

WALPOLE PLANNING BOARD MINUTES OF SEPTEMBER 17, 2015

A regular meeting of the Planning Board was held on Thursday, September 17, 2015 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; Margaret Walker, Town Engineer.

Mr. Conroy opened the meeting at 7:15 p.m.

Minutes: Mr. Conroy moved to approve the minutes of August 20, 2015. Motion seconded by Mr. Nottebart and voted 5-0-0.

ANR – Joan Mooney, 23 Oak Hill Drive: Mr. Conroy moved to endorse an ANR plan entitled “Plan of Land in Walpole, Massachusetts” prepared for Joan Mooney and dated May 25, 2015 and prepared by PFS Land Surveying, Inc., 20 Balch Avenue, Groveland, MA 01834 finding Form A in order and subdivision control not required. Motion seconded by Mr. Nottebart and voted 5-0-0.

The division of the tract of land shown on the accompanying plans is not a subdivision within the meaning of the subdivision control law because it shows a proposed conveyance namely land swap with no change to either lot. The owners’ titles to the land are: Joan Mooney, 23 Oak Hill Drive, Walpole, MA by deed from Thomas D. Hogan dated May 4, 1984 and recorded in the Norfolk Registry of Deeds, Book 6395, Page 385, Assessors’ Parcel 33/159; and Michael and Deborah Duffy, 21 Oak Hill Drive, Walpole, MA by deed from Michael J. Duffy dated March 17, 1999 and recorded on April 19, 1999 with the Norfolk Registry of Deeds at Book 13369, Page 251, Assessors’ Parcel 41/24.

Winter Estates: Mr. Conroy read a request from Walsh Bros. Construction requesting that Special Condition #5 be removed from the May 3, 2007 Certificate of Approval. Special Condition #5 states: “The deeds to the individual lots shall have a stated restriction that finished grading on the lots shall substantially conform to that shown on the definitive plan, and a statement to this effect shall be inscribed on the definitive plan sheets that are to be recorded, prior to endorsement by the Planning Board.”

Mr. Murtagh asked if this falls under Ms. Walker’s jurisdiction and she stated she has never seen a condition like this. Mr. Nottebart asked if we should put this on our next agenda so that Ms. Walker can look at this. Mr. Murtagh asked if this property is surrounded by wetlands and Ms. Walker stated no. Mr. Nottebart stated that because of the nature of this, we should do our due diligence. Mr. Mazzocca agrees with Mr. Nottebart to put this on the October 1, 2015 agenda.

Barachiah Lane: Mr. Conroy read a letter from Atty. Thomas Nannicelli, Norwood, MA requesting that the board re-endorse a Form I Release of Form F Covenant which was originally signed on November 6, 2012, but was not recorded by the applicant and also to endorse a Partial Release of Covenant with the Town of Walpole. Mr. Conroy moved to re-confirm the action taken on November 15, 2012 and to re-endorse the Form I – Release of Form F Covenant for

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Lots 1 and 2 Barachiah Lane and also to endorse a Partial Release of Covenant with the Town of Walpole dated September 17, 2015, both as prepared by Atty. Thomas Nannicelli, 470 Washington Street, Suite 30, Norwood, Massachusetts. Motion seconded by Mr. Mazzocca and voted 5-0-0.

Ms. Dennehy left at 7:25 p.m.

Olmsted Estates Form F Covenant: Sean McEntee was present and informed the board that the covenant has not changed since September 1st. Atty. Quirk did verify that it was correct, but did make a change in the Title Certification. He submitted the original Form F covenant to the board, which was verified by town counsel on September 7, 2015. Mr. Conroy stated we will send it to Atty. Quirk as she hasn't seen the newest correction. Mr. McEntee stated the only change is a correction to the title page. Mr. Viano asked if the board could vote to accept this as they agreed to what Atty. Quirk asked for. He stated that any time you vote to accept the covenant that you do so to approve the final covenant until the time of the final date of closing. Mr. Nottebart stated he has three different files and he printed them out and read them. They start on August 20 and go forward from that date. There is a letter from Mr. McEntee that pleads his case and it looks like a lot of back and forth and volleying with town counsel. If this is legitimate and we could verify it, someone needs to do that. Ms. Gaffey stated she reviewed the things that Ms. Quirk didn't like as stated in her August 20th email. Mr. McEntee stated if the board could vote to accept the covenant, they won't take it until the time of the closing at which time we want someone to accompany them to the registry. Nothing has changed since September 1st. Mr. Nottebart stated he was not in favor of this, but he is worried about continuing and continuing and he is not sure of the hardship to the homeowners. He asked if the board would be comfortable with approving this and holding it. Mr. Conroy stated no, we did that before and we got torched. Mr. Nottebart asked if he feels we should wait for Atty. Quirk. Mr. Conroy stated he would like to see the final covenant be mailed from Atty. Quirk to us. Mr. Mazzocca asked if changes were made from Atty. Quirk. Mr. McEntee stated yes and Atty. O'Brien sent them back to her. Also, on August 20th she asked that the title search be done on the day of the closing or be redone. They are now up against winter conditions. He would like them to take a vote to approve the covenant. Mr. Conroy asked where is Atty. O'Brien and Mr. McEntee stated on vacation as well as Atty. Quirk. Mr. Conroy asked what closing are we holding up and Mr. Viano stated the one to JTS as they can't transfer to Olmsted and O'Donnell without it. Mr. McEntee stated the attorney for JTS is not going to let them go forward until this is done. Mr. Viano stated no one can get their lots until that plan is endorsed and recorded. Mr. Conroy asked if he has to sell his right before it is recorded and Mr. Viano stated yes. Mr. Conroy stated our signing the covenant doesn't stop him from transferring the property to JTS. Mr. Viano stated the board can accept the covenant and endorse the plan. It all has to go in one package. Mr. Conroy stated in normal business this is your choice. Mr. Viano stated these people are buying lots. No one will do anything until they have an accepted covenant and an

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endorsed plan. Mr. Conroy stated that us not endorsing the plan and accepting the covenant is stopping you, but a business deal is. It has been said that we are holding up the closing, but we are not. Mr. McEntee stated they have done everything they can do. Atty. Quirk has signed off on the covenant. He stated they would be happy for the board to sign this so they can move forward. Mr. Viano stated that town counsel also told the board to accept the covenant subject to final approval by her and they ask that be done tonight. She only wanted to add eight more words. Mr. Murtagh stated the board should take a vote. Ms. Gaffey doesn't think she can vote on this as she wasn't here when it started. Mr. Mazzocca asked if Atty. Quirk has seen this and Mr. Viano stated yes. Mr. Conroy stated that just for the record, Atty. O'Brien went on vacation on Friday.

Ms. Dennehy returned at 7:45 p.m. Mr. Conroy explained to her what was being discussed. Ms. Dennehy stated that based on Atty. Quirk's email and being on vacation, she wanted changes which they made. She was under the impression she did review it and we would get the original from her. Her email was simple. They needed to revise 4-5 words which were highlighted in the package. Mr. McEntee stated he has the original. The covenant hasn't changed since September 1st. Mr. Mazzocca asked if we were to vote this with a contingency that the title certificate needs to be approved by Atty. Quirk, then what? Mr. Viano stated the board would vote to endorse the plan and covenant and then hold them. If Atty. Quirk wants another change, then they would have to make it. The board just needs to sign the plans and endorse the covenant. That is your job. Mr. Mazzocca stated you want us to vote tonight and then hope this is all done by the next meeting. Mr. Viano stated they will give us the original to hold with the plan. It is administrative once the board votes. Mr. Nottebart said to Mr. Viano that, respectfully, when this was brought to us ninety days ago, you said the same thing. He voted against this. He is now having trouble following this. He can follow Mr. McEntee better. After you have assured us that everything was correct, we have had rebuttals back and forth. Mr. Viano stated in May, Shirin Everett said it was okay and at 1:00 p.m. Atty. Quirk said no it's not. Mr. Nottebart stated he has no one here that can verify that this is accurate. He asked if there is a huge risk doing what they are asking? He stated that he understand and agrees with Mr. Conroy with regard to the principle of this. Mr. Conroy stated there were three owners back in May and that changed the covenant back in June. All that had nothing to do with us and we didn't hold anything up. Mr. Murtagh asked Ms. Dennehy if she weighed in on the covenant. Ms. Dennehy stated the most recent revisions were in Mr. McEntee's packet that was sent today to the board. She asked if the board is comfortable with signing something and holding it. We had an issue with the mylars, now we have a new set because the old set was marked. It is a comfort level thing. Mr. Nottebart asked what the risk is. Ms. Dennehy stated she couldn't begin to speculate. The board didn't think there was a risk when the plans were signed and there were many issues that rendered those mylars useless. We never would have speculated there would be so many issues. It is a comfort level. Mr. Nottebart asked if she was comfortable with this as our consultant if

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the board were to sign. Ms. Dennehy stated we can't do a whole lot without Atty. Quirk's input and she feels we should wait for that. We had hoped it would come from Atty. Quirk to us. We do need to be respectful of the time frames, but the board needs to be 100% comfortable with what we are signing. There have been many versions with typos. She feels the board would be in a better position if we received the original documents to sign from our counsel. Mr. McEntee stated no one has requested the originals. They scanned it and sent to Atty. Quirk. The board can verify that he has a scanned copy when he gives it to the board. It seems you want to look back. Ms. Dennehy stated they could give us the original and Atty. Quirk could come to town hall and review them. Mr. Conroy stated we have to learn from the past. Right now, we don't have anything from Atty. Quirk. We have nothing to verify. Mr. McEntee stated you have my word that this is the document sent to town counsel. Mr. Mazzocca asked if we have an email from Atty. Quirk stating this is okay. Mr. McEntee stated they have learned from sins of the past and they have done everything she has asked them to do. Mr. Conroy stated we don't have the covenant back from her and Mr. McEntee stated she sent back comments only. Ms. Dennehy stated that is correct and she sent us comments also. Mr. McEntee stated that all she could have sent back was the PDF from Atty. O'Brien. Her changes were in a 9/7 email stating she wanted changes to eight words. Mr. Mazzocca asked if they can wait two weeks. Mr. McEntee stated two weeks could mean six months. He asked if the board could come into the office on Monday and endorse everything after Atty. Quirk says it's okay. Mr. Mazzocca stated that based on what has been said, he doesn't feel the board is comfortable at this point. We rely on Atty. Quirk and this is a very sensitive development to begin with. He feels we should have that final sign off from Ilana Quirk. Mr. Nottebart stated he was comfortable when he saw Mr. McEntee's letter, but now he is not as we are still missing important input from town counsel. We get things at the last minute such as the letter that came in from Mr. McEntee today. Mr. McEntee stated what he sent was not new. He was surprised to learn after that Ms. Quirk was on vacation. It is confusing so he thought it would be beneficial to do this letter. He wants the board to be comfortable. As a favor to himself and the Olmsted's, he asked if the board would be willing once Atty. Quirk has said this is okay to come in and endorse the plan. He only needs three members. Mr. Nottebart stated he would do that. Ms. Dennehy stated the board could hold a quick special meeting, but we need 48 hours to post it. She also suggested that Mr. McEntee leave the originals to be sent to town counsel. Mr. Nottebart asked what happens if Atty. Quirk has changes. He feels we should have Atty. Quirk review everything and then we can post a meeting. Mr. Murtagh stated we need clearance from Ilana Quirk and then we can proceed. Mr. Mazzocca asked that Ms. Dennehy be the go-between and she agreed. She also stated the board might want to note for the record that they are accepting the originals and will then forward it to town counsel. She stated we need 48 hours from when town counsel says it is okay and then we need a quorum of the board for a special meeting.

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Mr. Conroy stated his opinion is this is way too much. You help people when they need it not when people have not been nice to you. We always received stuff two to three hours before a meeting. He asked the applicant if they will be part of the covenant. We have nothing saying this covenant is okay with them. Mr. Viano stated that is why it is signed and notarized. Mr. Conroy stated he is tired of the games that have been played. We have been played to be the scapegoat. Our town counsel had to tell your counsel how to do this. We have gone way overboard with this.

There were no further comments or questions from the Planning Board of the public.

8:20 p.m. Dynamic Energy Solutions, Bird Landfill off Norfolk Street, Case No. 15-10:

Mr. Conroy read the public hearing notice. The applicant was represented by Andy Backonowski from Weston & Sampson. He explained what they were requesting. He stated there are two types of systems. Connection to the grid will be up in the northwest corner. Mr. Conroy read comment letters from the various boards and committees. He asked if this is DC power and Mr. Backonowski responded the out is DC. Ms. Walker read and discussed her comments. Mr. Dennehy read and discussed her comments. She stated that an interconnection service agreement needs to be submitted and Mr. Backonowski stated they are still negotiating. Ms. Dennehy asked that when they receive the plans, she would like the access road compared to the solar array. Ms. Dennehy asked if there will be a landscaping plan and Mr. Backonowski stated no. Mr. Murtagh asked that the applicant sit with the Deputy Fire Chief and work out any issues. Mr. Backonowski stated they have met already. Mr. Murtagh asked if the Deputy Fire Chief's comments can be incorporated into the Planning Board decision. Ms. Dennehy stated that some of his comments can be done by way of special conditions in our decision. Mr. Murtagh feels that Mike Laracy did a great job and he asked if they are working with Eversource. Mr. Backonowski stated yes. Mr. Nottebart stated there needs to be access around the site. He asked if they are looking for a dirt road all around and Ms. Dennehy stated whatever the Deputy Chief wants; however, a reasonable access needs to be shown. We want whatever is to be endorsed to be clear. They just need it clarified. Mr. Nottebart stated the maintenance plan was touched upon by the fire department and he agrees with John Murtagh. Ms. Dennehy stated we can follow up with the fire chief. Ms. Gaffey is concerned that they need to file with the ConCom. There is a lot of water. Mr. Backonowski stated there is no increase in run off from a solar panel. Ms. Gaffey questioned the recharge and Mr. Backonowski explained it. She asked if Eversource is on board and Mr. Backonowski stated yes. Ms. Dennehy asked if the town will profit electrically and Mr. Backonowski stated no it will go to a third party; however, there is a PILOT before town meeting right now. Mr. Mazzocca thinks they should meet with Liz and make sure it is ready to go before they come back. They can change the plans and we know the numbers and hopefully that will be it. Mr. Conroy asked if the existing landfill is capped and Mr. Backonowski said back in 1998, GZA proposed a closure and it was accepted.

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Mr. Nottebart questioned the “permit” set. Mr. Conroy reminded the applicant that they can’t change what we approve and Mr. Backonowski stated he knows that.

There were no further questions and no public comments. Mr. Conroy moved to accept an extension of time up to and including November 30, 2015. Motion seconded by Mr. Nottebart and voted 5-0-0. Mr. Conroy continued this hearing to October 15, 2015 at 8:00 p.m.

8:45 p.m. High Meadows 6-Lot Subdivision, High Street: The applicant requested this application be withdrawn without prejudice as they failed to notice the abutters. He further asked that the filing fee be waived when they refile. Ms. Dennehy stated they will have to pay to readvertise.

Mr. Mazzocca moved to waive the filing fee on the refile as requested. Motion seconded by Mr. Murtagh and voted 5-0-0. Mr. Conroy moved to allow the applicant to withdraw without prejudice. Motion seconded by Mr. Nottebart and voted 5-0-0.

8:55 p.m. Roscommon Open Space 30-Lot Subdivision (Between North and Fisher Streets): John Glossa asked that this application be withdrawn without prejudice as he forgot to notice the abutters. He questioned if this hearing could just be continued instead of withdrawn. Ms. Dennehy stated the Form C was clocked by the town clerk and that dictates our time frames. We need to restart the clock, so it would be cleaner on our end. The board agreed with her.

Mr. Glossa requested to withdraw this application without prejudice. Mr. Conroy moved to allow the applicant to withdraw without prejudice. Motion seconded by Mr. Nottebart and voted 5-0-0. Mr. Glossa asked that the filing fee be waived when they refile the meeting. Mr. Murtagh moved to waive the refile fee as requested. Motion seconded by Mr. Conroy and voted 5-0-0. It was agreed the applicant would pay the advertising fee.

It was moved, seconded and voted to adjourn. The meeting adjourned at 9:10 p.m.

Respectfully submitted,

John Murtagh, Clerk

Accepted 10/1/15