WALPOLE PLANNING BOARD MINUTES OF JULY 11, 2013

A regular meeting of the Walpole Planning Board was held on Thursday, July 11, 2013 at 7:00 p.m. in the Main Meeting Room, Town Hall. The following members were present: Richard Nottebart, Chairman; Edward Forsberg, Vice Chairman (7:09 p.m.); John Murtagh, Clerk; John Conroy, Richard Mazzocca, Margaret Walker, Town Engineer and Ilana Quirk, Town Counsel.

7:05 p.m. High Oaks IV: Mr. Nottebart hereby declared, under G.L. c.30A, §21(a)(6), that the purpose of the executive session will be to discuss the potential purchase, exchange, lease or value of real property, known as Lot 115 on Mill Brook Ave in the High Oaks Subdivision, and that an open meeting may have a detrimental effect on the negotiating position of the Town, with the Planning Board to return to open session at the conclusion of the executive session.

Mr. Nottebart moved that the Planning Board go into executive session under G.L. c.30A, §21(a)(6) and §21(b) for the purposes and reasons declared by the Chairman, with the Board to return to open session at the conclusion of the executive session. Motion seconded by Mr. Mazzocca. Mr. Conroy disagreed and stated we should not be going into executive session as Mr. Walsh is negotiating with the Board of Selectmen, not the Planning Board. Mr. Mazzocca stated we will be talking about money issues and land values. Mr. Murtagh agreed. Atty. Quirk stated it is an issue related to the value of the land involved, which is the reason she came to tonight's meeting. Motion voted 3-1-0 (Nottebart, Murtagh, Mazzocca voted in the affirmative and Mr. Conroy voted against the motion). Roll Call Vote to into Executive Session: Mr. Mazzocca, yes; Mr. Conroy, no; Mr. Murtagh, yes; Mr. Nottebart, yes. The Planning Board entered into executive session at 7:08 p.m.

Mr. Nottebart moved to come out of executive session. Motion seconded by Mr. Murtagh and voted 5-0-0. Mr. Nottebart asked for a roll call vote to exit executive session: Mr. Mazzocca, yes; Mr. Conroy, yes; Mr. Forsberg, yes; Mr. Murtagh, yes; Mr. Nottebart, yes. The board went back into regular session at 7:45 p.m.

7:46 p.m. Bird Estates Traffic Signal Discussion: The applicant was represented by Atty. Philip Macchi I, 1256 Washington Street, Norwood. He stated there was a condition of approval in the special permit decision dated October 7, 1996 regarding the design of a traffic signal plan. At the last meeting, he had asked that the board to continue on with the street acceptance process. He also asked the board to ask town counsel for her opinion on the off site improvement special condition. At the last meeting, a member of the board had asked that we send a letter to MassDOT stating they should let Toll Bros. do the design. Atty. Macchi is adamantly opposed to that and will state that if that happens litigation would occur. MassDOT designed this on their own which makes that condition moot because the State is doing it. Mr. Nottebart asked if this can be done as this is a remanded court case. Atty. Quirk stated the question is has the condition been satisfied. Mr. Mazzocca stated the condition can't be satisfied because something else has happened.

Atty. Quirk read the condition in question to the public. She stated this is Route 1A. Traffic signalization is necessary if MassDOT finds it appropriate and if that happens, Toll would design it, but she understands another agenda overtook this. MassDOT did the traffic signalization for this intersection and that is not unusual. In her opinion MassDOT has determined it would be appropriate for them to do the design and that satisfies this condition. Mr. Nottebart asked if she has looked at the progress MassDOT has made.

Ms. Walker stated they are approaching 25%. Mr. Forsberg feels it could be done in good faith. Bill Keaton, Toll Bros., stated he will get together with Ms. Walker. Mr. Conroy stated this went through litigation and it was remanded back by the court. He has an issue that someone let this sit from 2001 to 2012 and then hopes this will happen. They did not do their due diligence. This letter was sent in June of 2012. They didn't try to meet the condition in question. MassDOT said they were beyond the study and are now designing it. It has been around since 2001 and Toll didn't do their job. Why would we as a taxpayer allow the State to do this.

Atty. Quirk stated the condition is for the design, not the study. It is valid that this is not finished. They can't release it if it is not done yet.

Atty. Macchi stated MassDOT took their time because that study and design ties into the whole area. At this point there is nothing we can do. You can't just break out and design a section without correlating all of Route 1-A. He doesn't feel that DOT would turn over that project to Toll or anyone else. It has been turned over to a contractor. The condition is this board's wording and the key word is "appropriate". Toll brought this up to the Planning Board. Mr. Nottebart stated it would have come up through the street acceptance process, although it did disappear for a long time. Mr. Conroy stated a letter should go to DOT from the Planning Board asking what should be done from here. No one can say what DOT will say. We have to show them what was promised. Atty. Macchi stated "promised" isn't the correct word. Mr. Conroy stated that is taken right from a Toll Bros. letter. Mr. Murtagh fully agrees with Mr. Conroy. There is 75% more to go. Atty. Quirk stated she agrees with Atty. Macchi that because the design requirement is being done by DOT, they clearly don't want the town to do this. Because DOT took it over, it is appropriate for them to do this, not Toll. Mr. Conroy doesn't think this has been done right. He feels we should talk to John Rogers or Senator Timilty and ask them to work with DOT. Atty. Macchi asked why he wants to the town to interface with DOT. Mr. Conroy stated an inaccurate letter was sent to DOT. Our state reps and senator should know what they are doing. Mr. Nottebart stated the decision was done on October 7, 1996 and nothing has been done until now. Atty. Quirk stated the way a condition works is that a surety is in place. The only issue before the board is whether or not the condition has been satisfied. DOT is incorporating that design into a large area of Route 1-A. Mr. Forsberg asked if the study or the design is the issue. The condition says the design. There are two different things in question. Atty. Macchi stated it was clarified in a future letter. Ms. Walker stated they are still at 25%. Mr. Mazzocca feels we have already answered our own question and thinks we need to send a letter to DOT. Mr. Conroy asked if Toll offered this knowing it would never happen. Atty. Quirk stated the question is is it appropriate for the town to do the design work. Mr. Conroy stated this was suppose to be in conjunction with Route 1-A. The town has no thing to do with this. It is between Toll and DOT. Atty. Macchi asked if this matter had been protracted and if so could they move on with the street acceptance process. Mr. Conroy asked if we have to conduct another hearing if we don't release the bond because of this. This can't go before town meeting until we release the bond. Atty. Quirk stated this doesn't relate to the roadway. Mr. Conroy doesn't agree with her, but we don't want to hold them up.

Atty. Quirk suggested the board's letter to MassDOT should ask if it would be appropriate for a separate design process to be undertaken given the fact that they are already doing it. Atty. Macchi asks that we send our letter to town counsel for review before sending it to DOT. Atty. Quirk stated she would prepare the letter. Mr. Forsberg asked who addresses the word "appropriate" and Atty. Quirk stated she will. Mr. Conroy asked if this should go back to a judge and Atty. Quirk stated that is not necessary as it is not modifying a decision.

Mr. Nottebart stated he will write the letter and have Atty. Quirk review it. Atty. Macchi stated this is not appropriate as he feels the condition has been met. He asked that they resolve this at our next meeting.

Atty. Quirk left the meeting at 8:20 p.m; Mr. Mazzocca left the meeting at 8:23 p.m.

8:24 p.m. Draft Zoning Article: Dan Merrikin, Merrikin Engineering, presented a draft zoning article to the board for the Fall town meeting. He stated that it would amend three different sections of the bylaw; i.e., Section 8-7-a; Section 6-B; and, Section 6-C-8.

He has met with Jack Mee, Stephanie Mercandetti and Atty. Phil Macchi II. He feels this article should be sponsored by the Planning Board. He further stated these are good changes for the town if they are interested in maximizing the HB area for taxes. Jack Mee has a list of other issues that also need to be resolved. He is willing to work with Jack Mee and the board. Mr. Forsberg feels that 25' is good and thinks a 10' buffer is too close. Mr. Nottebart asked if this is State mandated and Mr. Merrikin stated yes. He can rewrite this to read we are only talking about Highway Business or Industrial zones. Mr. Murtagh would like 10' or 15'. With regard to sponsoring the article, Mr. Nottebart doesn't have a problem with the board doing that. Mr. Conroy stated that when we did the Highway Business zone, town meeting stated we don't want to be like Norwood and here we are. Mr. Nottebart stated we will take this under consideration and we get back to Mr. Merrikin. He feels we should sponsor this. Mr. Conroy feels if Jack Mee wants them changed, he should be here working with us which would eliminate the middle man. Mr. Merrikin said he sat with Jack Mee and worked out the language. Mr. Conroy stated he feels the Selectmen should sponsor this because Jack Mee works for them. Mr. Forsberg thinks the buffers should be addressed because of situations like Plimptonville. Mr. Nottebart stated we will discuss this and get back to you. Mr. Conroy stated this should have been started in May or June. Mr. Merrikin stated he will start the process in time for the Spring 2014 town meeting.

8:50 p.m. Allied Recycle, 1901 Main Street, Special Permit Case No. 13-6 and Site Plan Approval, Case No. 13-7: Mr. Nottebart read a letter dated July 9, 2013 from Shane Oates, Project Manager, Coneco Engineering asking the board to continue this hearing without testimony until the next available meeting and also granted the board an extension of time through September 30, 2013. Mr. Nottebart moved to accept an extension of time up to and including September 30, 2013. Motion seconded by Mr. Forsberg and voted 3-0-0 (Forsberg, Nottebart, Murtagh). Mr. Nottebart continued this hearing to September 5, 2013 at 7:30 p.m. and 7:31 p.m. rather than August 15th as the applicant is meeting with the Conservation Commission on August 14, 2013, the day before our August meeting.

ANR – Ralph Topham, 210 Main Street: Mr. Nottebart placed this on the board's August 15, 2013 agenda due to the fact that the setbacks and dimensions are not shown on the ANR plan prepared by GLM Engineering. Mr. Truax had granted the board an extension of time. Mr. Nottebart moved to accept an extension of time up to and including September 4, 2013. Motion seconded by Mr. Murtagh and voted 4-0-0.

9:00 p.m. Tall Pines (refile) Subdivision): Mr. Nottebart read the public hearing notice. Mr. Murtagh stated the green cards are all set. Mr. Nottebart explained how the public hearing process will run. The applicant was represented by Richard Merrikin, Merrikin Engineering, Millis, MA. Also present was Ruth Palumbo and Bob Fox.

Mr. Merrikin stated the refile was done per agreement with the Planning Board to address some potential notice issues that revolved around easements on adjacent property. They have slope easements from 412 Old Post Road and people on High Plain Terrace. The roadway to the subdivision will be 750' long and will be the standard 26' of pavement with a cul-de-sac at the end. They would like the sidewalk on one side only. The property does include an existing ancient way, Summit Street, which is an unconstructed private way that is 20' wide and passable by foot only. They are creating five new lots and an existing house known as Old Post Road which has frontage on Old Post Road now and will continue to have it. The street is 46' wide from mid point to the end, but at the beginning it will be wider than 46'. This follows a preliminary plan which was filed prior to the first application. It will be connected to public water and town sewer.

There will be only one corner rounding and they have an easement in place. They don't need a corner rounding on the other corner.

It the board wishes, they could make this street a uniform 46' all the way down. He stated there are only two abutters present, but all neighbors have been informed about what is going on. He stated the applicant hired Robert Mangiaratti, a real estate attorney associated with the firm of Murphy, Hesse, Toomey and Lehane, Crown Colony Plaza, 300 Crown Colony Drive, Suite 410, Quincy, MA to represent them. He had previously submitted a letter dated June 27, 2013 regarding Summit Street and stated the easements do not violate anyone's property rights.

Mr. Nottebart read board comments from Board of Health, Police, Sewer and Water, and Fire and a letter dated October 1, 2012 from Michael and Ava Martin, 8 Arrowhead Road and David and Mary Johnson, 12 Arrowhead Road. Mr. Merrikin stated that lot improvements do not show up on subdivision plans, but they can be incorporated into the decision. Mr. Conroy stated a letter can be submitted to the board offering that.

Ms. Walker discussed her engineering comments that were based on the original refile plans. Regarding drain comments, Mr. Merrikin agreed with her and stated he will provide verification for comment #3 which states if there is to be a driveway installed over the underground leaching systems, proper catalog cuts must be presented. Regarding Ms. Walker's street comments, Mr. Merrikin agreed to request a waiver for corner roundings. He also stated that 412 Old Post Road is part of the subdivision and they will subdivide it into another lot, Lot 7 and when the subdivision is approved, it will become a road. The applicant stated it will become part of the road layout. Atty. Mangiaratti stated all the parcels will come together after approval. You approve it exactly as you want it and then it is up to the applicant to build it according to the decision. Ms. Walker asked that the modified plans show this. Mr. Merrikin stated he will draft a letter for town counsel and Mr. Nottebart agreed. Regarding Street comments, 5, 6, and 7, Ms. Walker stated the applicant needs to request waivers. Mr. Merrikin stated he doesn't think they need a waiver because the bylaw is in conflict. Ms. Walker would like 5' on one side and 10' on the other side. Mr. Merrikin stated he would like 5' on one side and 3' on the other. He will request a waiver if necessary. Atty. Mangiaratti stated typically Planning Board's don't require an applicant to do a title search of everyone's property. They have taken a most conservative approach. Ms. Walker asked if the basin will be a dry bottom basin and Mr. Merrikin stated yes. He further stated there is not a clear description of how to measure the 750'. To meet Ms. Walker's comments, they have to adjust the road back about 8'. He will submit an O&M. He will also ask the Conservation Commission to update their previous approval. Regarding the DIS, what is on there is field measured.

Mr. Conroy stated waivers need to be shown on the plans and Mr. Merrikin agreed to do so. Mr. Murtagh agrees with having a 5' grass strip. He doesn't expect the applicant to do a title search. Is Summit Street is privately owned? Mr. Merrikin stated yes, everyone owns to the street. Mr. Forsberg stated he can't remember ever putting a house back into a subdivision. Mr. Merrikin stated they need to do that for the roundings. Ms. Walker stated she is confused about the house not being part of the subdivision and then it will be. Mr. Merrikin stated he will give the board a letter. Ms. Walker stated you can't be a part of the subdivision now and then not later. Atty. Mangiaretti asked if she would be more comfortable if they did it with an easement. Ms. Walker stated we need to ask town counsel. He stated he will prepare a letter and send it to the board to be sent to town counsel.

Mr. Conroy stated you can't have a 6-lot subdivision with one of the houses not being in the subdivision. Mr. Merrikin stated they are. Mr. Conroy stated they need to be on the subdivision road and this one will never be in the subdivision. This has been presented to us as a 6-lot subdivision and this house is being included as the sixth home, but it's not.

Atty. Mangiaretti stated the board needs to be assured that 412 Old Post Road will be a conforming lot after the subdivision is approved. Mr. Merrikin stated he will put that on the plan when he gets his tangents once this is approved. Mr. Conroy stated that just because we may approve this, doesn't mean it will go forward. This is a five lot subdivision as you need to take 412 Old Post Road out of the subdivision. Atty. Mangiaretti asked if they should do this as an easement. Ms. Walker stated that is subject to town counsel's opinion. Mr. Merrikin stated that after the road gets approved and the bond is posted, they can ANR that lot out. Mr. Nottebart stated we need the attorney's letters so we can run this by our town counsel.

Mr. Nottebart asked for comments from the public.

Tony Zographos, 382 Old Post Road stated he feels his property value will go down as soon as the road is built. Tom Taylor, the listing Century 21 subdivision broker, stated he doesn't see why the value would go down. Mr. Zographos stated he never had met Mr. Taylor, but had spoken with Janet Robinson from the C-21 office and that is what she told him. He also now has water in his basement that he never had before. The water collects and comes into his property and basement. Mr. Merrikin stated that once the road is built the water situation will change for the plus. Surface water will not come down there. Mr. Zographos stated he was told there would be no effect on his property, but there are barriers on there now in the form of silt fences. Mr. Merrikin stated they will look at that but he doesn't think those are on his property. He showed the board where Mr. Zographos house is located as it pertains to the proposed subdivision.

There were no further comments. Mr. Nottebart continued the hearing to September 5, 2013 at 8:00 p.m. Mr. Merrikin asked if the board wants to look at the property and Mr. Nottebart stated yes, informally. He stated that the board's secretary will let Mr. Merrikin when.

Niden Woods Subdivision Discussion: Andrea Chamberlain from Derba Construction and Jason Roche, 23 Hummingbird Lane (Lot 8) had asked to meet with the board regarding a wall that abuts the Roche property and is shown on the plan. As Niden Woods was already on the agenda, the board allowed them to comment. Mr. Roche stated neither he nor his developer were aware of the wall. Ellen Rosenfeld had asked his wife to sign a letter. He has talked to Margaret Walker and Charlie Quigley as he didn't know if his house was at risk. He doesn't know if he should hire a civil engineer to find out what is going on with the wall or if he should just sign the

letter for Ms. Rosenfeld to make this go away. She did threaten his wife that if they don't sign, their property will be damaged and his landscape ripped up. They have a walkout basement now and the wall seems to be a landscape feature, not a build up for grade. Mr. Conroy stated the whole area has water problems and that wall is part of the retention basin.

Mr. Mazzocca returned at 10:22 p.m.

Andrea Chamberlain, Derba Construction, stated there was never a mention of the wall when they purchased that lot to build on. Mark Rosenfeld asked them after the fact why they didn't build the wall shown on the plan. He stated the builder was responsible for this and they didn't do it. Now, they need their buyer to sign the letter presented to them. He stated if you don't sign the letter we will tear up your lot.

The Roche's won't be happy with you because we will tear up their lot. She stated that none of her paperwork shows the wall. Also, it is always Mark Rosenfeld that talks to Joe Derba, never Ellen Rosenfeld.

Mr. Conroy stated that Ellen entered into an agreement with the town and they are ultimately responsible, not the individual homeowner. Nothing on the plan has to be done by the homeowner. There is a reason why Merrikin Engineering choose to put the walls there. Mr. Conroy asked if we ever put stone walls on a plan for houses and Ms. Walker no and that Rick Merrikin had told her this was silt fences and hay bales. Rick submitted as-builts and then came and took them back. The wall could be removed as a field change. Mr. Nottebart asked if they have any trouble with water and Mr. Roche stated not to date. He feels the wall was on the plan for a reason although he doesn't know why. He doesn't want to sign something that will get him in hot water down the road.

Ms. Chamberlain stated the Rosenfelds have been threatening Derba Construction for a week now and Mr. Roche for two days as Ellen wants her money back from the Planning Board. Ms. Walker stated it doesn't matter what the purpose is. It is on the plan and needs to be done. If it is being built to hold back fill, it is necessary. Mr. Forsbeg feels the wall should have been in place before the lot was built. Ms. Chamberlain asked if there is a chance that this wall is going to get built to make them comply and Mr. Conroy stated yes. Mr. Roche stated so he will have a 4' wall in his back yard. Mr. Nottebart asked if there is anything in our power that we can do to stop Ellen Rosenfeld from going onto this guy's property and to stop her from threatening his wife. Ms. Chamberlain stated it is still private property. Mr. Roche stated if she shows up his wife will call the cops. Ms. Chamberlain asked if the point of the wall was to be down the side of the retention basin. Should the hole should have been stone all the way down? They said it was engineered to have stone all the way down. Mr. Forsberg stated we are waiting until Ms. Walker verifies the as built plans. If the retention basin is working, he would go along with whatever Mr. Roche wants. Mr. Murtagh asked if Mr. Roche wants the wall if it is needed and Mr. Roche said he can't answer that right now. Mr. Nottebart asked if he would be willing to go along with Mr. Forsberg's suggestion. We want to protect the homeowner and Derba Construction. Mr. Conroy stated that Ms. Walker shouldn't be in the middle. An independent engineer should be hired to verify this. Mr. Mazzocca stated they have to come here and seek a modification. They need an engineer, not Merrikin Engineering, to certify that this works and meets all the standards and also to explain what the wall is originally for and why it is on the plan. Mr. Nottebart and Mr. Murtagh agree with him.

Mr. Nottebart asked if there is any action the board can take to protect the Roche's and Derba. Mr. Roche stated the only thing that is important to him is that he is not going to have his house slip down the hill either now or in the future or that if Ponderosa Lane floods it is not his responsibility. Mr. Conroy asked that they send Ellen's emails to the office and the board secretary will forward them to the board.

Mr. Roche thinks the neighbors have already signed off. Mr. Forsberg stated don't let her on your property. Mr. Roche stated there is also a big sink hole in the back that needs to be addressed.

Request for Comments:

- Residences at Moose Hill: Mr. Nottebart requested that the board summarize their thoughts and send their comments to Kate by Tuesday, July 16th. The deadline for comments back to the Board of Selectmen is ongoing. Mr. Nottebart is to summarize the board's comments and submit a letter to the Selectmen.
- Zoning Reform: Mr. Nottebart requested that the board email their comments to Kate. Mr. Conroy suggested we ask MAPC for their comments on this.
- Buttimer Family Trust 61-A: Mr. Mazzocca feels we should leave this alone. Mr. Murtagh agreed we shouldn't comment.
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It was moved, seconded and voted to adjourn. The meeting adjourned at 11:30 p.m.

Respectfully submitted,

John Murtagh, Clerk

Accepted 9/19/13