

**Minutes of Meeting  
Grafton Planning Board  
July 23, 2007**

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A regular meeting of the Grafton Planning Board was held on Monday, July 23, 2007 in Conference Room A at the Grafton Municipal Center, 30 Providence Road, Grafton, MA. Present for the meeting were Chairman Peter Parsons, Vice-Chair, Robert Hassinger, Clerk Keith Regan, Donald Chouinard, Richard McCarthy and Associate Member Christophe G. Courchesne. Staff present was Town Planner, Stephen Bishop and Planning Assistant, Samantha Hobson.

Chairman Parsons called the meeting to order at 7:00 p.m.

**SP 2007-8 GRAFTON WATER DISTRICT - 44 MILLBURY STREET,  
GRAFTON - WATER STORAGE TANK - 67 UPTON STREET REAR**

Mr. Regan read the legal notice and Chairman Parsons opened the public hearing at 7:01 p.m.

Present for the hearing were Matthew Pearson, Manager of Grafton Water District and his Engineer/Project Manager Mark Wetzel of Stantec Consulting Services, Inc.

Mr. Wetzel informed the Board that the subject water storage tank will provide additional storage for existing and future use requirements, also noting that as older tanks require maintenance, they need to be taken out of use and temporarily replaced by an alternative tank.

Mr. Wetzel stated the proposed 1.2 million gallon concrete water storage tank will be constructed adjacent to the existing water storage tank and existing booster pumping station. Mr. Wetzel noted the tank does not have to be cleaned for at least five to ten years and is pretty much maintenance free. Mr. Wetzel added that storm water on site will be collected and distributed into a detention basin with an overflow outlet.

Mr. Hassinger inquired about the possibility of the tank failing.

Mr. Wetzel reviewed the criteria associated with the tank structure for a low failure rate and stated the chances were very remote for tank failure. Mr. Wetzel stated the tanks are examined by the Water District once a week and any failure points would be obvious before any major breakdown could occur.

Mr. Hassinger questioned the notation in the Graves Engineering review report concerning adequate soil testing by deep-hole excavation for the indication of seasonal groundwater and noted their suggestion to require confirmatory soil testing as a condition of approval. Mr. Wetzel acknowledged this issue.

Mr. Hassinger also stated he was interested in tank designs that can accommodate cell tower structures on the tank and if this is a possibility with this type of tank.

Mr. Wetzel informed the Board that this specific tank was not suited to cell tower location, and explained that the type of tank needed would be reinforced by adding a structure to the top of the tank and four pods to accommodate wireless carriers.

Mr. Hassinger noted that the Town has struggled with cell phone coverage in the past within this area, that this would be an ideal location to fill that hole to solve an ongoing problem, and that this is done frequently with other surrounding water districts.

Mr. Pearson stated he felt that it was not appropriate for Mr. Hassinger to bring this point up at this time and indicated this should not be an issue at this public hearing and likened the reference to “putting an apple tree into an orange grove.” Mr. Pearson also noted that the Grafton Water District has made their position very clear in the past with regard to this issue. Mr. Pearson added that he would address this issue at another time and will look into tank designs that accommodate cell towers at a future time.

Mr. Regan asked how long it would take to build the tank. Mr. Wetzel stated about three months from start to finish. Mr. Regan requested the Board receive an outline of the applicant’s plan to secure the sight during construction.

Mr. Pearson noted that a neighbor immediately abutting the area maintains a good relationship with the Water District and watches the site for them.

Mr. Wetzel informed the Board that contractors who perform the water tower work have been very amenable on any issues/problems that may arise.

Anthony Molinari of 69 Upton Street asked if there was anything on the plans associated with work around the tank that will require any easements to his property.

Mr. Pearson stated they will be tying into the existing piping.

Clayton Cox of 22 Woodside Drive asked if there were any other locations considered for this tower.

Mr. Pearson stated this site was ideal, as all the equipment, piping, and required height were already located at the site, whereas other sites in Town would have required a steel tank at about 95-96 feet high.

Mr. Regan inquired if the tower was planned to be built in September, when the approval from the Attorney General should be received.

Mr. Wetzel informed the Board that the intention was to get the project out to bid as soon as possible in an effort to secure better pricing for construction next spring.

Mr. Hassinger asked about equipment on site for construction, how many concrete truck trips daily and what the duration of the truck trips will be.

Mr. Hassinger also inquired about how the capacity of the tower relates to the build-out of the Town. Mr. Wetzel stated they were composed of flow equalization during the day; if there is a fire in the Town, since one-half to two-thirds of the tank is considered for fire protection; and in case of an emergency situation, the Town can draw from the tower to supplement its supply.

Mr. McCarthy asked if the Water District would be back in 3 or 4 years looking for another water tower.

Mr. Pearson stated that additional water supplies may be called for depending on the use demands and new developments being created, but this tower is good for about fifty years. Mr. Pearson added that they are working together with area groups and organizations with grant allowances to determine future water, sewer and other requirements/needs for the Shrewsbury/Grafton area.

Bruce Casson of 20 Woodside Drive inquired why the Brigham Hill Road Water District site could not be used, since it was used when the water tank at the Upton Street site needed to be repaired. Mr. Pearson stated that the site was too small and could not accommodate the capacity needed to span from everyday use to emergency requirements.

Mr. Pearson informed the Board that they were in hopes of closing the hearing tonight, allowing them to send the project out to bid and get a start on things until the project is approved by the Attorney General. Mr. Pearson also reminded the Board that they had already lost a year due to the zoning issues they encountered.

Mr. Regan stated they had been advised by Town Counsel to keep the public hearing open until they receive the zoning change approval from the Attorney General's office and suggested Mr. Pearson request a continuance, keeping in mind the 90-day period of notification from the Attorney General which would be in September.

**MOTION** by Mr. McCarthy, **SECOND** by Mr. Regan, to accept the applicant's written request to continue the public hearing to September 10, 2007 at 7:00 p.m. **MOTION** carried unanimously.

**RZN 2007-1 CITIZEN PETITION ARTICLE FOR MAY 2007 ANNUAL TOWN MEETING – PROPOSED AMENDMENT TO THE GRAFTON ZONING MAP – CHARLES ATCHUE – 42 WESTBORO ROAD – RESIDENTIAL-20 TO INDUSTRIAL**

Chairman Parsons opened the public hearing.

Present for the hearing were Charles Atchue, petitioner and his attorney Peter Keenan.

Mr. Bishop reminded the Board that at the last hearing they had suggested Mr. Atchue obtain a legal opinion defending his position that rezoning this parcel of land would not be considered spot zoning.

Attorney Keenan stated he was representing Mr. & Mrs. Atchue concerning 42 Westboro Road and apologized that Norman Hill of Land Planning could not attend the hearing tonight.

Attorney Keenan noted the Planning Board had requested Mr. Atchue provide a legal opinion on whether his re-zoning request constituted spot zoning.

Attorney Keenan explained the spot zoning illegality comes about if the sale of the land is strictly for the benefit of the owners, but if it is to promote the general well being, growth of the Town, increase the tax base, and add job employment benefits, it cannot be considered spot zoning.

Attorney Keenan pointed out that there is 1000 feet of frontage on the railroad which would be very beneficial as an Industrial use and should be encouraged by the Planning Board, adding that the applicant hopes the re-zoning can be done at the fall Town Meeting and forwarded to the Attorney General.

Attorney Keenan stated that WBDC informed them there was a significant demand for industrial land on a railroad spur, particularly for Grafton.

Mr. Regan questioned if there was a sense of what those uses might be. Attorney Keenan stated they had not secured a use as yet, but were waiting for the approval of the zoning change.

Mr. Hassinger asked whether the parcel is within the Water Supply Protection Overlay District. Attorney Keenan answered that he did not know and could defer these zoning questions to Norman Hill for clarification.

Mr. Regan inquired whether there had been correspondence from the Economic Development Commission regarding this re-zoning petition, and if there was no reply, was it due to a lack of distributing the petition or some other reason.

Mr. Hassinger discussed having concerns of one parcel in the middle of residential zoning, requesting to change to a different use within the present zone.

Mr. Regan questioned John LaPoint, present at the meeting, if he had any knowledge of the EDC discussing or commenting on this petition. Mr. LaPoint stated he was unaware of any discussion of this matter with the EDC.

Mr. Hassinger also noted that the petition seemed to be a well considered plan for the public welfare, but since the Board does not know what the plan consists of, it is difficult to vote on what is before us.

Attorney Keenan explained to the Board that his client's objective is to have the Board recommend the zoning change to Industrial after having heard a legal opinion on the spot zoning issue and forwarding it to Town Counsel for consideration, then moving forward to work with the WBDC in securing industrial uses for the site. Attorney Keenan again emphasized the parcel has significant Industrial value as located, but they will not look into industrial uses until the rezoning is approved.

Mr. Hassinger noted that the Industrial zone is the most generous in the use allowance, but that most uses are not terribly attractive to the area.

Mr. Bishop informed the Board that the zoning map indicates the area is within the Water Supply Protection Overlay Development.

Mr. Regan stated he was interested in hearing feedback from our Town Counsel and the Economic Development Commission, who he will reach out to personally to hear their reaction to this petition.

Mr. Hassinger brought up concerns of wetlands in the area and Attorney Keenan stated that Norman Hill can respond to these concerns.

John LaPoint of 220 Providence Road asked if this article has been submitted to Town Meeting.

Mr. Regan explained that the petition was submitted in the spring, and was deemed not to be in order by the Board of Selectmen, resulting in a public hearing scheduled after Town Meeting.

Mr. Bishop informed the Board that the Board of Selectmen had referred the petition to the Planning Board, asking whether there was enough time to schedule a public hearing before the warrant submission deadline. Mr. Bishop noted it was determined there was not sufficient time to post the public hearing and a hearing was advertised for a later Planning Board meeting date after Town Meeting. Mr. Bishop noted that at that scheduled hearing, the Board had requested the petitioner to provide a legal argument that the rezoning does not constitute spot zoning. Mr. Bishop remarked that if the Board decides to recommend the rezoning article to the Board of Selectmen, the petitioner will be looking to resubmit the petition for the Fall Town Meeting.

John LaPoint asked if this was a valid article for Fall Town Meeting and was told yes.

**MOTION** by Mr. Regan, **SECOND** by Mr. Chouinard, to grant the petitioner's written request to continue the public hearing to September 10, 2007 at 7:00 p.m., in order to allow time for Town Counsel's consideration of the spot zoning legal argument and feedback from the Economic Development Commission.

**DISCUSSION:** Attorney Keenan inquired that if Town Counsel agrees with the spot zoning argument, does the Planning Board recommend the petitioner returning for further discussions.

Mr. McCarthy stated that further discussion can't be anticipated if the Board has no knowledge of what uses are to be considered.

Chairman Parsons added that he could see no benefit in the petitioner's return to the Board at that time unless there is a valid submission with a valid intent for the parcel use.

Mr. McCarthy wished to note that typically a party does not spend a significant amount of money investigating a site use unless there is some driving idea as to what the site will be used for.

Chairman Parsons indicated to the petitioner that the Board would feel more comfortable if some attractive uses are submitted and suggested.

Mr. Atchue informed the Board that two local businesses, Fiba Technologies, Inc., located at the Grafton/Millbury line and Washington Mills in North Grafton, had already contacted him with significant interest in establishing distribution points for their businesses.

Mr. Regan directed Mr. Bishop to channel this re-zoning petition information to the Economic Development Commission, and stated he would also follow up on the notification.

**MOTION** carried unanimously.

**SP 2007-3 DAVID MASON / MASON CONSTRUCTION (APPLICANT/OWNER)**  
**- 129 FERRY STREET – COMMERCIAL BUILDING WITH ASSOCIATED**  
**PARKING**

Chairman Parsons opened the public hearing.

Present for the hearing were applicant/owner David Mason, his attorney Laura Mann, and his engineer Mark Santora.

Attorney Mann briefly reviewed the application with the Board, stating there were three main points raised: one, the drainage easement, which after discussion with the DPW, will be given to the Town; two, the ongoing discussion of how the site uses fit into the zoning regulations, for which a new letter & sketch were submitted clarifying the uses and storage of materials; three, how this permit fits into the uses under the WSPOD.

Mr. Courchesne stated there was some question about the letter received, which described uses, and reminded the applicant that the Planning Board is constantly interpreting the bylaw every time they make a decision. Mr. Courchesne noted that with regard to the

letter, under the regulations attached, it is still unclear how storage is being defined. Mr. Courchesne also stated that the quantities listed are a little misleading and the reference to the Fordham case is a little vague. Mr. Courchesne and Attorney Mann continued to discuss what storage actually means, with Mr. Courchesne noting that he understood this to mean quantities greater than household use under Section 7.4.C.9 of the WSPOD.

Mr. Santora explained that storage was the intended use of the building.

Mr. Courchesne remarked that this is exactly the issue the Board is facing; that the use is described as the storage of vehicles and equipment using the facility, but there is no active use. Mr. Courchesne stated it is all a matter of interpreting the bylaw and we each have different ways of looking at it.

Attorney Mann suggested the Board proceed to seek acquire Town Counsel's advice on the storage issue under Section 7.4.C.9.

Mr. Hassinger asked about when parking becomes storage and Attorney Mann responded that it doesn't.

Mr. Chouinard inquired about needing a permit for additional fuel storage tanks.

Mr. Santora informed the Board that a Fire Department permit is required for additional fuel storage tanks.

Mr. Chouinard also asked if sprinklers are required in the building.

Mr. Santora stated that it depends on the uses allowed.

Mr. Hassinger pointed out that an explanation is needed from the applicant in the case of any Class I liquids, so that the Board can get a handle on the problem.

Mr. Santora indicated they will not be renting to anyone with tankers, or with any substance in violation of the Water Supply Protection Overlay District (WSPOD).

Mr. Hassinger informed the applicant that the Board's approach was one of "what is the purpose here?" and is concerned with keeping bad stuff from going into our water supply. Mr. Hassinger adjusted his questioning to determine how much petroleum will be on site here that the Board does not want in the water supply.

Attorney Mann stated that she would provide a draft lease document with specific controls.

Mr. McCarthy added that Mr. Courchesne has brought up some valid interpretations that the Board should request Town Counsel's advice on.

Mr. Courchesne noted the Board needs to know how this issue has been interpreted in the past.

Mr. Hassinger noted that since we have an opinion from the Building Inspector, the Board could make a decision, but with all the confusion arising on this issue, it is in the best interests of the Board to seek Town Counsel's advice.

Mr. Santora repeated that if there are any fluids within the building, it immediately goes to the MDC trap into a special trap container, not into the water supply.

Attorney Mann requested that Town Counsel be asked if storage is defined as petroleum if it is in a vehicle or only if in a storage tank.

Mr. Bishop stated he would request clarification from Town Counsel on Use Regulation 7.4.C.9, relating to the storage of vehicles on site.

Attorney Mann asked if there were any other concerns in any other areas of the application.

Mr. Bishop questioned the issue raised by the Conservation Commission with regard to the 25-foot no disturb zone impact.

Mr. Santora informed the Board they were re-flagging the area and the Conservation Commission will check the area again to see if the applicant is in compliance.

**MOTION** by Mr. Regan, **SECOND** by Mr. Hassinger, to accept the applicant's written request to continue the public hearing to September 10, 2007 at 7:00 p.m. **MOTION** carried unanimously.

Chairman Parsons received unanimous consent to take **ACTION ITEM 2-A** next in order.

**ACTION ITEM 2-A – CONSIDER DECISION – SP 2007-5 TOWN OF GRAFTON / GRAFTON FIRE STATION BUILDING COMMITTEE – 26 UPTON STREET**

Mr. Bishop informed the Board he had received the requested site distance specifications and also a prospective architectural design submission, both of which should have been in the Board's mailboxes.

**MOTION** by Mr. Courchesne, **SECOND** by Mr. Hassinger, to grant Special Permit/Site Plan SP 2007-5 with the changes noted for Condition #1. **MOTION** carried unanimously 5 to 0 by roll call vote: Chouinard-aye; Hassinger-aye; Parsons-aye; Regan-aye; Courchesne-aye.

**ACTION ITEM 2-B – APPROVAL NOT REQUIRED PLAN – ANR 2007-9 MICHAELINA SUCH – (APPLICANT/OWNER) – 350 PROVIDENCE ROAD**

Mr. Bishop noted that the plan meets the requirements for frontage and lot area.

**MOTION** by Mr. Hassinger, **SECOND** by Mr. Chouinard, to endorse ANR 2007-9 on the Town Planner's recommendation and to authorize the Planner to sign the plan on behalf of the Planning Board. **MOTION** carried unanimously.

### **MINUTES OF PREVIOUS MEETINGS**

**MOTION** by Mr. Hassinger, **SECOND** by Mr. Chouinard, to approve the open session minutes of July 9, 2007 with the corrections noted. **MOTION** carried unanimously.

**MOTION** by Mr. Regan, **SECOND** by Mr. Chouinard, to approve the Executive Session minutes of July 9, 2007 as drafted, to be held in confidential status until the matter is resolved. **MOTION** carried unanimously.

### **STAFF REPORT**

Mr. Bishop informed the Board that since he was on vacation the previous week, there were no items to discuss in the Staff Report.

Mr. Regan inquired about the 40B project for Nugent Place who had changed their application to 20 condominiums with four affordable units and wondered if the Affordable Housing Committee had looked at the project as yet.

Mr. Bishop stated the Affordable Housing Committee had not been contacted yet.

Mr. Courchesne stated the project at Institute Road was seeking to make a presentation to the Board of Selectmen.

Mr. Bishop informed the Board that the wireless facility decisions for 51 Browns Road and 160R Upton Street were not appealed.

### **CORRESPONDENCE**

Mr. Bishop informed the Board that Mr. Magill had violated the conditions of his approval resulting in a stop work order by the Conservation Commission. The Conservation Commission had requested a construction meeting on the next phase involved for Highfields to re-establish the ground rules for the work being done.

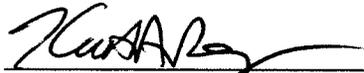
Mr. Hassinger stated he had heard that revised plans have surfaced for the South Street/Bruce Street Intersection. Mr. Bishop noted he has received a plan from Town Engineer Stephen Risotti, marked for the minor modifications. Mr. Bishop informed the Board that the intersection will be immediately modified, and an immediate request will be in to fix the pole, with an added request from the Chief of Police.

Mr. Bishop noted the modifications are staked out now for the Board to view and forward feedback to Mr. Risotti.

Chairman Parsons suggested the Board view the staked-out modifications and forward feedback to Mr. Bishop by Thursday.

**MOTION** by Mr. Chouinard, **SECOND** by Mr. McCarthy, to adjourn the meeting.  
**MOTION** carried unanimously.

The meeting was adjourned at 9:10 p.m.

  
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Keith A. Regan, Clerk