

PLANNING BOARD
Meeting Minutes
Tuesday, December 18, 2012
Town Hall, 120 Main Street
7:00 PM

1 Present: M. Colantoni, D. Kellogg, L. Rudnicki, L. McSherry, R. Rowen

2 Absent: J. Simons

3 Staff Present: J. Tymon, J. Enright

4

5 Meeting began at 7:00pm.

6

7 **BOND RELEASE**

8 Red Gate Lane: Request for a partial roadway bond release.

9 J. Tymon: Gene Willis has inspected the site and provided a memo approving a total release of
10 \$14,100. This will leave a remaining bond of \$16,200. This will cover continued maintenance
11 of the detention pond, final cleanout of the catch basins, and street acceptance procedure. The
12 developer would also like to request a waiver of the sidewalk fund donation due to extreme
13 financial circumstances.

14 The Board denied the request for waiver of the sidewalk fund donation.

15 **MOTION**

16 A motion was made by L. Rudnicki to keep a roadway bond of \$16,200 and release the
17 remaining for Red Gate Lane. The motion was seconded by D. Kellogg. The vote was
18 unanimous.

19

20 **PUBLIC HEARINGS**

21 CONTINUED PUBLIC HEARING, 72 Great Pond Road: Application for a Land Disturbance
22 Permit and a two (2) lot Definitive Subdivision Plan. One of the two lots contains an existing
23 home.

24 J. Tymon: A draft Decision has been completed. The Decision has incorporated the ANR
25 previously approved as a third lot in the Definitive Subdivision. Therefore, the Decision is for a
26 3-lot Definitive Subdivision.

27 **MOTION**

28 A motion was made by M. Colantoni to close the Public Hearing for 72 Great Pond Road. The
29 motion was seconded by D. Kellogg. The vote was unanimous.

30 A draft Decision was reviewed and edited.

31 **MOTION**

32 A motion was made by M. Colantoni to approve the Decision for 72 Great Pond Road North
33 Andover, as amended. The motion was seconded by L. McSherry. The vote was unanimous.

34

35 CONTINUED PUBLIC HEARING, 1018 Osgood Street: Application for Site Plan Review-
36 Special Permit for proposed construction of a 2,250 sq. ft. coffee shop with drive-thru and
37 associated site amenities including drive-thru lane and twenty five (25) parking spaces. In
38 addition, applicant has filed for a Request of Determination of Applicability of Watershed
39 Protection District Requirements.

40 J. Tymon: A Watershed Special Permit application has been filed. There have been some
41 changes made to the site plan in response to the civil and stormwater reviewer comments. There
42 will be more infiltration at the front of the site, the number of parking spaces has been reduced,
43 and the width of the drive-through aisle has been reduced.

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44 Mark Gross, MHF Design Consultants, Inc: To improve the stormwater management design and
45 because of the watershed concern the amount of pavement has been reduced. A special permit
46 application has been filed for the reduction in parking and for a modification to the loading area
47 requirements. The entrances have been revised to an entrance only and exit only. Transaction,
48 parking, queuing, and traffic flow data comparisons for a similar site in Methuen, Ma have been
49 utilized to design this site. A Notice of Intent has been filed with the Conservation Commission
50 and a second infiltration system has been added to the site. The grade on the driveway will be
51 approximately 5%. The top of the foundation for the proposed building will be lower than the
52 top of foundation of the existing house.

53 R. Rowen: This will be continued until January 15, 2013.

54 NEW PUBLIC HEARING, 41 Second Street: Application for Special Permit-Site Plan Review.
55 Applicant proposes to demolish an existing dwelling and to construct a new 3-unit residential
56 building with an eight space, off street, parking lot.

57 J. Tymon: This would replace a single family residential building in the R-4 Zoning District.
58 The ZBA granted a zoning variance for a multi-family for this plan in September 2012. There
59 were several abutters that came to that hearing. One of the items of concern was the placement
60 of the parking in front of the structure. The Site Plan Review is due the number of parking
61 spaces proposed. L. Eggleston has requested less grading and a grass swale on the eastern side.

62 Bill MacCleod, Andover Consultants, Inc: The original proposal before the ZBA was for a four
63 unit building. It has been reduced to a three unit structure with parking on the side. The Zoning
64 requires six spaces. Two additional spaces have been added for visitor parking. A landscaping
65 plan, elevations and a rendering of the building are included with the application. The structure
66 is connected to sewer and a drainage system is included to take care of the parking lot. There
67 will be a 6' fence installed around the perimeter of the lot that will provide screening for the
68 neighbors. The applicant disagrees with L. Eggleston's suggestion that something has to be done
69 with the slope on the eastern side of the lot. There is a grass area to the side of the house. All of
70 the roof runoff will run to the front and to the back of the house. The stormwater on the front
71 will run off to a gutter. The drainage calculations show that the runoff from the back of the roof
72 should just drain off and flow. The only water that will fall onto the side of the lot is what falls
73 from the sky. Water is not being channeled to the side of the lot. The slope on the side of the
74 property is only 4' feet over 15' of land. The existing top of foundation is higher than the
75 proposed top of foundation.

76 R. Rowen: There will be less water runoff to this corner of the lot in the future than there is
77 today.

78 J. Tymon: There overall runoff will be a little less; however, the peak runoff will be a little bit
79 higher. L. Eggleston is suggesting some slight grading to keep the runoff on the property.

80 B. MacCleod: If it is just a matter of putting a 6" deep swale it can be done.

81 L. Rudnicki: Will there be an impervious pavement under the decks?

82 B. MacCleod: It will be crushed stone. If it were ever to be changed in the future it is not an
83 issue that will cause more runoff to the neighbors.

84 R. Rowen: We will keep the hearing open until January 15, 2013.

85

86 **DISCUSSION**

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87 O Lacy Streets, John and Stephanie O'Mahony: Application for Land Disturbance Permit
88 J. Tymon: This has to do with a request for an application for a Land Disturbance Permit.
89 Jennifer Hughes, Conservation Agent, has been on the property within the last six months
90 because of some re-grading and clearing close to a wetland that is on the property. According to
91 J. Hughes there has been some re-grading and vegetation removal, over the last year, in an area
92 on the property that is not within jurisdiction of that wetland on the property. The Land
93 Disturbance Permit is designed to oversee any clearing or disturbance of more than an acre of
94 land. Based on aerial photos it is estimated that there has been more than two acres of re-grading
95 and clearing outside of the 100' buffer to the wetlands. The Land Disturbance Permit Bylaw
96 requires that an application be made. What has come into question is the use of the property as
97 Agricultural Use and whether it is exempt from the Bylaw. In the Bylaw, as it is written, the
98 definition of Agricultural Use is defined within the Wetland Regulation. This means it has to be
99 a commercial, agricultural use.

100 R. Rowen: Is the purpose now to right an apparent wrong over the past period of time and apply
101 for a Land Disturbance Permit now?

102 J. Tymon: There is more clearing being proposed for the installation of solar panels. An
103 application for construction of the solar panels has been submitted to the Building Department.

104 R. Rowen: So the application for the disturbance is for what has been done plus what they want
105 to do in the future to have a totally compliant Decision.

106 J. Tymon: Yes.

107 Bill Gardiner, Representing John and Stephanie O'Mahony: Stated that he does not believe there
108 is to be anymore clearing to be done for the erection of the solar panels. About two years ago the
109 O'Mahonys bought the old Whipple Will Farm property on Lacy Street. They own the property
110 and they have resided in their house right next door for several years prior to this. There was
111 litigation surrounding the old Tighe property, which is the farm property referred to here. The
112 litigation ultimately resulted in the prior occupant, the neighbor on the other side, being ordered
113 to vacate the property and it gave the estate the ability to sell it. The O'Mahonys saw the
114 opportunity to take over the farm and to run a commercial farm operation. As part of the
115 purchase agreement the estate was required, per court order, to raze the buildings that were on
116 the farm. In January of 2011 the O'Mahonys began the permitting process through the Building
117 Department to improve the property and bring it back to the farm it once was. The construction
118 process began later in 2011. They have worked with the Conservation and Building
119 Departments throughout the entire process. They did not know about the Land Disturbance
120 process. At this point they are ready to have the animals delivered and to determine what they
121 can do in terms of crops. The last piece of construction is the erection of the solar panels. There
122 are incentives that National Grid and the State offer for solar power generation. If they can erect
123 these solar panels by the end of this year there are grants and tax credits that they are eligible for.
124 It was not until just recently that the Land Disturbance Permit and Chapter 160 came to the
125 O'Mahony's attention. The estimate of two acres of land disturbance could be accurate. The
126 Agriculture Use exemption requires that you sell product and that you do it for profit. Town
127 Counsel has requested something that demonstrates it is going to be used for commercial use,
128 either currently or in the past.

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129 R. Rowen: There are two separate and distinct issues. One of them is the timeline you are under
130 to get the solar panels erected. If there is no clearing and it consists only of putting up the solar
131 panels on existing grade whether or not they need a Land Disturbance Permit is a moot point as
132 to whether or not they have permission to put up the solar panels. The second discussion needed
133 is that perhaps they should have applied for a Land Disturbance Permit. That is not pertinent to
134 the task of putting up the solar panels. If the Board can say that it sees no reason not to move
135 forward with the erection of the solar panels because they are not disturbing the land this can be
136 separated from the land disturbance issue. Then the Board can take its time to discuss the Land
137 Disturbance Permit and determine if they should have one, if they should be exempt from one, or
138 if they should request a waiver. All of these should be considered without having the burden of
139 trying to rush something through and not doing it improperly.

140 B. Gardiner: That is totally acceptable.

141 J. Tymon: The Zoning Enforcement Officer/Building Inspector issues the Building Permit for
142 solar panels. By State law solar panels are not subject to Zoning.

143 Tom Urbelis, Town Counsel: It would be helpful to the Building Inspector if the Board took a
144 vote that there is no requirement for them to file an application for a Land Disturbance Permit for
145 the solar panels.

146 R. Rowen: If it is true that the installation of the solar panels will not require any land
147 disturbance and you can present that plan to the Town Planner and she concurs with that
148 assessment then we can have a contingent vote providing guidance to the Building Inspector that
149 there would not be any land disturbance permit required for the installation of the solar panels.

150 J. O'Mahony: The panels are a ground mounted, stationary system. There are 62 panels with 12
151 sonar tubes that would require small holes dug. The panels are approximately 20" off the ground
152 in the front and 6' off the ground in the back.

153 **MOTION**

154 A motion was made by D. Kellogg that the Board finds that the plan for the installation of the solar
155 panels as described on land located on Lacy Street, owned by the O'Mahoneys, is subject to review by
156 the town planner and that the actual installation of the solar panels is not subject to the town's Land
157 Disturbance Permit." The motion was seconded by L. McSherry. The vote was unanimous.

158 R. Rowen: It is expected that in the very near future the proper application for Land Disturbance
159 Permit be applied for or formal application for a waiver or exemption.

160 D. Kellogg: Do we need to issue a cease and desist orders for further clearing?

161 J. Tymon: That is up to the Building Inspector.

162

163 **MEETING MINUTES**: Approval of December 4, 2012 meeting minutes.

164 **MOTION**

165 A motion was made by L. Rudnicki to approve the December 4, 2012 meeting minutes. The
166 motion was seconded by L. McSherry. The vote was unanimous.

167

168 **ADJOURNMENT**

169 **MOTION**:

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170 A motion was made by D. Kellogg to adjourn the meeting. The motion was seconded by M.
171 Colantoni. The vote was unanimous.

172
173 The meeting adjourned at 8:25pm.

174
175 MEETING MATERIALS: Agenda, Letter dated 12/18/12 from Eugene P. Willis, Town
176 Engineer, RE: Red Gate Pasture Subdivision bond release, Revised Plan 72 Great Pond
177 Road, draft Decision 72 Great Pond Road dated 12/18/12, Definitive Subdivision Plan
178 "Turkey Hill" dated 12/7/2, email dated 12/12/12 from Lisa D. Eggleston, P.E. RE: 72 Great
179 Pond Road, 1018 Osgood Street: October 19, 2012 letter from Mark S. Gross, MHF Design
180 Consultants, Inc., Letter dated December 11, 2012 from Chris M. Tymula, MHF Design
181 Consultants, Inc., Proposed Site Plan Development Plans for Map 35 Lot 19 1018 Osgood
182 Street North Andover, Massachusetts 01845 dated 12/7/12, 41 Second Street: letter dated
183 November 26, 2012 from James S. Fairweather II, P.E., Andover Consultants, Inc.,
184 Community and Traffic Impact 41 Second Street North Andover, MA dated 12/7/12, Site
185 Plan Review Application 41 Second Street, Letter dated 12/6/12 from Lisa D. Eggleston,
186 Eggleston Environmental, Letter dated 12/11/12 from James S. Fairweather II, P.E.,
187 Andover Consultants, Inc., Letter dated 12/18/12 from James S. Fairweather II, P.E.,
188 Andover Consultants, Inc. Site Plan 41 Second Street and Site Plan & Details 41 Second
189 Street dated 11/20/12, Front Elevation 41 Second Street, Landscape Plan 41 Second Street,
190 0 Lacy Street: Letter dated 12/13/12 from Thomas J. Urbelis, Town Counsel, Letter dated
191 12/14/12 from Thomas J. Urbelis, notes related to Land in Agricultural Use, Active vs.
192 Inactive Land, Land in Production, Definition of Commercial and Necessary and Related
193 Land, aerial view of O'Mahony property dated 11/26/12, Letter dated 12/12/12 from
194 William D. Gardiner, Brodigan and Gardiner LLP, aerial view 0 Lacy Street dated 12/18/12,
195 draft 11/4/12 meeting minutes.