

To: Walpole Zoning Board of Appeals

From: Jack Conroy abutter @ 38-40 Burns Ave

Re: Wall Street 40B Proposal

12/4/20

The following narrative will outline the facts surrounding the Ownership by the Campbell's & myself and not only the lack of ownership but control of Burns Ave beyond the accepted portion of Burns by Wall Street. I have included backup to support this position.

My clear understanding of your role & Mass. Housing's role is to review & approve everything the Developer proposes under his control and not get involved in "offsite" issues.

In this case the Developer has represented doing work beyond his property bounds and in to the street owned by both the Campbell's & myself plus a piece of land that ownership is unknown.

In order for this to be properly represented to your Board & Mass Housing, both the Campbell's & myself would have to be Co- Applicants, which we are not, as evidenced by the application.

This lack of Ownership was admitted to me in a letter from Wall street's Attorney, Rackerman, Sawyer & Brewster contained herein, dated 2/3/20.

Based upon this fact, and the 40B Rules, this application has no merit and must be remanded back to the applicant.

I would also like to add that upon the same issue of control, the Brook Lane entrance is also not under the Developer's control, but the Town of Walpole. The town does surrender / vacate some its rights under zoning for the development of a parcel under Private ownership in a 40B application, but cannot abdicate its ownership of Town property, especially a Town accepted street. The process for any Town property to be conveyed to private ownership would be

1. The Board of Selectmen must declare the land surplus
2. The Town Meeting must vote to allow to go to auction
3. The land is put out to Public Auction

This event has not occurred with the Town

BURNS AVE HISTORY

1. A Plan & Profile Portion of Burns Ave. was drawn on September 8, 1934 by Kenneth E McIntyre of Walpole. (Plan Attached)
2. This 1934 Plan showed a roadway layout from Pleasant St to a point of 519.33 on the South side & 526.61 on the North Side.

3. This Plan was signed by 5 Selectmen on 10/16/1946 and attested to by the Town Clerk as the accepted Roadway Plan.
4. At the Fall Town Meeting of 1946, Town Meeting Accepted Burns Ave from Pleasant St to a terminus point of 440 lf from Pleasant St, noted on the plan between Lot 5 & Herbert Cobb.
5. There is what appears to be a pencil notation made by someone in the past that said “ End of Acceptance Nov. 21,1946.” Not sure what this about since this is the only copy Engineering has.
6. There is no dispute that Burns did run the 519.33 & 526.61 on a plan but Town Meeting only has accepted it to 440 lf. The last 79.33 on the south side or the 86.61 on the north side was never accepted.
7. The 1967 ANR (provided last time) creating 34-36 & 38-40 Burns shows the layout plan to the 526.61 mark.
8. In 1971 or 1972 the State changed the Zoning Laws by deeming any unaccepted way, street etc. was now owned by each abutter along the unaccepted portion to the center line of the unaccepted portion. This would be owned by Campbell & Conroy from 440’ mark to the 1934 layout of 526.61 on the north side.
9. The 10/20/80 ANR of 48 Burns shows once again not only the end of old unaccepted portion but also indicated the accepted portion in 1946 at the 440 lf mark.(given last time)
10. The Campbell’s Variance of March 7, 1986 and their ANR of October 26, 1987 indicate that they needed frontage on an “ Accepted Road” as the Accepted portion of burns noted on the plan did not give them the required frontage. (Given last time)
11. The survey by AS Elliott for 31-35 Burns Ave. prepared for Cathy Campbell show that
 - a. The “ END OF TAKING” stops short of the former Felton property
 - b. The other parcel shown as map 20 Block 139 is the Campbells which blocks Burns Ave development from accessing the “End of Taking”
 - c. In summary, this property has no legal access.
12. **Please see attached letter from Wall Street’s lawyer, Rackemann, Sawyer & Brewster, dated 2/3/20, which clearly indicates unless I agree to granting Wall Street access, they will be forced to go to Court to decide. This is very simple, Wall Street admits that he does not have clear title to his property through mine, therefore he does not control it. The plans presented indicate that work will occur in Burns Ave. The Housing Commission requires evidence of control over the property. If he is doing work on Burns on his plan and expects approval, then of course he represents that he controls it, which would** of a 40B.
13. Based upon this History it is clear that both the Campbell’s & I own to the center of the unaccepted portion of Burns and 48 Burns has a prescriptive easement for their access. Per State Law, any change to 48 Burns, such as added to the lot, changing the use or

number of homes on it is considered “ Overburdening the Easement”. Wall St’s plan, showing access through Burns is illegal.

14. There is the “ **Missing Link** “ piece of land shown on the Wall St ANR of 2017 indicating that the land from the 1934 Layout going east for 100 ‘ +/- labeled “ **Burns Ave (Private Way)** “is the first time in all these plans from 1934, 1946 Acceptance, 1967 ANR, 1980 ANR & 1987 ANR that this is labeled. There is no proof of Ownership of this piece. This is beyond the 1934 layout. The Owners of this land beyond 526.61’ mark in 1934 were Burns & Cobb, but the plan did not show a lot line.

PLAN OF APRIL 21,2020 COMMENTS

1. Gay Ave is still being shown but there is no known filing for this street. It indicates a book & page which is not how subdivisions are filed, just parcels
2. All pages are not stamped as required by MGL.
3. Shows the LIMIT OF PUBLIC WAY at the center of my driveway. The accepted portion of Burns is at the 440’ mark, which is the NW corner of 34-36 Burns.
4. There is no #48 Burns as it was demolished.
5. The plan shows the taking of Brook Lane on Town property, which is not allowed.
6. The plan shows encroachment on my centerline of ownership on Burns for Construction stabilization.
7. The plan shows the relocation of a Town hydrant on Brook Lane to private property, a no-no.
8. The plan is absent of road details / improvements on Burns nor Brook Lane, of course which one is private & the other public property.
9. Once again Burns is a dead end, with no cul de sac in the public way, which is crucial for Public Safety vehicles to turn around.
10. The mere fact that there is no parking for visitors, the 40 units, 22’ of road paving, no snow storage area, the driveways packed next to each other, public safety vehicles would not be able to navigate this road.

CONCLUSION

1. ***Based on Wall St’s own plan both Lot 137 & 136 have not only no frontage /access on an unaccepted Way but front on a piece of land whose ownership is unknown. This Ownership will have to be decided by Land Court. Regardless of the outcome, the Accepted road is over 80’ away.***
2. ***Given the 1946 Town acceptance and the location of the 440 lf mark, all road layout beyond 440 ‘ mark to the 526.61 mark on the North side is now held in ownership by each abutter fronting on it. Wall St does not have any of this.***

3. ***Given that the State allows prescriptive easements 48 Burns can continue to access out through the unaccepted portion of Burns, but cannot, by Law OVERBURDEN THE EASEMENT by accessing this project through Burns. Also please note that Lot 137 is "Landlocked" and has no type of easement or access.***
4. ***Given the letter from Rackemann, Sawyer & Brewster, he has no legal control***
5. ***It is very simple, this property has no legal frontage on Burns, and cannot use it for access.***
6. ***The plan in front of you is illegal and must be turned down as it stands***
7. ***This, I might add is not an Abutters problem to fight this, this is up to the Town to review & reject as it is about " Legal Frontage".***
8. ***BURDEN OF PROOF is on any Applicant that they has legal frontage for access and this plan does not.***

Summary

This plan, as presented cannot use Burns Ave as an access.