

WALPOLE PLANNING BOARD MINUTES OF APRIL 7, 2016

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

Mr. Conroy opened the meeting at 7:06 p.m.

Minutes: Mr. Nottebart moved to accept the minutes of March 3, 2016. Motion seconded by Ms. Gaffey and voted 5-0-0. Mr. Nottebart moved to accept the minutes of February 18, 2016. Motion seconded by Ms. Gaffey and voted 5-0-0. Mr. Nottebart moved to accept the minutes of March 17, 2016. Motion seconded by Ms. Gaffey and voted 5-0-0.

54 Peach Street, 2-Lot Subdivision: The applicant was represented by Atty. James Brady, Main Street, Walpole, MA. He stated his clients are not selling both lots. They are purchasing one for themselves and the front lot is being sold. They intend to live on the back lot. Mr. Mazzocca asked if they understand where we are coming from. There was a sign that said two lots for sale. Atty. Brady stated that is a misinterpretation. It is a marketing tool. Technically, there will be a sale because they want to buy Lot 2. Atty. Brady stated he can tell the board unconditionally that the Adams' will buy this second lot. Mr. Mazzocca stated he is satisfied with that. He was not happy in the beginning with all the waivers involved, but as long as there is no misrepresentation, he is fine with signing this tonight. Mr. Nottebart asked if the sign ever said "two" lots and Atty. Brady stated no. Mr. Nottebart stated this was sent to the Historical Commission with regard to tearing down the front house. Atty. Brady stated yes. That occurred earlier in the process.

Mr. Conroy moved to endorse the mylars for 54 Peach Street as presented noting the town clerk signed off that no appeal has been taken. Motion seconded by Mr. Mazzocca and voted 5-0-0.

Mr. Conroy moved to accept the Form F covenant as presented. Motion seconded by Mr. Nottebart and voted 5-0-0.

Mr. Conroy moved to accept the covenant with the Town of Walpole Private Way as presented. Motion seconded by Mr. Nottebart and voted 5-0-0.

Mr. Conroy moved to accept the Operation and Maintenance Plan and Covenant with the Town of Walpole as presented. Motion seconded by Mr. Murtagh and voted 5-0-0.

Mr. Conroy moved to accept the Mutual Maintenance Agreement Morrissey Lane as presented. Motion seconded by Mr. Nottebart and voted 5-0-0.

Mr. Conroy asked that the applicant submit proof of recording of all documents to the Planning Board and Atty. Brady agreed.

Twins Realty Trust, 985-995 Old Post Road: Mr. Conroy read a letter dated March 10, 2016 from David Norton, Building Inspector, stating he has determined there is no zoning relief required for the proposed amendment to the site plan. Mr. Nottebart questioned why they didn't have to come back to us and Mr. Conroy stated the building inspector said they didn't have to. Mr. Murtagh stated the building is shrinking, not getting larger. Mr. Conroy stated they are doing this through a limited site plan.

Commerford's Corner: Mr. Conroy read an update from the town engineer dated April 4, 2016.

7:25 p.m. Frucci/Lipizzi, 3 Warren Lane Scenic Road Hearing: The Town of Walpole Tree Warden was present for this hearing. Mr. Conroy read the public hearing notice and comments received from Engineering and Conservation. Mr. LeBlanc stated he couldn't find the monuments on the corner of Warren Lane and North Street. Mr. Conroy stated he needs to make sure the stone wall is not going over a bound. Mr. LeBlanc stated he was contacted by Cinthia Frucci. She stated there are three trees she would like removed and all three are in fair condition; one is a Norway maple, one is a swamp Elm and one is a white Oak. The two largest trees have already been cut back by the utility company. He has no objection to the removal of these trees to be done at the applicant's expense. Also, there is a rubble wall which is in no particular configuration. Ms. Frucci stated the intention is to rebuild the stone wall to reach the property at 651 North Street where the farm stand was and right now it is falling over. Mr. LeBlanc asked for replacement of the trees removed. Ms. Frucci stated she is planning on planting arborvitaes on her own property so the town doesn't have to take care of them. Mr. LeBlanc stated he would like the replacement cost of the three trees to be donated to the Tree Fund Gift Account. The trees will be about \$250 each. Ms. Frucci agreed to that. Mr. LeBlanc stated that will be \$750. Ms. Frucci feels that is too much money if that is in addition to the cost of the removal. Mr. LeBlanc stated the tree removal will improve her property. Ms. Frucci offered to pay \$350. Mr. Nottebart stated they do have to pay to take the trees down and Ms. Frucci stated that will cost her \$1200 to remove all three trees and then they have to rebuild the stone wall. Ms. Gaffey asked if the wall is on her property and Ms. Frucci stated it is half and half. Mr. Murtagh stated he supports Mr. LeBlanc 100%. He asked him if when he gets the check for the trees, will it go back to the applicant's yard trees. Mr. LeBlanc stated he couldn't possibly put a tree on the edge of the road there, so they will most likely end up at an elementary school or a playground. Ms. Gaffey asked if there is a sight problem pulling out of the Warren Lane now and could a tree impair that distance more. Mr. Nottebart stated this will make Ms. Frucci's property better. He also supports Mr. LeBlanc. Mr. LeBlanc stated the price is \$250 per tree of 2-1/2" caliper. For every tree taken down, one gets put back. Mr. Mazzocca stated if these were pretty trees he would feel differently, but these are not.

Ms. Gaffey moved the applicant will replace the stone wall and they will take down three trees in lieu of a \$500 donation to the Tree Fund. Motion seconded by Mr. Murtagh and voted 5-0-0.

7:40 p.m. 2016 Spring Town Meeting Article: Mr. Conroy read the public hearing notice and also comment letter from the Conservation Agent and the Fire Department. Ms. Dennehy explained the article and stated it was as a result of a loophole that we encountered a while back. Mr. Nottebart asked if this was driven by Eastover Road and Ms. Dennehy stated yes.

There were no board comments or public comments.

Mr. Conroy moved to voted Favorable Action on the Zoning Article. Motion seconded by Mr. Nottebart and voted 5-0-0.

Attorney Quirk arrived at 7:49 p.m.

7:50 p.m. Olmsted Estates Continued Hearing: The applicant was represented by Atty. Vincent O'Brien, Dover, MA. He stated there were three issues from the last meeting: 1) utility pole – no certificate of occupancy until the pole was removed and 2) he has the assents from the lot owners: SR11, Whitman Homes, Lot 11 Gallagher, Lot 8 Maars, Lot 1 O'Donnell and Lots 9 and 10 Olmsted. Mr. Conroy asked if that includes the mortgagees and Atty. O'Brien stated if there is a mortgage on the property, it is attached. He requests that counsel review this right now so they can move on. Mr. Conroy stated that town counsel is here tonight but he doesn't want to put her on the spot. The board handles everything in a public hearing, so nothing is done behind the scene. Counsel is here as an observer, not to speed things through. Atty. O'Brien stated he is not trying to speed things up, but does feel it was not necessary and it redundant. Mr. Conroy stated it is different between this board and the utilities. This is a safety concern of the board. Atty. O'Brien stated that was addressed at the last meeting. Since town counsel is here he is requesting she look at it now. Mr. Murtagh suggested he as town counsel her opinion. Atty. Quirk stated this is not redundant and is necessary to the modification. She suggests that a condition of approval be that any time a decision with respect to the modification is recorded at the registry that there be a certificate by counsel that all the assent of the mortgagees and owners is in hand. It can be dealt with through a condition or a certificate signed by their counsel. Mr. Conroy stated he wished the applicant had something. Atty. O'Brien stated he didn't think of it. The objective of this exercise was to be assured that the people who purchased lots were aware of this and he feels they satisfied that. Mr. Conroy asked the pleasure of the board. Mr. Murtagh stated he will go along with town counsel and the other three members agreed with him. Mr. Conroy stated she was simply here as an observer and feels we are paying to have her do the work right now. It should have been done a long time ago, but he is in the minority. Atty. O'Brien stated there was a notice from the Conservation Commission that was raised by them and he has a letter that now they are satisfied. Mr. Murtagh stated he rode up to Warren Lane and the basins are empty.

Mr. Conroy read comment letters from the Board of Health, fire department, police department and the conservation agent. There were no public comments.

Mr. Conroy stated we will be faced with a time when there is no bond on this subdivision when they get approval and then go to record it. Atty. O'Brien stated that once the board reaches a decision, they can authorize the engineer to calculate a bond. He raised that at the last meeting. Mr. Conroy stated the other bond will disappear and the new bond will take over. The other subdivision will cease to exist and this one will be on line. Atty. O'Brien stated that in the normal course of the subdivision, you have a couple of options: they can bond the subdivision when plans are signed or they can enter into an covenant. They can elect to give the board a bond instead of a covenant. Most of the infrastructure work will be done by that time. When they recorded plans the last time, the town engineer went with

them. Mr. Conroy asked how we are going to do this. Atty. Quirk stated if you have a bond already it could be modified. Mr. Conroy stated this is a whole new bond. Atty. Quirk stated they would need a new bond referring a new date. The developer has the ability to choose the surety it will use to the satisfaction of the board. She is hearing their counsel say a money based surety, which is the best way. Mr. Conroy stated they would walk in with a bond before we sign off and there would be no Form F. He doesn't think we can let them take the plans until we have a bond, but how do we accept a bond on something that is not recorded? Atty. Quirk stated the board would have to accept the bond before endorsing. Mr. Conroy asked can we accept a bond on something that has not been endorsed. Atty. Quirk stated yes and Atty. O'Brien agreed. Atty. Quirk stated we should let them know the bond amount, they give us the bond in that amount, and once the bond is in hand, obviously at the same meeting, the plans can be endorsed. Mr. Conroy stated he is not comfortable with third party bonding, especially with electrical stuff. In this case, P.J. Hayes doesn't have the legal right to move the pole. It has to be the owner. Atty. Quirk stated in the surety agreement they could address that saying each owner involved would have to sign off and give a license to the bonding company to go forward in the event of a default. Mr. Conroy stated the utilities are not on the bond. Atty. Quirk asked if the Planning Board Rules and Regulations require that utilities be bonded and are they shown on the plan. Mr. Conroy stated no. Atty. Quirk stated you can only ask for what is shown on the plan. She doesn't know of a mechanism to require a surety for something not shown on the plan, such as cable, phone, etc. Mr. Conroy stated someone can't speak for someone else. Mr. Murtagh asked if we are limited in what we can do and Atty. Quirk asked if he is talking about the electricity to the individual houses and Mr. Conroy stated no. Atty. Quirk stated they would retain the fee and Atty. O'Brien stated they have already done that. Mr. Conroy stated if they impose a third party bond and walk, the town would be liable. How do we pay for all the stuff? Atty. Quirk stated it should be included in the bond when it was set. Mr. Conroy stated that two years from now if this doesn't go through, there will be eleven people screaming at us. How do we assure this will be covered 100%. Atty. Quirk stated the town engineer will prepare a punch list. Mr. Conroy stated he doesn't want an issue because someone wants to do a third party bond. Atty. Quirk doesn't know what that means. Michael Viano, applicant, stated the bond was issued by Hartford Insurance in the name of SR11 and P. J. Hayes. Mr. Conroy asked if it was just P.J. Hayes and Mr. Viano stated no. This is the same bond issued under the Planning Board Rules and Regulations. The only difference is that P.J. Hayes is on there. Mr. Conroy just wants to know how we are protected so when the bond comes in we will be 100% sure it is properly before us. Atty. Quirk stated require they provide you with evidence that they have what you need. Mr. Conroy stated this will be a joint bond between SR11 and P. J. Hayes? Mr. Viano stated yes issued by the Hartford Insurance Company.

There were no further questions.

Mr. Conroy moved to close the hearing. Motion seconded by Mr. Mazzocca and voted 5-0-0. The board discussed the draft decision as provided by Ms. Dennehy. Mr. Conroy requested that the Deputy Fire Chief memo of March 9, 2016 be attached. Ms. Dennehy stated that Parcel 5 as shown on the definitive plan is unbuildable. Mr. Conroy there was no phasing submitted to us. Ms. Dennehy noted there is only ten lots, not eleven. Atty. Quirk asked that Special Condition #9 be added with regard to a title

certificate. She will provide that verbiage to Ms. Dennehy. Mr. Murtagh questioned Special Condition #4 regarding concrete sidewalks. Ms. Dennehy stated that was in the prior decision.

Mr. Conroy moved to approve the Olmsted Estates Modification as per a plan prepared by Glossa Engineering showing the latest revision to be March 9, 2016 with the Board's standard and special conditions. Motion seconded by Mr. Nottebart and voted 5-0-0.

8:45 p.m. Roscommon Subdivision Continued Hearing: The applicant was represented by Atty. Vincent O'Brien, Dover, MA and John Glossa, Glossa Engineering, Walpole, MA. Mr. Glossa stated they made some minor changes to the plan based on comments from the Conservation Commission and the Conservation Agent, which have to do with a natural infiltration basin. The Conservation Commission had asked them to be no closer than 50' to the wetlands. There will be no excavation, just areas to trap the water. He agrees with Ms. Hershey to have an easement in place. They were asked to provide some monuments to identify the easements and it be added to the plan. Also, during construction, they were asked to provide temporary construction fencing that would limit the area within which the contractor could work. They want everybody to stay out of those areas. There are minor changes and no changes based on comments from the Planning Board at the last meeting. He gave those changes to the Conservation Commission today and the meeting is April 13th. He will leave those new plans with the board tonight. Mr. Glossa stated that based on the changes made, he thinks the ConCom is ready to close the hearing and then wait to see what the Planning Board does before they issue their order of conditions. Mr. Conroy asked if the plans we have are the latest and Mr. Glossa stated no. He will leave those tonight as he wants to meet the fourteen day rule. Mr. Conroy stated the two week rule is to allow us time for review. If the plans we have tonight will be changing, why are you here tonight? We are going to be talking about plans that are no good? Mr. Glossa stated yes. There have been minor changes to the plans that board has in front of them. Mr. Conroy stated those changes have anything to do with us and Mr. Glossa stated yes. Mr. Conroy asked if we could give you approval with the plans that are before us tonight and Mr. Glossa stated yes because the changes are based on the last Conservation Commission meeting. The revisions are very minor in nature. Mr. Conroy stated that whatever is in front of us tonight is not the most up to date plans. Atty. O'Brien stated you have said in the past that they would be at risk if the Conservation Commission changes something and the Planning Board doesn't have it. The plan before you is complete and accurate; however, there may be more changes from the ConCom. There is input from many different boards and the fire department. These issues need to be resolved prior to the board making a decision. They want to keep the discussion going with the knowledge that there will be changes. Mr. Conroy asked what revision they are up to and Mr. Glossa stated #7. Mr. Conroy stated there are seven revisions. He doesn't think that is the result of what we have done or even ConCom. The changes have not been driven by the town. A good portion of these changes are your own. He doesn't want it said they are getting bounced between two boards. Atty. O'Brien stated sometimes they are Maggie's changes. Hopeful, the ConCom will be satisfied on Wednesday, but he is not sure. Mr. Conroy stated as far as whether or not the changes are major or minor that is up to the boards we sent them to. Since we have a new set of plans coming, he asked the board what they wanted to do. Mr. Murtagh stated he has some issues with Roscommon; therefore, he would like to move forward. Mr. Nottebart doesn't see a problem with continuing. It is troubling with

all these changes. He asked if the new plans could go out tomorrow. Mr. Conroy stated there are two issues with that. We can put them on for next time as we can't control the other boards. If they don't get information back, we would have an issue. Mr. Nottebart asked if we could waive that review. Mr. Conroy stated everyone has different time frames for meetings. Atty. O'Brien stated they are trying to do as much as they can to get the plans out. Ms. Dennehy asked if it would make sense to see if the board wants to proceed. Ms. Gaffey stated we gave them a bye last time. There was no access last time and we moved forward. She hasn't seen this new plan and there is still no legal access into the subdivision. We need to have actual comments before we can go forward. Mr. Mazzocca thinks we can continue to discuss the issues like Lots C and D. We are here and there is plenty to discuss. Mr. Conroy stated three want to do it and two don't. Mr. Conroy asked Mr. Glossa if he wants to present and Mr. Glossa stated he already has. Atty. O'Brien stated this is a plan we will be living with for a while. There will be minor changes. Can we move from the special permit phase to subdivision phase? The board put in at least a year's worth of time in the special permit phase. There is a difference in the concept of design, including the size of the lots and the length of the roadway. That is a big issue. During the special permit part that was discussed. Many members of this board have expressed concern with this. We should discuss that waiver tonight, and also a description of the total lot count. They need to know if the plan survives.

Mr. Conroy read comments from SR II Ventures and also two letters from the fire department. Mr. Conroy feels they should use a bus with regard to the turning radius. Mr. Glossa stated a fire truck is bigger. He questioned that Mr. Conroy wanted them to put a school bus on a 75' radius and Mr. Conroy stated that a school bus driver is different from a fire man. He would like something in writing.

Ms. Dennehy stated she believes the lot count is 30 including Lots C and D. The plans state "existing houses to be relocated". Lots C and D are numbered as "36" and "37" and thirty-seven was the total requested. The plan tonight shows thirty; therefore, she is concerned with the lot count. She and Ms. Walker have the same comment that town counsel will need to review certain documents. Regarding waivers, both she and Maggie agree that the request to waive the street lighting doesn't appear to be reasonable given the size of the subdivision. Regarding the dead end street waiver, if the board doesn't grant that waiver, the plan would change significantly. Regarding monoberm, if Bob O'Brien prefers this, she is not sure there needs to be further discussion on it. Mr. Murtagh stated the Planning Board makes their own decision. We don't need to reach out to anyone. Once you hit the monoberm, it is a mess, so he is not in favor of that.

Ms. Dennehy stated she didn't see the hydrant near Lot 27 on the plan. Mr. Glossa stated that with regard to zero plots, that was a suggestion of the Town Engineer. Ms. Dennehy suggested more discussion on the phasing process and 61-A land needs to be done. She asked if the board is sending this subdivision out for traffic peer review as the only access is through Olmsted Estates to Fisher Street. She asked if we would be sending out the whole subdivision. Mr. Conroy stated Ms. Walker determines if this needs a peer review. Ms. Dennehy stated this is a lot of lots and feels either she or Ms. Walker can get three quotes.

Mr. Conroy moved we get a draft study as recommended by the town engineer and the economic development officer. Motion seconded by Mr. Mazzocca and voted 5-0-0. Mr. Mazzocca asked if Ms. Dennehy is recommending that we peer review the whole thing and Ms. Dennehy stated yes. Mr. Nottebart stated when he talked to Wayne, he thought we should do the whole thing. Mr. Mazzocca asked what would we be asking them to do. Ms. Dennehy stated to verify with regard to our rules and regulations. She is not trying to add time to this.

Mr. Conroy moved we go get a peer review. Motion seconded by Ms. Gaffey and voted 5-0-0. Atty. O'Brien stated Beals & Thomas is very familiar with this. Mr. Conroy stated he has an issue with that. Mr. Glossa stated they won't review the drainage again. Mr. Conroy stated no, only the open space numbers. Mr. Glossa stated okay. Mr. Nottebart asked if it was more in terms of procedures and Ms. Dennehy stated that is correct. Mr. Conroy stated we all have an issue with Lots C and D and asked if we should jump into that now. Mr. Mazzocca stated we should probably wait until after the peer review. Ms. Dennehy stated it won't take too long. We can send them the stuff immediately. Mr. Conroy stated that what you have is a special permit versus what we have here is a bone of contention. We were told by Ilana Quirk that what is in the decision, we have to go with it.

The board discussed Lots C and D. Atty. Quirk stated the decision is the decision, but you have a waiver here and it is a heavy waiver. Atty. O'Brien stated he knows some members of the board don't like waivers. If this is objectionable, this won't work. Mr. Murtagh asked if he is talking about the dead end and Atty. O'Brien stated that is correct. Mr. Conroy asked the purpose of the dead end. Atty. O'Brien stated 1) the ConCom doesn't want two crossings and 2) they assured the residents on North Street they wouldn't exit onto North Street. If there is absolute opposition to that waiver, this is moot. Atty. Quirk stated the dead end waiver can change the lot count. You probably should reserve the rights on the number of lots because you haven't gone their yet. Ms. Gaffey this is a big area to have only one way in and one way out. She is not in favor of this waiver. She feels it is too tight for all that to go on. Mr. Mazzocca thinks it is a trade off for the people on North Street not to go out to North Street. He looked at the fire department and they have no issue, so he is okay.

Mr. Conroy stated he won't give an answer un he gets a report from the traffic engineer. He is Switzerland. That report could change their minds. Atty. O'Brien stated he will defer to the board on the other waivers. Mr. Conroy feels they should have had two plans in case the waiver is shot down. Mr. Glossa stated if you don't vote for a waiver they would add them to the plan. Atty. O'Brien stated if you don't approve the street light waiver, they would go back and add the street lights. Mr. Glossa explained a limited project. Mr. Conroy questioned two crossings and stated that Con Com won't allow two. Mr. Glossa disagreed. He stated they have to allow the second road if the Planning Board denies the waiver. Mr. Murtagh would like a configuration. He asked if we gave Ms. Dennehy permission to proceed with the peer review.

There were no comments from the public. Atty. O'Brien gave the board an extension through May. Mr. Conroy stated we need a draft consultant. Atty. O'Brien stated he will give the board an extension of time through the end of May. Further they request that the peer review be given to them as soon as possible so they can respond to it.

Mr. Conroy stated the next meeting if May 19, 2016. Mr. Murtagh asked if Ms. Dennehy can send the peer review to the board and Atty. O'Brien and she agreed. Mr. Conroy verified that with town counsel. Atty. Quirk stated it could be provided to them immediately. Also, anything in the folder is public record unless the board votes a policy but that would have to be done.

Mr. Conroy moved to accept an extension of time up to and including May 31, 2016 per the applicant's attorney, Vincent O'Brien. Motion seconded by Mr. Murtagh and voted 5-0-0. Mr. Conroy moved to continue this hearing to May 19, 2016 at 7:45 p.m. Motion seconded by Mr. Nottebart and voted 5-0-0.

10:16 p.m. Boyden Estates Subdivision continued hearing: Mr. Conroy moved to accept an extension from the applicant Lou Petrozzi up to and including June 9, 2016. Motion seconded by Mr. Nottebart and voted 5-0-0. Mr. Conroy continued this hearing to May 19, 2016 at 7:31 p.m. as requested by Lou Petrozzi.

Mr. Conroy moved to adjourn. Motion seconded by Mr. Nottebart and voted 5-0-0. The meeting adjourned at 10:20 p.m.

Respectfully submitted,

John Murtagh, Clerk

Accepted 5/19/16