

## WALPOLE PLANNING BOARD MINUTES OF DECEMBER 3, 2015

A regular meeting of the Planning Board was held on Thursday, December 3, 2015 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, Richard Mazzocca, Margaret Walker, Town Engineer; Ilana Quirk, Town Counsel.

Mr. Conroy opened the meeting at 7:03 p.m.

**Minutes:** Mr. Conroy moved to accept the minutes of November 19, 2015. Motion seconded by Mr. Nottebart and voted 4-0-0.

**Brush Hill Subdivision Bond Release:** Mr. Conroy moved to send a letter to P. J. Hayes and John Hasenjaeger to inform them that the guard rails should be put up as soon as possible as there is a safety issue without them. Motion seconded by Mr. Murtagh and voted 5-0-0. Ms. Walker stated that this subdivision is not yet ready for bond release.

**Olmsted Estates Bond Acceptance:** Mr. Nottebart stated he is not sure where we stand on this at this point. Atty. Quirk stated she had given a recommendation. She reviewed the bond and feels it was accurate. There was a clerical error that one of the signatory's was Northridge Farm, but that was corrected the next day. She feels this is proper as to form.

**7:30 p.m. and 7:31 p.m. Jiten Hotel, Route 1, Case No. 15-11 and 15-12:** Mr. Conroy read a letter dated December 1, 2015 from Atty. William O'Connell, 1333 Main Street, Walpole requesting to withdraw Case No. 15-11, Site Plan Approval, and 15-12, Special Permit, without prejudice. Mr. Conroy moved to allow the applicant to withdraw Case No. 15-11 and 15-12 without prejudice per a request by their attorney. Motion seconded by Mr. Nottebart and voted 5-0-0.

**7:33 p.m. Roscommon Subdivision:** Mr. Conroy stated this hearing had been continued without testimony from November 5, 2015. Mr. Conroy read the public hearing notice. At the last hearing, John Murtagh, Clerk, stated that the green cards were all returned. Town Counsel, Ilana Quirk, stated she was at tonight's meeting at the expense of the applicant.

Ms. Gaffey stated when she was reviewing this she was checking the board's Rules and Regulation. She doesn't feel there is access to this subdivision. Mr. Conroy stated that is an issue. We can't vote or approve this tonight and he feels that is an issue. Atty. Quirk recommends the board speak to the applicant to see how they wish to proceed with this issue. Mr. Conroy stated they gave us a plan with no access. It is not up to the applicant. According to MGL, it is not a plan. Atty. Quirk stated she knows there is a through connection proposed, but that access hearing is not on the table yet. We have nothing.

Atty. Johanna Schneider, Rackemann, Sawyer & Brewster, Boston, MA was present and representing the applicant. She stated they were before the board two weeks ago and refiled that Olmsted application. She understands that the board could not vote yes tonight, but there will be many meetings. They are proposing access, but it is not before the board tonight. She would like to sync up the applications. Mr. Conroy asked if she was asking us to rearrange the law and Atty. Schneider stated certainly not. Mr. Conroy asked if she agrees this plan cannot be submitted. Atty. Schneider stated yes.

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Mr. Conroy asked when can it be approved and Atty. Schneider stated when the Olmsted modification is approved. Mr. Conroy stated we have the cart before the horse. Ms. Gaffey stated she was just following the Rules and Regulations. Atty. Schneider stated this is a paper street and she believes this can be approved. Mr. Conroy stated that paper streets are created off regular streets. You can't have it in the middle of an island. He asked what street they are connecting to and Atty. Schneider stated there will be a connection through Olmsted Estates and also there is access off North Street. Ms. Gaffey stated that is a dead end and it hits the back of Lot 14. Mr. Glossa, Glossa Engineering, stated isn't that what this process is about. You tell us that it meets the Rules and Regulations or not and then they make those changes. Mr. Conroy stated that the process Mr. Glossa is talking about is for drainage or something like that, not access. Back on December 18, 2014, he asked Atty. Vinnie O'Brien and John Glossa why aren't they doing this now and you said you would do it later. Why would you present a plan that cannot be approved and why would we review a plan that can't be approved. The Special Permit plan we had in May doesn't look like what is before us tonight. It just showed us a connection to Olmsted Estates. Atty. Schneider asked isn't it also about the layout of the lots and Mr. Conroy stated yes. Atty. Quirk stated under CH 41 S 81U Paragraph 2 states in the event of a denial of a subdivision, the board needs to cite every reason why it can't be approved. In the event of a denial, you would need to enumerate the reasons. Mr. Conroy stated he can go down the list and throw everything away. Atty. Schneider asked if he would do this without allowing the applicant due process. I am asking you if it is your intent to deny this without a public hearing. Mr. Conroy asked if she is saying they should be allowed to submit a plan without access. Back on November 2, you indicated that you knew you didn't have access, but you would eventually get it. You admitted that right off the bat. For the record, why was this plan submitted now without having proper access. What is the reason? What sense does that make? Atty. Schneider stated they had pending before this board a request to amend Olmsted Estates. They could either withdraw and do a conventional plan which would create other legal issues. We had something before this board two weeks ago that they were required to withdraw and they have re-filed and it is pending. Mr. Conroy stated that is a requirement of MGL, not ours. Why didn't your client wait until after this was done. This way doesn't make sense.

Atty. Schneider stated that due to the scheduling this didn't work out. Mr. Conroy stated they have had almost a year to do this. Mr. Murtagh stated this is a five-member board and he would like to poll the rest of the board. Should we deny this or take town counsel's recommendation. Ms. Gaffey stated she is not looking to deny this. She just wants to know if we have to wait until the other one passes before we can do this. She doesn't want to find out later we should have done the other one first. The only guide lines she has are the Rules and Regulations. Mr. Murtagh asked if we should take town counsel's advice. Ms. Gaffey stated this doesn't have to be denied. It can be withdrawn. Mr. Murtagh stated we should listen to town counsel. Ms. Gaffey stated she doesn't want to do this one wrong. She wants this to be right. We have had so many problems with Olmsted Estates. Let's keep this one clean and get this where it should be. Atty. Quirk thinks you are asking if the applicant should withdraw. With respect to your authority to proceed, the public hearing is open. In order to deny this, you have to list everywhere there is a violation. She understand there is something from the Director of Economic Development and she agrees with the chairman and so does the applicant's attorney. She is hearing that the other counsel would like to hook up the two hearings and go forward with that. She feels that is what the applicant is asking. Mr. Conroy stated that what he said last December is they should have shown the access through Olmsted Estates and they said they didn't have to. We are here for the town. We are not here to serve the applicant. They should probably withdraw and come back after Olmsted Estates is done. That is a viable option and is what makes sense. Atty. Quirk stated that is an option.

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Atty. Schneider asked if it would also be an option to continue and not withdraw. She feels they could go forward tonight properly, so she doesn't see the need to withdraw and re-file the exact plans. Atty. Quirk stated this should be accompanied by an extension of time. Mr. Conroy stated if that would be the cleanest way, that is not an issue. There are people that possibly would wonder why this board would hear something that is not right. He asked if they are requesting that this be continued until a decision is made on Olmsted Estates. Atty. Schneider stated she would like to continue this to January 21, 2016 with an extension of time. Mr. Conroy stated we don't need an extension right now. Atty. Quirk recommends the board get one. Mr. Conroy asked for an extension up to and including March 15, 2016 and Atty. Schneider agreed.

Mr. Conroy moved to accept an extension of time up to and including March 15, 2016. Motion seconded by Mr. Nottebart and voted 5-0-0. Mr. Conroy moved to continue this hearing to January 21, 2016 at 7:40 p.m. Motion seconded by Mr. Nottebart and voted 5-0-0.

**Olmsted Estates Bond Acceptance:** The applicant was represented by Atty. Johanna Schneider, Rackemann, Sawyer & Brewster, Boston, MA. She stated they had made an in-hand delivery on Monday. Mr. Conroy stated it was only a draft bond. Atty. Schneider stated they are asking that the board approve this. Mr. Conroy stated we have a draft copy, on an official bond. Atty. Schneider asked if they give you the original bond, will it be accepted. Mr. Conroy stated we need the official bond and then we will give it to our finance director. Atty. Schneider stated so the board is not interested in working with us. Mr. Conroy stated this is our process. We want the real deal. We don't have the real deal here. Atty. Schneider stated they will try it his way. Mr. Conroy stated it is the right way. The finance director doesn't work for an individual, she works for the town. Atty. Schneider stated they were trying very hard to have this and to streamline the process. They wanted the bond held in escrow.

**Spring Town Meeting Article:** Ms. Dennehy had prepared an article for the Spring 2016 town meeting as requested by Mr. Nottebart at the board's November 19, 2015 meeting. Mr. Conroy moved to accept the article as presented for submission to the Selectmen for placement on the warrant. Motion seconded by Mr. Nottebart and voted 5-0-0.

Ms. Gaffey moved to adjourn. Motion seconded by Mr. Mazzocca and voted 5-0-0. The meeting adjourned at 8:15 p.m.

Respectfully submitted,

John Murtagh, Clerk

Accepted 12/17/15