanted to meet in executive session with them on January 21st. It was the consensus of the board that it would not be necessary to do that as they have answered our questions. Mr. Conroy asked that we get a copy of the September 4, 2012 Selectmen minutes. Mr. Nottebart suggested we write a letter to Ilana Quirk asking why she feels that is not our land at the time of street acceptance. Further, would the board be satisfied with that letter.

Mr. Nottebart moved that we respond the Selectmen's memo of January 8, 2014 that based on the fact that we have no new information, we will not be coming in. Motion seconded by Mr. Conroy and voted 4-1-0 (Forsberg voted in the negative).

It was moved, seconded and voted to adjourn. The meeting adjourned at 10:00 p.m.

Respectfully submitted,

John Murtagh, Clerk

Accepted 2/6/14