

WALPOLE PLANNING BOARD MINUTES OF SEPTEMBER 5, 2013

A regular meeting of the Walpole Planning Board was held on Thursday, September 5, 2013 at 7:00 p.m. in the Main Meeting Room of Town Hall. The following members were present: Richard Nottebart, Chairman; Edward Forsberg, Vice Chairman, John Murtagh, Clerk; John Conroy, Richard Mazzocca, (7:10 p.m.); and Margaret Walker, Town Engineer.

7:05 p.m. Nightingale Farm Road Discussion: Joe Moraski, 3 Buckboard Drive, North Walpole and Senator Timilty were present. Mr. Nottebart stated that Jack Mee had asked them to do a courtesy site plan review and they said no unless it was required. Mr. Murtagh feels the Dover Act is allowing this group home to be built on this street and asked Senator Timilty to amend the Dover Act because of situations like this. He doesn't feel is an educational use. Mr. Forsberg feels this would fall under the original subdivision plan and the use would fall under the jurisdiction of the Zoning Board. He also questioned if this does come under the Dover Act. He asked what type of "home" this is.

Jeffrey Formica, 16 Nightingale Farm Road stated he believes this would be under the Dover Act under 40A; however, no one knows what kind of group would live here, even the town. The home is being built by a company named CIL and they don't know either. However, the State does. Mr. Forsberg stated that regarding the Dover Act, we can't restrict the use, but they would have to abide by the Zoning Bylaws regarding frontage, setbacks, etc. which is what we deal with as a Planning Board, not the use. Mr. Mazzocca stated this is new construction and asked if the first notice of this was taking down the trees. Mr. Formica stated no as someone had told them there was permitting for a sprinkler system. He feels this town needs some reasonable regulations. This should be closer to public transportation, fire, police, etc. We don't know if there will be drug dependent people, alcoholics, etc. Mr. Conroy stated he understands there was a permit issued to build a house, but there was no commitment to a group home. Mr. Formica stated it is a group home. The permit that is issued says a five bedroom group home. They were told that other projects did require a site plan approval. Mr. Conroy asked if there were any subdivision restrictions and Mr. Formica stated no. Mr. Mazzocca stated that thinking back to the Home for Little Wanderers, it was the size that brought them before us. This essentially is a home which is how they got around us. He doesn't know if we have the power to say it has to be in a certain part of town as they just have to comply with the zoning bylaw. Mr. Formica asked if this board has any jurisdiction to ask for a site plan review which would be their request so it could benefit the town and the residents. Mr. Nottebart stated he knew nothing about this until Cliff Snuffer told him about it and then Joe Moraski. He shares their concerns although he sees a necessity for these houses. We could request an administrative review of the applicant if the board agrees. He doesn't like a precedence to be set because of safety and other violations. He feels this got through because it wasn't a subdivision and Jack Mee approved it as a lot being built out. He feels there is a need to work with Senator Timilty and we need to look at our bylaws not to restrict them, but to protect people.

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Senator Timilty stated he would like to work with the board and would be happy to be the conduit for the neighbors with the State agencies. It is surprising as he thought a 40R would have been a better suit. He does support DDS and they have some concerns. Mr. Conroy stated we have never had anyone turn us down when asked to come in to discuss a 40B. Everyone has come in and done a site plan review – schools, libraries, etc. and it has worked out fine.

Mr. Forsberg stated that Section 13-2-F lists what is required to go through site plan approval. Even if they come in, he is not sure what we can do. Mr. Conroy stated we worked with the neighbors and the applicant to make it better for everyone with regard to Longview Farm. It does work well. Mr. Nottebart stated we will take a vote to send a strong letter, but stated the neighbors should not get their hopes up that we will be the lightning bolt they are seeking.

Joe Moraski, 3 Buckboard Drive stated he has some documents that maybe the board doesn't have. He is an RTM member in Precinct 8 and he disagrees with Ilana Quirk's opinion on an administrative site plan review. He asks that we go back and clarify what allows municipalities to conduct an administrative site plan review. He stated it is part of MGL. Mr. Nottebart asked him to email him that link. Mr. Moraski feels as a town we can demand that site plan review. The applicant should be told to come in here. If they refuse, we should file an injunction in Superior Court and notify the proper State agencies. He feels the town needs to get tough here. There is an obligation to protect the citizens of the town. That is the number one priority. Mr. Conroy stated there was no appeal on the building permit. Mr. Moraski stated there is a second letter from Ilana Quirk that the board doesn't have.

Mr. Conroy stated the Board of Selectmen carry the biggest stake in this. We will do what we can, but we would like help from the Selectmen. Mr. Snuffer Walpole is on a State agency list of twenty towns where these group homes should go and he doesn't understand how Walpole was one of those twenty towns. How were we chosen? He also feels this is very challengeable. There has been no study of personnel, parking or traffic in and out which makes this challengeable. That is what the Selectmen are doing as we speak.

Mr. Nottebart asked Senator Timilty if there is anything else he feels the board could do. Senator Timilty stated he will be working with DSS, Decam and others and will ask that they make a better effort to settle this. He has many concerns and many questions and he will take phone calls or emails in this regard. Mr. Nottebart asked what he foresees the role between the Planning Board of Board of Selectmen to be. Mr. Snuffer stated he has been pushing for appropriate communications between boards. Again, they have no idea how Walpole got on this list. He has asked Mr. Boynton to contact town counsel to find out how we got on the list.

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Mr. Nottebart stated we need to vote to send this letter to CIL to request an administrative site plan be filed with us. He may touch base with Senator Timilty, Joe Moraski and Cliff Snuffer. Mr. Moraski stated he will drop off the aforementioned information at Mr. Nottebart's house in the morning.

Mr. Nottebart moved to send a strong letter to CIL strongly worded and based on some dialog he will have with Cliff Snuffer and Joe Moraski to request they file for a site plan approval. Motion seconded by Mr. Murtagh and voted 4-0-1 (Conroy abstained).

Mr. Formica stated he hopes the board is strong with this letter. Mr. Nottebart stated we will keep you posted through Joe Moraski.

7:45 p.m. Allied Special Permit, Case No. 13-6 and Allied Site Plan Approval Case No. 13-7 Continued Hearings: Mr. Nottebart read a letter dated August 14, 2013 from Shane Oates, Senior Project Manager requesting to continue both hearings to October 3, 2013 as they are not meeting with the Conservation Commission until September 25, 2013. In a letter dated July 9, 2013, he granted the board an extension of time on which to take action up to and including October 30, 2013 for both hearings.

Mr. Nottebart moved to accept an extension of time up to and including October 30, 2013 as requested for both hearings. Motion seconded by Mr. Murtagh and voted 5-0-0. Mr. Nottebart continued both hearings to October 3, 2013 and 7:45 p.m. and 7:46 p.m. respectively.

7:50 p.m. Niden Woods Discussion: Mr. Nottebart stated the board had requested an opinion from town counsel regarding a modification versus a field change and he stated that it is Ms. Quirk's opinion received today via email that any modification to an approved definitive subdivision plan requires a public hearing with notice to interested parties under MGL c41, s.81W. Further the Town Engineer may accept a field change for something very minor that comes up in the field while construction is underway. A change to the size or configuration or the location of drainage basins that is supported by new drainage calculations would require a modification to the plan with a public hearing and notice, in her opinion. Mr. Nottebart asked Ms. Walker to speak to Atty. Quirk's opinion. Ms. Walker feels that eliminating the wall will not affect the drainage basin. Mr. Nottebart feels bad because at the last meeting there were only three members and they led the applicant to believe this would be a done deal and it was continued to allow the full board to address Mr. Merrikin's request. After receiving Ms. Quirk's opinion, he thinks we will have to vote the change to be a major modification and move forward from there. Mr. Forsberg stated that at our last meeting when we discussed this, Dan Merrikin stated that the wall had nothing to do with the detention basin and Ms. Walker agreed. If it doesn't have anything to do with the workings of the detention basin, why can't we just do this as a field change. Ms. Walker stated Ms. Quirk had said very minor would be such as moving pipe slightly.

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Ms. Walker didn't have a problem with what the board is doing, but she does procedurally now. Mr. Forsberg feels this is minor. Mr. Nottebart stated we would need a new plan and Ms. Walker agreed. Mr. Conroy stated Ms. Quirk is working under MGL. Therefore, it is not what we consider to be minor, it is what MGL states. Mr. Nottebart stated when he talked to town counsel she said that anything changing the as-builts would require a hearing with notice to the abutters. Ms. Walker agrees. Mr. Nottebart stated that as a board member, he relies on both town counsel and the town engineer. Dan Merrikin stated that the question that was put to Ms. Quirk was not the issue at stake. The wall sits above the basin. Mr. Conroy stated if you want to resubmit it, you need to do it via a modification. Mr. Merrikin stated what Mr. Forsberg pointed out is correct and Ms. Quirk is responding to a question we are not talking about. Going from a wall to a slope is a minor thing. It is not a significant issue as it is a shorter slope. If you want this to go through the modification process, what is involved? What would he need to submit? Ellen Rosenfeld stated she is okay with doing that. Mr. Conroy stated they are only asking to change the basin and stated nothing else comes into play on this. Mr. Murtagh stated we are beating a dead horse. Mr. Conroy stated this was designed and approved and should have been done the way it was approved. Mr. Murtagh stated the basin didn't change and the configuration didn't change. Mr. Conroy asked then why don't they do it per the plan. Mr. Mazzocca stated we have an opinion from town counsel and Ms. Walker and he doesn't want to go against them. A new hearing will make this cleaner. Mr. Nottebart wants this done right and agrees we have beaten this to death. If it is done as a field change and then challenged, we all lose. He feels they should bring the stuff in and move forward. Mr. Forsberg said he stated before if the town engineer was okay, then he would be okay. He feels it is a field change as it has nothing to do with the basin. Mr. Murtagh agrees with Mr. Forsberg. Mr. Nottebart doesn't think the question to town counsel was inaccurate as Mr. Merrikin had stated. Mr. Merrikin said he is not saying it was inaccurate, but it could have said if the plan showed a retaining wall and it was changed to a slope could that be constructed as a field change.

Mr. Forsberg stated if the stone wall was across the yard as a decoration, would we have this discussion. Ms. Walker stated yes if it was within the roadway. Mr. Conroy stated that wall was there because they needed the extra room. Ms. Rosenfeld stated he is wrong. Rick Merrikin stated the two houses on the corner lot were small, so they showed the wall to maximize the buildable area. Mr. Conroy stated that was never stated. Mr. Nottebart asked if they have anything that states the wall is extraneous and Dan Merrikin stated the wall doesn't impact the basin itself. Mr. Nottebart asked Ms. Walker if she thinks the question was misrepresented to town counsel and Ms. Walker stated no, it was not; it's just that town counsel takes a narrow view of field changes. Mr. Nottebart asked if she had written the letter to town counsel does she think she would have gotten the answer that this is a field change and she stated no. Mr. Mazzocca stated the problem is you can't speculate what Ilana Quirk would say. He doesn't know if this wall is a field change, but removing a wall is not a minor thing.

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Mr. Nottebart asked the applicant what she would like us to do. Ms. Rosenfeld stated if the board votes tonight and she loses, then she will move forward with the modification process. She asked the board to vote. She just wants to move forward. Mr. Conroy stated he is about process. Dan Merrikin stated the wall was supposed to hold up the side yard that doesn't exist.

Mr. Nottebart moved that the removal of the wall be a field change. Motion seconded by Mr. Murtagh and voted 2-2-1 (Forsberg, Murtagh in the affirmative; Mazzocca, Conroy in the negative; Nottebart abstained).

Dan Merrikin stated that Ms. Rosenfeld can construct the wall or come back in for a hearing.

8:20 p.m. Tall Pines Subdivision Continued Hearing: The applicant was represented by Rick Merrikin, Merrikin Engineering. Also, present was Atty. Robert Mangiaratti, Quincy, MA and Mr. Fox, the applicant. They have done everything the board has asked them to do. They changed the corner to a parcel to take Lot 28 out of the subdivision. He asks the board vote on this subject to Ms. Walker's comments as they are minor. Mr. Nottebart asked if he has the signatures of all the abutters and Mr. Merrikin stated yes. Mr. Nottebart asked including Anthony Zographos and Mr. Merrikin stated that is not required. Atty. Mangiaratti stated he thought this issue was resolved before as he had written a detailed opinion in a letter dated 6/27/13 that Mr. Zographos was not being impacted. The opinion that he sent to the board included case law. He only needs signatures of those people on whose land they are doing work. There are two letters, one dated June 27, 2013 and one dated August 9, 2013. Mr. Nottebart stated we are waiting for an opinion back from town counsel. Mr. Conroy stated he saw the agreement for 8 and 12 Arrowhead Road dated 2012 and it is his opinion that it was based on a previous subdivision and you have since refiled. He suggests you update this. Mr. Merrikin agreed. Mr. Nottebart stated when we opened the hearing, we said past information could not be used. Atty. Mangiaratti asked that the June 27 and August 9 letter be sent to town counsel.

Ms. Walker submitted an email that was sent to her from Bob LeBlanc, Tree Warden, to Mr. Nottebart. She stated that Mr. Merrikin gave her revised plans and then she went on vacation, but she did review the drainage issues. Mr. Nottebart feels we are heading in the direction we were before and things are not being received or sent to us in a timely manner. He stated when the board's secretary is printing stuff with today's date and no one has seen anything, it creates problems for everyone. Atty. Mangiaratti stated he feels there has been a genuine effort on their part. He doesn't characterize this as a troublesome application and they are doing their best. Mr. Nottebart stated if you look at the correspondence that the board secretary got in both today and in the past few days, there is a lot. Mr. Fox stated that on the last go around, they waited three and a half months for town counsel because a letter sat in the town manager's office for one and a half months and he doesn't want that to happen again.

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Atty. Mangiaratti urges the board to stay on track and work with them. Mr. Merrikin asked the board to send the O&M and Form J to town counsel along with the June 27 and August 9 letters as soon as possible.

Mr. Nottebart read correspondence from the Sewer and Water Commission, Police, Tree Warden and Ms. Walker. There were no issues. Mr. Conroy stated we typically don't close a hearing especially with issues from town counsel outstanding because once we close the hearing you can't add or change anything. It's over. Town Counsel was to address the corner roundings and Lot 28 coming out of the subdivision and the grant of easement from Mr. and Mrs. Miles per the August 9th letter. Atty. Mangiaratti stated they have agreed to be bound by the O&M and the covenant with respect to the drainage. Mr. Conroy stated we need to do what is best that will not create a problem down the road. Atty. Mangiaratti stated they can show this on the subdivision plan and will write a letter to that effect; i.e., is Lot 28 in or out of the subdivision and how should we deal with this. Mr. Conroy asked that he send it to the board and we will send it to town counsel. Further, it will most likely be a regular lot on the street and you will put that square footage back into the subdivision. Mr. Merrikin stated no, there will be an easement you will take.

Ms. Walker stated she is all set.

Anthony Zographos, Old Post Road, stated he abuts the property on Old Post Road and asked if he will be able to use Summit Way again. There has been a hill of construction debris and he can't walk there. Mr. Merrikin stated yes you will be able to physically walk there. Mr. Conroy stated this will be a public street just like Old Post Road. Mr. Zographos asked if he can walk his dog there and Mr. Conroy stated yes. Mr. Nottebart asked if this area can be cleaned up now and Mr. Merrikin stated the boulders are not on the street and will be gone because the road is going in there. They are not on the original street.

The board agreed to send a packet to town counsel containing: O&M, Form J, Miles Easement, June 27 and August 9 letters.

The applicant granted the board an extension of time on which to take action up to and including October 30, 2013. Mr. Nottebart moved to accept an extension of time on which to take action up to and including October 30, 2013. Motion seconded by Mr. Forsberg and voted 5-0-0.

Mr. Nottebart continued this hearing to October 3, 2013 at 8:00 p.m.

9:19 p.m. Chris and Bill Glaropoulos, Ashmont Plaza: Chris Glaropoulos stated the area in question is just dirt now and they want to pave about 10,000 s.f. to be used for snow storage. Mr. Conroy asked if they have a site plan for this already. Atty. Philip Macchi I stated he worked with the Chris' father a long time ago on this property.

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There was a site plan and it showed future parking and they are not changing anything now. Mr. Forsberg stated that is only for storage and the site plan shows eight spaces. He feels this would be an expansion of use. Mr. Nottebart feels this is a minor change. Mr. Murtagh stated they would need to go back to ConCom. Mr. Conroy stated that whether or not we rule minor or major right now, they should go back to ConCom to get the area flagged and to find out what they would need to do for Conservation. Mr. Forsberg questioned the field change. Mr. Murtagh asked that they go see Landis Hershey, get her to flag the area and then come back to us for a minor or major determination. Mr. Glaropoulos agreed.

9:25 p.m. Traffic Signal at Route 1A and Willet Streets: Toll was represented by Atty. Philip Macchi I and Bill Keaton. Mr. Macchi read a letter dated August 14, 2013 from MassDOT. Considering this letter, he believes the condition that Toll Bros. would do the traffic signal project if appropriate is academic and not applicable and he would ask that when they look for a partial release of the bond that the board release the \$250,000 for the traffic signal project. Mr. Conroy felt a copy of this letter should have been sent to our State Representative and Senator, so he sent them everything. He feels he was doing his duty and due diligence by looking out for the taxpayer. He did everything he could to have them intervene with the State. They missed the deadline and now it is a dead issue. Mr. Macchi stated he will send a letter to ask the board to consider reducing the bond by \$250,000 as he wanted to keep this a separate issue. Mr. Nottebart feels the letter from MassDot stands and now a vote by the Planning Board is needed. Mr. Macchi will also verify the Phase that lists the \$250,000.

9:32 p.m. Borrego Solar, Case No. 13-2 Plan Endorsement: John DiSangro, Jr., 52 Production Road submitted a letter dated and received September 5, 2013 with a complaint that Borrego Solar has essentially shut out any other small solar projects due to the size of the circuit they are installing. He asked if the town was aware of this. Mr. Nottebart stated he shares his concern, but doesn't think this would be a Planning Board issue. He asked if Mr. DiSangro has talked to Stephanie Mercandetti, Economic Development Director as she sponsored the solar article and held the hearings. Mr. DiSangro stated not yet. He stated that Borrego chose to keep it a hair over the threshold so they wouldn't have to pay \$200,000-300,000 for a bigger circuit. Mr. Nottebart stated we should be endorsing the Borrego plan tonight regardless of Mr. DiSangro's letter. Mr. Murtagh stated that Borrego was first out of the gate and there was a lot of public information given at the time. Dan Merrikin stated that Borrego didn't know if they should be at tonight's meeting, but he did talk to David Albrecht about Mr. DiSangro's letter and he will get him some information if John wants. Mr. Conroy stated he didn't know of any limits. This was almost a custom zoning change. There could have been more debate if the board knew about it. Mr. Murtagh stated he was informed of the maximum at the time. Mr. Conroy stated they didn't tell us when they presented the article, which was tailor made for this site. Mr. Mazzocca asked if the entire town is impacted by this or just this site. Mr. DiSangro stated just this area or at least that is what he thinks.

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Mr. Forsberg stated he was not aware there was a maximum size and feels it would be worthwhile for Mr. DiSangro to talk to David Albrecht.

Regarding plan endorsement, Mr. Conroy asked if this property has been sold. Dan Merrikin stated he doesn't know. The paper said the land is owned by Noviiis and Borrego was going to lease from them; but regardless, Borrego will build this out and operate it. Mr. Murtagh stated this is private enterprise. Mr. Conroy stated we have a plan in front of us that needs to be signed. Dan Merrikin stated the plan refers back to the decision and even if this is sold, it won't change the plan. He asked that the board send a letter to the town clerk changing the plan of record from Lorusso to Noviiis.

Mr. Conroy moved to send the town clerk a letter changing the plan of record from S. M. Lorusso to Noviiis, LLC. Motion seconded by Mr. Forsberg and voted 5-0-0. Mr. Nottebart moved to endorse the site plan for Borrego Solar entitled "Noviiis, LLC" as reviewed by Margaret Walker, Town Engineer. Motion seconded by Mr. Murtagh and voted 5-0-0.

ANR – Washington Green: Mr. Murtagh moved to accept an extension of time up to and including October 30, 2013 and to continue this hearing to September 19, 2013. Motion seconded by Mr. Mazzocca and voted 5-0-0.

Lubold, 254 Plimpton Street: Mr. Conroy moved to endorse a site plan for 254 Plimpton Street as reviewed by Margaret Walker, Town Engineer. Motion seconded by Mr. Mazzocca and voted 5-0-0.

It was moved, seconded and voted to adjourn. The meeting adjourned at 10:40 p.m.

Respectfully submitted,

John Murtagh, Clerk

Accepted 9/19/13