

WALPOLE PLANNING BOARD MINUTES OF JUNE 2, 2016

A regular meeting of the Walpole Planning Board was held on Thursday, June 2, 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 and Elizabeth Dennehy, Community Development Director and Ilana Quirk, Town Counsel.

Mr. Conroy opened the meeting at 7:08 p.m.

Production Road Bond Figure Request: Ms. Dennehy stated the bond request is relative to the two lots that the board issued the site plan approval for on Production Road. Ms. Walker told us after the fact that the previous bond stopped at these lots. She asked Ms. Walker why the bond number is so large and Ms. Walker stated because the roadway is 50' wide. Ms. Dennehy stated she thought that portion of the roadway was already bonded. Mr. Conroy feels it could be an issue that we approved two buildings without the roadway being bonded. Ms. Dennehy disagreed as site plan is not addressed in M.G.L. Mr. Mazzocca asked if Mr. DiSangro knows the amount and Ms. Dennehy stated yes. Mr. Murtagh stated it sounds high. Ms. Dennehy agrees, but stated Ms. Walker said it is 600' long and 50' wide. Ms. Walker won't sign off without the bond in place. Mr. Mazzocca stated they could come to a future meeting to reduce the bond.

Mr. Mazzocca moved to set the bond at \$362,000.00. Motion seconded by Mr. Murtagh and voted 4-0-1 (Mr. Conroy abstained).

Commerford's Corner: Mr. Conroy moved to release the bond on Commerford's Corner in its entirety as recommended by Margaret Walker, Town Engineer. Motion seconded by Mr. Mazzocca and voted 5-0-0.

Brush Hill Bond Release: Mr. Conroy asked Mr. Hasenjaeger if he was requesting a bond reduction and he stated he asked for it six months ago. Mr. Conroy clarified that he wanted a reduction, not a final and Mr. Hasenjaeger stated that is correct, but has never been told there is anything outstanding. The list that Ms. Walker gave to him in January is done and he didn't ask for this to be completed. Mr. Conroy read a letter dated January 26, 2016 from Ms. Walker. Mr. Nottebart stated he thought that some progress has been made. Mr. Hasenjaeger stated he did the work that was on the list he was given. Mr. Murtagh stated it sounds like a communication problem. He feels that Mr. Hasenjaeger has done quite a bit of work. Ms. Dennehy asked if the board can request Ms. Walker to revise her punch list and let us know what the reduction is. Mr. Conroy stated it appears that Ms. Walker refers to a release and Mr. Hasenjaeger wants a reduction, so we can't resolve this. Mr. Hasenjaeger stated he won't ask for a release until the Fall. Mr. Conroy stated if he comes back and is done, we have to release it. Mr. Conroy moved to ask Ms. Walker if her figure is for a final punch list or a bond reduction and we will tell her Mr. Hasenjaeger wanted a reduction. Motion seconded by Mr. Nottebart and voted 5-0-0.

Meadowbrook Plan Endorsement: Mr. Conroy moved to endorse the mylars for Meadowbrook dated May 15, 2015 with the latest revision date of January 22, 2016. Motion seconded by Mr. Mazzocca and voted 5-0-0.

ANR – Boyden Estates (refile): Mr. Conroy stated that Ms. Walker is all set. He moved to endorse an ANR plan of land by GLM Engineering with the latest revision date of May 20, 2016 finding Form A in order and subdivision control not required. Motion seconded by Mr. Mazzocca and voted 5-0-0.

Jiten Hotel: Mr. Conroy moved to endorse the Jiten Hotel mylars showing the latest revision date of February 15, 2016. Motion seconded by Mr. Nottebart and voted 5-0-0.

Time Cards: Mr. Conroy moved to endorse the board secretary's time cards for weeks ending April 29, 2016, May 6, 2016, May 13, 2016, May 20, 2016 and May 27, 2016. Motion seconded by Ms. Gaffey and voted 5-0-0.

7:45 p.m. 765 Washington Street discussion: Mr. Conroy stated this is like a preliminary discussion. John Glossa was representing Judy Fontes and submitted a plan to the board. He stated the building inspector determined the lot was not grandfathered and therefore they were denied a building permit. She has a handicapped child. Christine Corcoran, Peach Street, said point of order and asked what that has to do with this. Mr. Glossa stated she needs the money to pay for medical care for her twenty-year old child. He discussed the plans he submitted and stated he could have done a preliminary plan, but is trying to keep the costs down. He feels this can be done as a matter of right and compared it to the 54 Peach Street subdivision. Mr. Conroy stated promises were made with regard to Peach Street, so he doesn't want to go down that road again. Mr. Murtagh stated you are looking for us to waive some restrictions.

Christine Cochrane, 166 Peach Street stated she is a direct abutter and feels this is identical to what town counsel previously denied.

Robert O'Leary, 766 Washington Street questioned a previous ANR and previous meetings.

The board held no further discussion or had further comments. Mr. Conroy informed Mr. Glossa that this is not a public hearing and if he wanted any discussion he should have filed a preliminary plan or definitive plan.

8:10 p.m. Roscommon Subdivision decision: Mr. Conroy asked if the board members were all set to move forward with a decision and each board member stated they were all set. Mr. Conroy stated the final plan was revised through May 12, 2016 and we reviewed it on May 19, 2016. Ms. Dennehy stated they have not submitted new plans. Mr. Conroy stated that if the latest revision was May 12, we couldn't take it up on May 19th because of the 14-day rule. We did not vote to waive the 14-day rule. Ms. Dennehy stated she doesn't recall. Mr. Conroy stated we have a plan dated May 12, 2016 which doesn't meet our Rules and Regulations. We denied

the curb waiver and we didn't have a plan showing the actual curb going in. The plan we have shows an asphalt berm. Ms. Dennehy stated the hearing was closed. Mr. Conroy stated they wouldn't give us an extension of time. We still don't have a plan showing granite curb. Ms. Dennehy stated that is correct. Mr. Conroy stated that is an issue. We also don't have an O&M or HOA in our possession. He cited various things that were not on the plan, but should be. Further, the hearing was closed and they have no access or public access to this. He feels that is an issue. Nothing has been recorded on Olmsted Estates. Therefore, we can't approve a subdivision without frontage on a public way. If we approve this with a condition that they will get a bond, then this is in limbo until they get one. Atty. Quirk stated the board can't endorse until they have acceptable surety. Mr. Conroy stated that Roscommon is an island because Olmsted Estates has not been recorded. Atty. Quirk stated she doesn't know if it has been recorded or not. Atty. Schneider asked to submit proof of recording. Mr. Conroy stated they are asking us to accept this. He asked Atty. Quirk if we can. She stated new evidence cannot be presented. Mr. Conroy stated this would be considered new evidence. Atty. Quirk stated the access issue has been ongoing. Mr. Conroy asked her for an opinion and she stated we can't take any new evidence. Atty. Quirk stated we always prefer the public hearing to remain open. Mr. Conroy stated if we had been given an extension, this would not be an issue. Why did we close? Atty. Quirk stated you asked the developer to extend and he said no. Mr. Conroy agreed. Mr. Murtagh stated are five members on this board and he feels this is a sermon. Mr. Nottebart stated he doesn't disagree with either Jack or John Murtagh. He feels Mr. Conroy is just regurgitating what we have already done. How do you fix it? You are coming up with obstacle after obstacle. He stated he doesn't always follow him. Both Ms. Dennehy and Atty. Quirk have offered to help. No member wants to screw up. He stated that Mr. Conroy is not an attorney. How do we fix this? Mr. Murtagh agreed that Mr. Conroy is not an attorney. Mr. Conroy stated there are a lot of people that want this through. You allowed this to go forward without a bond. Mr. Nottebart stated that counsel has answered questions that no one else could answer. Mr. Conroy asked Atty. Quirk if the missing green cards are an issue or not. Atty. Quirk stated on December 3, the clerk stated they were all returned. Mr. Murtagh stated they were in alphabetical order, which is why he got through them so quickly. Mr. Conroy stated that would have been November 5th if you checked them at the first hearing. Mr. Nottebart stated that Mr. Murtagh said he did them. Mr. Conroy stated you certified on December 3 that you did this on November 5? Mr. Murtagh stated yes, he is 100% sure. He remembers getting the cards, but is not sure of the date. Mr. Conroy read a letter from Rackemann, Sawyer and Brewster that they were delivered three days prior. Mr. Nottebart stated he is confused. Mr. Conroy stated Mr. Murtagh said he got them, but he has a letter from Atty. Schneider that they were delivered to the Planning Board office. They said they brought them in three days prior. Mr. Nottebart stated he and Mr. Mazzocca have been on this board for seven years. He is impressed with the research that Mr. Conroy put into this. Mr. Conroy stated he has an issue. He has a card signed by Marion Sadler on November 3. Mr. Mazzocca asks what happens when there is a technical problem. Atty. Quirk stated you can do a waiver which is under the Planning Board's

regulations. Mr. Conroy stated he has a letter from Rackemann, Sawyer and Brewster stated this was done properly. Mr. Murtagh stated he is not sure of the exact date. Mr. Mazzocca stated if this is an issue it should have been addressed before now. If they didn't get notice, maybe they can appeal it. Mr. Conroy stated he was told by Atty. Quirk in the Spring that it is not incumbent upon the board to ask for it. He has a letter from an attorney that says they gave us the cards. Mr. Mazzocca stated that looks bad. Mr. Conroy stated we have an attorney attesting they did it right. We have to deny it. Mr. Mazzocca stated yes if it is a fatal mistake. Mr. Conroy stated it is. Atty. Schneider stated they have the minutes of the clerk stating the green cards were received and we have the clerk stating he checked them. The board is protected. She can't speak to what is in our files. Also, the clerk said he did this. She doesn't know why this is so problematic. She feels this would be a summary judgment. Mr. Conroy stated he knows where this is going. He didn't do this. Mr. Nottebart asked if we would be egregious if we take a vote. Atty. Quirk stated it is up to the board. They need a majority vote. Mr. Nottebart asked if they can offer him any assurance that we are not totally going in the wrong direction.

8:55 p.m. Mr. Conroy left the meeting; Mr. Nottebart chaired the remainder of the meeting.

Mr. Mazzocca stated an issue has been raised by the chairman about the green cards. He is comfortable going forward and is not sure we need to vote anything about the cards. Mr. Mazzocca stated we do need to address what Jack said about things missing on the plan. Ms. Dennehy stated that Margaret Walker has stated she saw plans with a newer date; however, the May 12 plan is what the board looked at and discussed on May 19. The board doesn't need the documents until prior to endorsement. Mr. Nottebart asked if Beals & Thomas looked at the wetlands, high land, etc. Atty. Quirk doesn't think that has any bearing on the vote as that is what the town engineer does. Ms. Gaffey stated we are volunteers. This is the most confusing of anything that has come before us. She abstains sometimes because she doesn't understand something. Mr. Nottebart stated he made an appeal for a planner and we got Ms. Dennehy. She can give the board what they need. What he says is from his heart. Ms. Dennehy stated on behalf of herself and Ms. Walker the planning duties are taking up 85% of her time. There are some small things that can be settled by Kate or herself calling an engineer. Regarding phasing, Mr. Nottebart asked Ms. Dennehy if she feels the discrepancies we discussed before were the result of a typographical error and Ms. Dennehy stated yes. You vote to award 30 total points, resulting in a 62% lot build out. Mr. Mazzocca stated he is not really clear on this. He is troubled by the notion that there was an error or a typo in the Bylaw. Mr. Nottebart asked if you interpret it the way Mr. Conroy wanted to do it, then what. He asked if we can defer this to the next meeting. Atty. Quirk stated that phasing has to be done prior to building permits being issued. The board agreed to leave out the phasing at this time. Atty. Quirk stated it has to be addressed as it is part of the decision. Mr. Mazzocca stated he is comfortable with voting. Mr. Mazzocca asked if the standard conditions are consistent with the OSRD bylaw. Ms. Dennehy stated it is really the special conditions that get into the nuts and bolts.

Mr. Nottebart stated we are ready to vote the Roscommon subdivision with our standard conditions and special conditions with the phasing to be done later. Ms. Dennehy added plus the recording of the Olmsted Estates Modification shall be provided to the board prior to endorsement. Ms. Walker is going back and forth on the documents with town counsel. Ms. Dennehy asked if any Board members had further questions about the draft decision including any of the draft Special Conditions. Mr. Mazzocca said no and Town Counsel had reviewed the draft decision including Special Conditions.

Mr. Nottebart moved to approve the Roscommon OSRD Definitive Subdivision with the Board's Standard Conditions and the following Special Conditions: 1. The design of all retention basins shall be subject to the approval of the Walpole Conservation Commission and the Town Engineer and any revisions to the design of the retention basins shall be subject to the approval of the Planning Board. Said retention basins to be dry bottom basins except in storm events. 2. In accordance with Section IV-6(c)-(10) of the Subdivision Rules and Regulations, an Operation and Maintenance Plan and covenant for the retention basins, Conveyance of Easements and Utilities (Form J) has been approved by the Planning Board. The executed and recorded documents shall be submitted to the Planning Board prior to the execution of Form I (Release of Covenant) for any lots within the subdivision. 3. No permanent structures may be installed within the Access and Utility Easements which encompass the retention basins and access to the retention basin and other drainage facilities cannot be blocked by fences or other structures. A statement to this effect shall be included in the deed to each lot with an Access and Utility Easement. 4. Applicant shall retain the fee in the street as each lot in the subdivision is sold. 5. The proposed equestrian use on Open Space Area 1 shall be conditioned and limited by the following restrictions which shall be supported by a separate covenant which shall be duly recorded against Open Space Area 1 and Lot 30 before any building permits for Open Space Area 1 and Lot 30 are issued: *There shall be no more than one barn on Open Space Area 1; The barn on Open Space Area 1 shall have maximum square footage of no more than 2,000 s.f. and shall not have more than one-story and shall not exceed a maximum height of 20 feet; The barn on Open Space Area 1 shall not contain any living, shower or kitchen facilities and shall have no more than one bathroom that shall be equipped with no more than one toilet and one sink; There shall be no more than one paddock on Open Space Area 1; There shall be no other structure on Open Space Area 1, other than the barn and the paddock; The equestrian use of Open Space Area 1 shall be restricted to no more than five (5) horses; The equestrian use of Open Space Area 1 shall not include the showing of horses and shall not include any public events; and The equestrian use of Open Space Area 1 may be combined with the use of Lot 30; however, there shall be no showing of horses and no equestrian public events on Lot 30.* 6. The protected open space shall be subject to a recorded Conservation Restriction as defined under M.G.L. Chapter 184 and shall be conveyed, by easement or fee, to one or more of the following prior to the issuance of the first Building Permit and/or prior to any lots within the Subdivision being conveyed, whichever comes first: *The Town or the Walpole Conservation Commission; A non-profit organization, the principal purpose of which is the conservation of open space; and/or A*

corporation or trust owned jointly or in common by some or all of the owners of lots within the OSRD. If such a corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Documents creating such trust or corporation shall be submitted to the Planning Board for approval and shall thereafter be recorded. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust that shall provide for mandatory assessments for maintenance expenses to each lot, in accordance with Section 10D of the Zoning Bylaw. In any case where such land is not conveyed to the Town or the Walpole Conservation Commission, a restriction enforceable by Town shall be recorded providing that such land shall be kept in an open or natural state and shall not be built upon for residential use or developed for accessory uses such as parking or roadway. 7. Prior to the issuance of any Building Permits, written confirmation of acceptance of the final Conservation Restriction by the Executive Office of Energy and Environmental Affairs (EEA) shall be provided to the Board and to the Walpole Conservation Commission. 8. Trails shall be utilized for walking and passive recreation purposes only. No motorized vehicles shall allowed on the trails. 9. All open space shall be subject to the provisions of the Tree Management Plan submitted with the Definitive Subdivision Plan, as approved by the Planning Board. 10. The established Homeowners Association, trust and/or corporation shall be responsible for generating the funds necessary to adequately maintain all open space and trails. Additionally, maintenance and replacement of the retaining walls on Emerald Way as it leads into the Roscommon Subdivision shall be the responsibility of the Homeowner's Association. 11. The Applicant shall provide recording information for the Olmsted Estates (Modified) Subdivision and proof of right of access prior to endorsement of the Definitive Plans. 12. Prior to endorsement of the approved Definitive Plans, said plans shall be revised to include the required granite curbing, as the waiver request was denied at the May 19, 2016 public hearing and shall be reviewed by the Town Engineer. 13. Prior to endorsement of the approved Definitive Plans, said plans shall be revised to include details as required in Section 10D of the Zoning Bylaw related to Open Space Residential Developments, specifically within Section 10D, (subsections) 10.A., 10.C., 10.F., 10.G., 10.H. and 10.I and shall be reviewed by the Town Engineer. 14. The Homeowners' Association and O&M Plans shall be provided to Town Counsel and to the Town Engineer for review and shall be presented to the Board for approval prior to endorsement of the Definitive Plans. We will defer on a phasing vote until the next session or a subsequent session. Phasing will be determined prior to the issuance of Building Permits. Motion seconded by Mr. Mazzocca. Motion voted 4-0-0 (Nottebart, Murtagh, Mazzocca, Gaffey).

Atty. Schneider submitted a bond request to the board.

Mr. Nottebart moved to allow the town engineer to start working on the bond Roscommon bond. Motion seconded by Mr. Mazzocca and voted 4-0-0.

Jack Conroy, Elm Street, stated what was requested on the bond shouldn't have happened and violates the Open Meeting Law. Atty. Quirk stated Mr. Conroy is correct, but if you receive something you didn't anticipate, you do have the ability to act on it. You can put it on the next

agenda and ratify it as well. Mr. Conroy asked when it is an open meeting violation and what does reasonably anticipated mean. He would like clarification from Kopelman & Paige. He asked if the decision has to be signed tomorrow and Atty. Quirk stated the extension ends tomorrow; therefore you have to have it done by then. It needs to be filed with the town clerk by then.

Mr. Nottebart moved to adjourn. Motion seconded by Mr. Murtagh and voted 4-0-0. The meeting adjourned at 9:40 p.m.

Respectfully submitted,

John Murtagh, Clerk