



ZOOM MEETING MINUTES

March 22, 2023

Members Present: Sarah Miles (Chair), Marc Frieden, Vincent Vignaly, Barur Rajeshkumar, Francesco Lopriore

Members Absent: None

Others Present: Paul Lenkarski, Attorney Russell Chernin, Mr. Ali

All documents referenced in these Minutes are stored and available for public inspection in the Planning Board Office located at 140 Worcester Street.

The Chair opened the Zoom meeting at 7:14 p.m. Members Present: Vincent Vignaly, Barur Rajeshkumar, Marc Frieden, Sarah Miles, Francesco Lopriore.

20 Holt Street Project Discussion –The summary of remaining items as of 3/19/23 was reviewed. The as-built plan was received today. Mr. Lenkarski said the engineer provided the compliance letter today and he was going to address it. Ms. Miles noted that we received responses from the DPW and Fire Department; the Master Deed reviewed by Town Counsel was recorded; the retaining wall was removed.

Quoted Conditions of Approval from Site Plan Review Approval, Special Permit and Stormwater Management Permit 9/8/21:

Condition #2. There's some concern about the HOA documents specifically in relation to the area within the foundation that has this structure above it. Mr. Vignaly said the condition reads in part "condominium document shall include limitations and conditions to the area within the foundation having no structure above it". He hasn't seen any of that in the condominium documents. Attorney Chernin said those are not required by state law and didn't believe the town has the authority to override state law. Mr. Lenkarski said he was told the documents were ready for recording and did conform to this condition per the Town Counsel. Mr. Vignaly said the last Town Counsel email mentioned the work above the foundation and stormwater basin; they were confused about it. We requested clarification and Town Counsel agreed that it was referencing the foundation and what the conditions were above the foundation, but the board never saw any revisions to the proposed document that he gave Town Counsel. Ms. Miles said there's some disagreement about this and wasn't clear on exactly what might be missing. Mr. Lenkarski said Ms. Miles sent him an email confirming that no additional changes were suggested. Mr. Vignaly read the January 26, 2023 email from the Town Administrator forwarding information from Carolyn Murray who said Condition #2 of the Planning Board's Decision states exactly that the Master Deed nor the Declaration of Trust explicitly include this wording about the foundation; the documents do not technically comply with the Planning Board's Decision." Ms. Miles said on February 22, 2023 Carolyn Murray said she was comfortable with the revision as presented which is why Ms. Miles moved forward from there; members were included on that email, but no discussion occurred at a public meeting.

Condition #3. There were no stormwater inspection reports submitted as required. Mr. Lenkarski said his engineer would speak to that but he has not joined the meeting yet.

Condition #7. Mr. Lenkarski said they did update the trash and recycling contract with a private carrier. The address has been corrected and special conditions were put in the contract that the trash be picked up at the end of the driveway by a private hauler and no trash pickup will take place within 50 feet of Holt Street.

Condition #9. Mr. Lenkarski said they don't have any plans for a sign. Mr. Vignaly said they need the house number for the Fire Department and mail. Mr. Lenkarski said the Fire Chief did require a certain size and location; they have installed it as they were told where to put it.

Condition #14. They did provide proof that the Special Permit has been recorded but the site plans are not designed to registry standards; they are not a recordable document. The applicant and the board agreed to have the as-built plan recorded.

Condition #16. Limitation of 6 Temporary Certificates of Occupancy is moot if the work is completed.

Condition #20. Ms. Miles said the condition was not met; a building permit was issued without signed plans. A building permit should not have been issued; it's a violation of this condition; it was the Building Inspector, George Tignor's fault, not the applicant's fault.

Condition #21. Ms. Miles said the time for this has passed; it is for future reference.

Condition #24. Changes to the approved plans need prior review/approval from the Planning Board. This was not done. Ms. Miles said it is for future edification. If they are going to change the plan, they need to come before the board and request the change, not wait until the end of the project.

Mr. Frieden mentioned the most recent email from the Chief about changing the driveway from 18 feet wide to a 20 foot width and asked if it was being done prior to the as-built plan and documented as conforming. He wanted to make sure that they widen it through the inboard side so we don't run into the problem with paving in the zoning-required yard setback. Mr. Lenkarski said that work has been performed. Ms. Miles said it has been confirmed by both the Building Inspector and the Fire Chief. The Fire Chief's comments were about the numerical marker to address 24 Holt Street and also there are several feet of snow in the vehicle maneuvering area; there should be no snow storage there as it negates the turn around area. Mr. Lenkarski said they have a new plow driver; he will address the proper storage with him.

Condition #26. Certified as-built plans and engineer's certification shall be submitted to the Board. Ms. Miles said we have not received the final as-built plan yet, but have received the written certification from the engineer.

Ms. Miles said items 1-9 noted by VHB have been resolved at this time.

Items A-E VHB discrepancies raised by the Planning Board:

A. Mr. Lenkarski presented a photo of the cut pavement, but some remained within the yard setback. He explained that there is an existing stairway to the building. Mr. Vignaly questioned why this wasn't

on any of the plans submitted. Mr. Vignaly saw the photo of the pavement removed. The concern is that parking is not allowed within the yard setbacks. The need to provide access to the stairs would allow for some pavement. The board discussed allowing a landing at the bottom of the staircase and the rest would be removed.

Ms. Miles asked about striping; Mr. Vignaly said striping does nothing. Mr. Frieden suggested landscaping so people couldn't drive over the lawn. Mr. Lenkarski said when the spring breaks they will probably put mulch on it and maybe make it a bed. Mr. Vignaly asked if the board could get a plan or proposal of what they are planning on doing. That's the idea of requesting a project change. You were supposed to do the 10 foot, we're willing to make it usable with corrections on the as-built plan but there wasn't anything submitted and it hasn't shown that there is a staircase going to an entryway. We can make something work, but we don't have anything that shows what you want to do and how you're going to treat the remove pavement area. Mr. Vignaly thought it was going to be 4 inches of loam and seeded, but now we're hearing it's going to be something else. Let's put something on a plan so we can all agree on it and do it; Mr. Lenkarski can do a sketch dated so there's something we agreed to. Ms. Miles said that's what would normally happen with a project change request; a change to the approved plan. Mr. Vignaly thought if they came back three feet from the yellow curve line and then cut it from that point to the orange cone and propose what you they will do with the area marked "remove pavement". Mr. Lenkarski said they don't have any plan for that; they just pulled it on Friday. Ms. Miles said the board is not asking him to have it immediately but that's what we're looking forward to seeing. She explained that if he's going to make a change to the approved plan, he gets it to the board, we get in anybody who needs to say anything; that's what would have happened in that process. She said he does have a sense of what the board is willing to say ok on as far as how this pavement is shaped. She asked the members if they had any thoughts about what should be built in there. Mr. Rajeshkumar said this is not a new issue we are raising here. It was proposed in the site plan. It was on site plan review document; they have known it for a long time. She asked the board what would be preferred to be filled in there. Mr. Frieden suggested it be loamed and seeded, possibly a curb; do the minimum required to make it non-parking. The attorney suggested the board issue a very detailed directive to the applicant, because right now all we have are people's ideas.

What does the board really want? Ms. Miles appreciated what he was saying, however, it is incumbent in that condition that it is on the applicant to have come to us with a proposed change where we could have given official feedback; work has already been done. We are trying to react to that and give advice on something that hasn't actually been proposed. Mr. Vignaly suggested that if they wanted to put something like a vegetable garden there, he thought the board would be OK with that. You would have to check with the Fire Department and make sure that they have whatever access they need. Mr. Lenkarski said it would be grass and seed or be a planting bed. He said the issue is the pavement removed to your approval and thinks they have that. Mr. Vignaly didn't think they were there yet. Ms. Miles interpreted Mr. Lenkarski saying that he hears what the board is requesting that we're not quite there yet, but what he will do to fix that. Mr. Frieden was not sure where it should be drawn because it's somewhat off plan, but the property shown on the plan is a neighbor. Should we ask for that to be on the as-built in that location just so that it's documented or do you want an all sides sketch? Mr. Vignaly said the engineer will be submitting a new a new as-built plan and the plan should show what's been discussed tonight. He needs to check everything to make sure it meets all the appropriate standards; that's what an as-built plan is. For him to stamp it, he needs to do his due diligence.

B. Ms. Miles said we have the written certification. It may need an adjustment based on where the pavement is going to be.

C. Ms. Miles did hear from DPW today. He deferred to the Fire Chief as far as the 20 foot width.

D. Ms. Miles said comments were received from the Fire Chief which were discussed earlier.

E. Ms. Miles said she was satisfied with the Master Deed and Declaration of Trust.

Ms. Miles said we're close to completion. We need the final as-built which will include the final proposal for the area where pavement will be removed. Mr. Vignaly asked if before we get the as-built, we would like a sketch agreed upon so when he does his as-built he will note the correct things. Mr. Lenkarski said it will be loamed and seeded. It needs to be on the as-built plan. The engineer stamping the plan can't say it's as-built if it isn't done yet. Ms. Miles asked if Mr. Lenkarski should provide a sketch for the board's approval or can it be on the as-built. Mr. Vignaly said it would be easier on the as-built. He would have to get the pavement cut and have his engineer go out and measure where the asphalt is and put the actual measurement on the plan and the plan would show stairs so we would know the reason why we are not requiring the 10-foot removal. Mr. Lenkarski said he will cut it out tomorrow because the engineer is coming. He said we already have the as-built, it only needs to be amended. Ms. Miles said if there are changes being made, it isn't the final as-built. Mr. Vignaly said we need the final as-built for the entire project. The engineer's letter should match the as-built conditions about the portion of pavement not being removed. Mr. Lenkarski didn't think the engineer's letter would need to be revised.

Ms. Miles said we are on a path forward and will see them at the next meeting with the final as-built. The attorney asked if we could hold an emergency meeting. Ms. Miles said we could not. The attorney said they are running out of time and will hold the town liable if they lose a sale. Ms. Miles said we all went through very clearly exactly what conditions were not followed in the original approval we issued. Much of where we are today is from not seeking approval for changes to the plan ahead of time. She said it is up to Mr. Lenkarski if he wants to sue the town, but there is not an issue on our part that requires the Board to have another special emergency meeting at this time. Ms. Miles said he is asking us to release one of two temporary Occupancy Permits that are still being held. She said we've been very clear and voted on this twice at this point. She asked for board members' input. Mr. Vignaly would not want to do that. We scheduled this special meeting for the purpose of them getting everything done and completed; that hasn't happened; we still haven't received everything. He suggested we put it on our agenda for our next regularly scheduled meeting. They are almost there, but the problem is they've been almost there since last January; when it's done, it's done. Mr. Rajeshkumar said they need the pavement cut, they need to put the loam and seed along the cut area, and need an as-built. Mr. Vignaly had put together a list and hasn't gotten a response itemizing all the things that have been met or not met. Mr. Rajeshkumar said it's been an extremely difficult situation. He said Mr. Lenkarski has been dealing with this without an engineer or attorney (until just recently). This is the volunteer board and we are trying to do our best; it's been frustrating for the board as well as the applicant. He understands there will be a closing on April 1st and would be willing to release one unit, but will not give consideration to releasing the last unit until everything is completed and a final as-built received, despite the attorney's warning about possible action being taken against the board. Mr. Frieden made a motion to release one temporary Certificate of Occupancy for 20 Holt Street; Mr. Rajeshkumar seconded; roll call vote: Frieden-yes; Rajeshkumar-yes; Vignaly-no; Miles-yes; motion approved.

Discuss Punch List Items for Nuha Circle and Westland Circle – Ms. Miles said we need to give Mr. Ali an up-to-date punch list for what needs to be done to complete the project for street acceptance for Nuha Circle and Westland Circle. Mr. Frieden said a punch list needs to be given to the Selectboard as well as Mr. Ali for the LIP conditions of his Local Initiative Petition of West Boylston Street. For Nuha Circle, Ms. Miles put together a list with the board's, VHB comments, etc., dated May of 2022. She asked what needs to be done to update the list. Mr. Rajeshkumar said the residents could provide some information. Ms. Miles asked Jackie Leonardo to provide written comments. Ms. Leonardo had a punch list from September 21, 2020. Mr. Ali said it was agreed at the April 2022 meeting that when the weather permits, he would take care of the issues. He said the final punch list was decided by the Planning Board according to VHB's letter dated July 7, 2022. Mr. Ali was asked to send everything in an email to the board. After all comments/issues are compiled it will be reviewed by a board member and confirmed with the DPW, Fire Chief, and VHB since things could have changed since the summer of 2022. Ms. Miles said VHB's July 7, 2022 letter states that they are repeating the contents of the May 6, 2022 and February 8, 2022 documents.

Ms. Leonardo said their main concern is that if the property owners take over the HOA, will they be liable for items that did not get completed. She asked if there are cleaning and inspections of the drainage system and certification of such before they have to take over the HOA? They want to make certain that they are not taking over any faulty drains; they want inspections for the drain and basins.. Mr. Ali said VHB is an independent contractor and will do proper inspections. Mr. Frieden said a final cleaning will be needed; Mr. Ali agreed. Ms. Leonardo questioned if they have to accept anything until he has completed everything on his list. Ms. Miles said for street acceptance, the HOA has to exist properly; the language needs to be correct in the Master Deed and Declaration of Trust. Their deeds state that they are part of it. Having unfilled positions does not make it dissolve. Mr. Frieden said the town will not accept the road without the HOA committing to maintenance outside of the road right-of-way. Mr. Ali and his attorney should help formulate those documents. Mr. Ali said all the documents are in place for Nuha Circle except for the HOA. He said if the board has no issues with VHB's list, he would like to get started. Ms. Miles said the most recent list we have is from September of 2022. Mr. Ali agreed that he would do it last spring. She told him his portion of getting the HOA to exist and properly put together is up to him and the homeowners to do the transfer, not the board. Mr. Frieden asked for the current list and to make sure we are all on the same page. Ms. Miles said the list is dated mid-September of 2022; it had everything we accumulated from VHB, the board and DPW. Mr. Vignaly said nothing since then has been inspected or rejected; if any new issues happened over the winter, it will have to be inspected and accepted by the town. Mr. Ali was told to give VHB 5 days' notice of work on the roadway and to the neighbors as well. If anything comes up, he will work with VHB.

Westland Circle – Mr. Ali said on 3/17/2023 VHB sent a letter to Ms. Miles. The letter was based on their August 16, 2022 field walk. She asked the board what else may be needed beyond VHB's list in order to give Mr. Ali a comprehensive list. Mr. Frieden said the Sewer Commission voted to accept the sewer system in the road and thought the plan or approval needs to be amended since it is a significant change. Ms. Miles said maintenance of the sewer system on private property needs to be properly included in the HOA. Mr. Vignaly didn't think the Selectboard or DPW has officially accepted the sewer but they have committed to accepting it when it goes before the town meeting. We should get an updated inspection from VHB and someone needs to go through the subdivision approval to make sure all work is in accordance with the conditions. This is typically done by the applicant's engineer and reviewed by the board and our engineer. We should not be creating a punch list for them.

Mr. Ali said there is an issue with the walking trail which was done in lieu of sidewalks. He suggested that the Town/Selectboard take over the walking trails. Mr. Vignaly said the process would be to go to the DPW and see if they have concerns, then come back to the board with their list of concerns/issues; it's not a Selectboard issue yet. He said the path is currently required to be the responsibility of the HOA. The homeowners do not want the responsibility. If the town is willing and accepts it, it would need to follow the same process as that followed to transfer the sewer in the street. The final decision comes from the Selectboard after review and recommendations from the Board and the DPW Director. Mr. Frieden said the walking trail was over a water line and we sacrificed sidewalks for the easement. Ms. Miles will ask the DPW to review the walking trail and ask he has any concerns with the town taking it over. Mr. Frieden said it's on private resident property and they were concerned that if someone was hurt was it their responsibility; they don't want it if it is their liability.

Randy Chavoor 34 Westland Circle) was told the trail was there because the people on Lawrence Street didn't have a way to get to Woodland Park. He said it is on his property but he doesn't use it and doesn't want to maintain it. Ms. Miles said the biggest issue is that the HOA did not exist when the people bought their property. Town Counsel needs to review the Master Deed and Declaration of Trust to make sure it covers what is noted in the approval. Nuha Circle owners knew when they bought that they were signing up to be part of an HOA, but the homeowners in Westland Circle did not. Ms. Miles doesn't know how it will get resolved. Ms. Miles said the board is looking for a legal recommendation for how it gets resolved after-the-fact that can be reviewed and approved by Town Counsel. Mr. Ali said there is no Master Deed and no Declaration of Trust. He will contact an attorney for a recommended process and send it to the board. He also said he can't resolve the trees because they are planted on the lots. Mr. Vignaly asked if the plan showed street trees in the right-of-way and was told yes. Mr. Ali said he has an email from the tree warden saying not to put trees in the right-of-way. Since he did not get a change to the plan, he is still responsible to install the trees in the right-of-way.

A resident asked what else was on the punch list. Mr. Ali said street grading, water line and shutoff locations/grades, drainage issues, asphalt cracking, settling and poor construction of the walkway. He said he completed installation of the fence around the stormwater basin on the right entering the project. The resident asked when she could see the HOA document. Mr. Ali will provide it; it can also be found on the Registry of Deeds.

Nicole Cushing (31 Westland Circle) said that the property lines at their driveway were changed but need to be reflected on the plan. Mr. Vignaly said those changes were already approved with an ANR plan. Ms. Miles will ask DPW, Fire Chief and Water Department to make punch list of any issues; she will include VHB to keep him up-to-date. She will incorporate any changes, prepare a revised punch list, and send it out.

Mr. Rajeshkumar made a motion to adjourn; Mr. Lopriore seconded; roll call vote: Rajeshkumar-yes; Lopriore-yes; Vignaly-yes; Frieden-yes; Miles-yes; motion approved.

The meeting was adjourned at 9:30 p.m.

Date Accepted: _____

By: _____
Marc Frieden, Clerk

Submitted by: _____
Melanie Rich