



TOWN OF WALPOLE
COMMONWEALTH OF MASSACHUSETTS
OFFICE OF COMMUNITY DEVELOPMENT

JAMES A. JOHNSON
Town Administrator

ASHLEY CLARK
Community Development Director

To: Zoning Board of Appeals

From: Ashley Clark
Community Development Director

Date: January 6, 2021

Subject: Burns Avenue 40B Staff Report

See below summary of Burns Ave modification review from 11/18/2020 – 1/6/2021.

11/18/2020: The hearing for the project modification for Burns Avenue is opened. Mr. Petrozzi presented the proposal to the Board. Staff presented the Board with an overlay of the site plans demonstrating that the changes made are not only substantial but are not limited to one area of the proposal. Staff noted that all buildings from the original proposal have been moved, enlarged and modified and also greatly reduce setbacks and create an entirely new access into the site. The Board then discussed requesting scopes for peer review. Upon the request of Mr. Petrozzi, the Board agreed to solicit scopes from Tetra Tech and BETA. The hearing was continued to 11/30/20.

11/19/2020: Scopes of work were requested from BETA and Tetra Tech for peer review.

11/24/2020: Tetra Tech provided a scope of work with an estimate of \$13,624.

11/30/2020: A scope of work was provided from BETA the afternoon of the continued hearing with an estimate of \$7,500. The ZBA discussed the scopes of work provided. Members were amenable to tabling the vote on the design peer review due to objections from Mr. Petrozzi and hoped an agreeable scope could be worked out.

Staff noted that while the BETA proposal estimate was less than Tetra Tech's scope, during the previous review BETA required additional funds during the review process. Mr. Petrozzi opined that the Board should use BETA again as they did the last review. Mr. Petrozzi stated that it is not about the money, but that BETA has familiarity with the site.

The ZBA discussed Mr. Petrozzi's objection. The Board discussed how the changes were major and noted that the new connection on Union Street near the river was not in the scope last

time and would be a new review, no matter who was the peer reviewer. Ms. Murphy noted that she would prefer to use Tetra Tech due to the technical acumen demonstrated during the review on a different 40B proposal. Ms. Coffey concurred and noted that it would be beneficial to the review to have a fresh set of eyes review the project.

Mr. Petrozzi stated that he would return to the HAC and “deal with it there” and stated that BETA is familiar with the site and their office is around the corner. He opined that in his opinion, Tetra Tech is not in a position to review the proposal as efficiently as BETA.

Upon inquiry from Chair Lee, Mr. Petrozzi stated that he would not pay for the peer review of Tetra Tech, noted that he objects and will seek recourse.

Having deliberated on the matter and finding the Tetra Tech review preferable for a number of reasons, the Board then voted to accept peer review proposals from Tetra Tech for \$13,624.00 and noted their Comprehensive Rules and Regulations provide that funds shall be submitted within seven days.

12/7/2020: A letter dated 12/3/2020 was submitted by Wall Street Development’s Attorney objecting to the ZBA’s approval of the scope of work by Tetra Tech.

Staff disputes the assertion in the letter that states that the work will be duplicative. Staff reiterates that the entire site has been redesigned – including the size, number, locations of buildings not to mention the addition of a new access road from an existing cul-de-sac. Due to the scale and number of changes the entire site warrants review as there are significant implications for the stormwater, drainage, circulation, etc. The changes cannot be isolated to one specific area of the project.

12/10/2020 Pursuant to 760 CMR 56.05(5)(d), Wall Street Development submitted an appeal of the peer review selection to the Walpole Board of Selectmen.

12/22/2020: Finding no conflict of interest or that Tetra Tech was an unqualified consultant, the Walpole Board of Selectmen voted to deny Wall Street Development’s request to overturn ZBA’s vote to use Tetra Tech as a peer reviewer.

12/23/2020: The Board of Selectmen sent a letter notifying Wall Street Development of the Board’s vote.

12/28/20: Wall Street Development sent a letter to the ZBA outlining the reasons why a check in the amount of \$15,000 was being provided to the ZBA for BETA and not Tetra Tech to review the project.

The letter selectively quotes Town Counsel’s response to questions from the Board of Selectmen at their meeting on 12/22/2020. The letter omits any discussion of the other reasons the ZBA cited for preferring to have Tetra Tech be the peer reviewer.

Staff would like to take the opportunity to clarify that when BETA's previous scope was brought up at the ZBA hearing on 11/30/2020, it was merely meant to demonstrate that while there was a disparity in estimations, some consideration should be given to the Board's previous experience where the initial quote from BETA was in fact not sufficient to cover the review.

Additionally, the 12/7/2020 letter from Attorney Tallerman quotes from 760 CMR 56.05(5)(a) as follows:

Whenever possible it shall work cooperatively with the Applicant to identify appropriate consultants and scopes of work and to negotiate payment of part or all of the consultant fees by the Applicant. ... The Board should not impose unreasonable or unnecessary time or cost burdens on an Applicant.

The letter stops there and leaves out the next sentence of 760 CMR 56.05(5)(a) that states:

Alternatively, the Board may, by majority vote, require that the Applicant pay a reasonable review fee in accordance with 760 CMR 56.05(b) for the employment of outside consultants **chosen by the Board alone**.

Given that: the scope of work for Tetra Tech is from a qualified nationally known firm, there are no conflicts of interest, the scope of work is reasonable given the substantial changes to the proposed project, and Wall Street Development has provided the Board with a check in excess of the funds requested by Tetra Tech, **the scope is not unreasonable or adding unnecessary time or cost on the Applicant**. Wall Street Development themselves have inflicted a considerable loss of time in delaying the provision of the requested funds.

Additionally, the Board may have been amenable to requesting a reduced fee for the peer review, however, Wall Street Development stated at the hearing that money was not the objection. Furthermore, the 12/7 letter refers to the scope as an "exorbitant sum", meanwhile Wall Street Development provided a check in the amount of \$15,000 for BETA's review.

1/6/2021: More than 14 days have elapsed from the Board of Selectmen's vote to deny the appeal of peer review selection, well in excess of the seven days deadline prescribed in the ZBA's Comprehensive Regulations to provide peer review funds. To date, 37 days after the ZBA voted to approve Tetra Tech scope of work, the Applicant has not provided the requested peer review funds for the selected peer reviewer, in the amount of \$13624.00.